Studying Indigenous Politics in Canada:
Assessing Political Science's Understanding of Traditional Aboriginal Governance

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In the discipline of political science, the importance of understanding the historical development of political systems is recognized. A historical sequence of events must be constructed and analyzed to determine possible causes and effects when studying politics and government systematically. Introductory political science textbooks lament the minimal historical understanding that exists amongst the student body because it is maintained that those "without a historical perspective are adrift intellectually. They lack the important bearings that make sense of Canada's unique history, as well as the development of Western civilization and the rise and fall of other civilizations".[1]

Historical understanding is particularly important in the study of indigenous politics in Canada, where there is a constant attempt to link modern and traditional forms of governance. Understanding aboriginal traditions is essential for achieving aboriginal-non-aboriginal reconciliation, and many political scientists argue that misrepresentations of pre-contact indigenous governance continue to perpetuate colonialism.

This makes it important to ask how aboriginal political traditions are being conceptualized in the discipline of political science. Is this portrayal based on a rigorous and systematic analysis of all the evidence that is available? Through an overview of aboriginal political traditions, as well as an examination of three specific areas - the Iroquois Confederacy's *Kaienerekowa*, the pre-contact Mi'kmaw constitutional order and the ancient Gitksan-Wet'suwet'en *adaawk* and *kungax* - a preliminary assessment, of the conceptualization of pre-contact political characteristics in the discipline, will be developed. Questions will then be raised about how this perception is influencing our current understanding of aboriginal governance and claims to self-determination. It will be argued that there is a linkage between academic determinations of aboriginal circumstances, political activism and policy formulation; all political scientists, therefore, should be concerned about how indigenous traditions are being represented in the discipline.

The Study of Political Traditions in Political Science

The purpose of political science is to develop and disseminate knowledge about government and politics. To do so requires that these aspects of society be studied systematically. Political scientists are expected to strive for objectivity, by considering alternate hypotheses and

[1] Mark Dickerson et al., *An Introduction to Government and Politics: A Conceptual Approach*, Eighth Edition (Toronto: Nelson Education, 2010), p. xviii.

incorporating all the evidence that is available. While absolute objectivity is unattainable, and important data can be missed, some political science studies are more rigorous than others.

While developing a more comprehensive understanding of politics and government is important for its own sake, as acquiring knowledge about the world is fundamental to human fulfillment, it is also important to help us in our attempts to reduce conflict, improve governance and achieve social justice. Developing an understanding of plausible causes of war, political oppression and government corruption can enable effective reforms to be proposed. On the other hand, misunderstanding political and governmental processes can result in flawed policies and counterproductive political activities.

Political science obviously cannot be as rigorous as the physical sciences, such as physics or chemistry, because it concerns phenomena pertaining to human beings – who can influence research about themselves. However, certain methods can increase understanding over time. Two of the most significant methods are historical analysis and comparative approaches. By developing synchronic and diachronic studies, a certain amount of control can be exerted over the study of political systems.[2] Significant variables can be identified and implausible explanations discarded, enabling more convincing accounts of politics and government to emerge.

Use of these methods also necessitates a clarification of concepts to ensure standardized usage in the discipline. When studying political systems, it is important that similar elements are identified. In this way, like can be compared with like. As one introductory political science textbook explains, "it is vital that we establish a common language as students of political studies so that we can avoid unnecessary misunderstandings and make our dialogue more effective and efficient".[3]

While being an important aspect of political science in general, historical analysis, in particular, is seen as necessary for the study of aboriginal politics. This, because colonization, and the resulting conflict between aboriginal and non-aboriginal peoples, is rooted in history. Furthermore, many decolonization proposals by political scientists promote a revitalization of aboriginal political traditions. As Kiera Ladner and Caroline Dick assert,

> for Indigenous peoples, answering such questions [about aboriginal-non aboriginal reconciliation] requires looking to the past, because in the past lies not only the source of the problem but its solution. Indeed, the vision of an acceptable future that is predominant among Indigenist thinkers is one that reconciles the past with the future by renewing the treaty order. It is this vision that grounds this discussion as it proceeds historically and grapples with questions concerning the effectiveness of political, legal, and international action in advancing this agenda.[4]

This view differs from most political science studies, which tend to assume human commonality, not a romantic view of inherent cultural differences. While history is perceived as a causal factor

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[2] Robert J. Jackson and Doreen Jackson note that "in the synchronic approach, specific political factors in Canada are compared with those of others states. In the diachronic approach, political factors are examined in one or more countries over historical time". Jackson and Jackson, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*, Fifth Edition (Toronto: Pearson Education, 2000), p. 15.

[3] George A. MacLean and Duncan R. Wood, *Politics: An Introduction* (Toronto: Oxford University Press), p. 25.

[4] Kiera Ladner and Caroline Dick, "Out of the Fires of Hell: Globalization as a Solution to Globalization – An Indigenist Perspective", *Canadian Journal of Law and Society*, 23(1-2), 2008, p. 64.

in the development of political systems, it is not considered that the answer to current conflicts lies in a revitalization of traditions. It is understood that modern political systems are much more complex than those that existed in the past.[5] No political scientist studying American, European or Chinese politics and government, for example, would argue for a return to slavery, feudalism or a dynastic system to improve domestic governance or international relations.

Because of the important place that indigenous political traditions play in studies of aboriginal politics and governance, it is important to assess how the discipline is portraying precontact circumstances. This will require an examination of political science's conceptualization of aboriginal political traditions, as well as more specific case studies of the political systems of different aboriginal groups.

Political Science's Portrayal of Indigenous Political Traditions

Assessing the portrayal indigenous political traditions in Canadian political science is difficult. How can "political science" in Canada be identified as a totality? Isn't political science just the compilation of the views of Canadian political scientists? If so, how many political scientists will be studied? Should the work of academics of other disciplines be included?

While it is impossible to study everything that has been written about aboriginal history in political science, the widest survey possible of indigenous political traditions in the discipline will be undertaken. This will occur in two different parts. First will be an attempt to understand the general characterization of aboriginal political traditions in the discipline. Then, the portrayal of the traditions of three specific areas – the Mi'kmaw, the Gitskan-Wet'suwet'en and the Iroquois – will be examined.

With respect to political science's general portrayal of political traditions, there will be a focus on four areas: articles in the *Canadian Journal of Political Science*, articles by political scientists (academics who have received doctorates in political science or teach in political science departments), political science textbooks, and books on aboriginal politics that have been awarded the Donald Smiley Prize.[6] After reviewing sources selected according to these criteria, it will be shown that a relatively consistent portrayal of indigenous political traditions is occurring within the discipline. Concerning external political relations, it is generally maintained that aboriginal people before contact were nations asserting sovereignty in what is now Canada. Domestic political relations, on the other hand, are seen as being non-coercive and egalitarian in nature,[7] where democratic forms of governance embrace consensus-based decision making, the use of customary laws and the acceptance of personal authority. A number of political scientists also argue that constitutional principles prescribed the activities of precontact aboriginal governments.

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[5] One of the major frameworks used in comparative politics, in fact, is the developmental framework. For a discussion see Robert J. Jackson and Doreen Jackson, *An Introduction to Political Science: Comparative and World Politics*, Fifth Canadian Edition (Toronto: Prentice Hall, 2008), pp. 106-112 and 457-472.

[6] The Canadian Political Science Association notes that the prize is "awarded to the best book published…in a field relating to the study of government and politics in Canada", http://cpsa-acsp/ds-prize.shtml [accessed May 2012].

[7] Gender equality and environmental sensitivity are included in these egalitarian relations.

This general characterization of indigenous political traditions is, however, not universally accepted. Thomas Flanagan, in particular,[8] has vigorously opposed this characterization. Flanagan's work has been celebrated by some, and his book, *First Nations? Second Thoughts,* was awarded the Donald Smiley Prize in 2001. His views are often incorporated as the "other side" in a number of political science textbooks.

Many political scientists have vehemently opposed Flanagan's work. Awarding Flanagan the Donald Smiley Prize, for example, caused a furor within the discipline. Gurston Dacks, the chair of the three-member jury, quit when he was outvoted in the decision to award *First Nations? Second Thoughts* the prize (Dacks had agreed to participate in the voting process, and only withdrew when he did not get the result that he wanted). Joyce Green maintained that the awarding of the prize to Flanagan "fractured the [political science] community…because it implicated us all in rewarding something that many of us felt was deeply wrong" by celebrating arguments supporting "the subordination of indigenous peoples".[9]

The argument that drew the most opposition was Flanagan's contention that aboriginal peoples' political systems were less developed than those in European societies at the time of contact. Flanagan maintains that native groups were relatively undeveloped because they lacked attributes of civilization – intensive agriculture, urbanization, an extensive division of labour, writing, advanced technology, and the existence of a state.[10] A "civilization gap", according to Flanagan, resulted in the colonial displacement of aboriginal peoples and attempts to assimilate them. This viewpoint led Radha Jhappan to argue that "there's a fundamental racism that underpins [Flanagan's] view". In Jhappan's opinion, Flanagan's work contains "an amazingly selective reading of history" that is "driven by a particular right-wing agenda that wants to undermine the [aboriginal] claims of collectivity."[11]

Much of the criticism directed at Flanagan constitutes unsubstantiated and unprofessional personal attacks against a colleague. However, Jhappan's assertion about Flanagan's "selective reading of history" warrants an examination. This statement is an indication of one of the standards of the discipline – that a political scientist's reading of history should not be "selective". Political scientists, like historians, should try to document the past as accurately as is possible by relying on all available data that can be publicly scrutinized.[12] Although it is true, as the Royal Commission on Aboriginal Peoples points out, that history "is not an exact science" since "past events have been recorded by human beings who…have understood them through the

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[8] Work written by one of us (often with Albert Howard) also is critical of the dominant characterization of indigenous political traditions in the discipline of political science. See, for example, *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation* (Montreal: McGill-Queen's University Press, 2008). This work will not be discussed because it has not cited extensively in the discipline.

[9] Marci MacDonald, "The Man Behind Stephen Harper", The Walrus, http://walrusmagazine.ca/articles/the-man-behind-stephen-harper-tom-flanagan/4/ [accessed May 2012].

[10] Tom Flanagan, *First Nations? Second Thoughts* (Montreal: McGill-Queen's University Press, 2000), p. 33.

[11] MacDonald, "The Man Behind Stephen Harper".

[12] The historian E.H. Carr makes this point when he characterizes history as a "constructive outlook over the past". Carr rejects mysticism because "a serious historian may believe in a God who has ordered, and given meaning to, the course of history as a whole, though he cannot believe in the Old Testament kind of God who intervenes to slaughter the Amalekites, or cheats on the calendar by extending the hours of daylight for the benefit of Joshua's army. Nor can he invoke God as an explanation of particular events". For a further discussion of these points, see E.H. Carr, *What is History* (New York: Alfred A. Knopf, 1965), pp. 74, 109.

filter of their own values, perceptions and general philosophies of life and society",[13] this does not mean that all accounts of the past are equally valid. As E.H. Carr points out, history is not "a child's box of letters with which we can spell any word as we please";[14] in order to write meaningful history political scientists must both ensure the accuracy of the evidence used and "bring into the picture all known or knowable facts relevant, in one sense or another, to the theme on which he is engaged and to the interpretation proposed".[15] All work in political science should be scrutinized on this basis. Questions should be asked as to whether political science's characterization of indigenous political traditions selectively deploys evidence to buttress a particular political agenda ("right-wing" or otherwise).

The portrayal of indigenous political traditions in political science, in fact, exhibits two fundamental problems. First of all, the evidence supporting the existence of particular indigenous traditions is limited; political scientists who study them avoid incorporating essential research contrary to their preconceived notions. Advocacy in this area of the discipline leads to the selection of a politically popular premise for which historical evidence is selected as support. More problematic is the uncritical use of "oral histories", which, in scholarly research, must be carefully examined before they are incorporated as historical evidence. Second, concepts that are given a particular meaning in political science are changed when applied to indigenous politics and governance. This prevents the discipline from understanding the significant differences that exist between indigenous and non-indigenous political traditions.

National Self-Determination and Inherent Indigenous Sovereignty

It is asserted in the discipline that aboriginal peoples have the right to self-determination.[16] This view assumes that native groups were nations before contact,[17] and therefore have an "inherent sovereignty" that continues to exist.[18] Questions, therefore, need to be raised as to what evidence exists to support the existence of pre-contact native nations, as well as the assertion that they continue to exhibit these characteristics.

One of the major works supporting the existence of precontact aboriginal nationalism is Patrick Macklem's *Indigenous Difference and the Constitution of Canada* – a book that was awarded the Donald Smiley Prize in 2002 and praised for its "deep and thorough research in law, political science, philosophy and history, and its subtle and sophisticated argumentation".[19] In making his

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[13] Final Report, 1, p. 32.
[14] E.H. Carr, *What is History*, p. 26
[15] Ibid, p. 28.
[16] See, for example, Peter Russell, "Indigenous Self-determination: Is Canada as Good as it Gets?", in Barbara A. Hocking (ed), *Unfinished Constitutional Business? Rethinking Indigenous Self-Determination* (Canberra: Aboriginal Studies Press, 2005).
[17] Some qualify this assertion by maintaining that "Native peoples exhibit some aspects of modern nationalism" but don't elaborate on the aspects. Jackson and Jackson, *Politics in Canada*, p. 248.
[18] Although not a political scientist, one of the most prominent academics making this claim is John Borrows. See, for example, John Borrows, "A Genealogy of Law: Inherent Sovereignty and First Nation Self-Government", 291(30), *Osgoode Hall Law Journal*. The argument in this article forms the basis of Borrows' assertions about indigenous sovereignty in his book *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), which won the Donald Smiley Prize.
[19] The reviews of the book by political scientists have been mixed. The book was praised by two political scientists - David E. Smith and Michael Murphy. Murphy even maintained that "this is an excellent book that is sure to become one of the standard texts in the field". Macklem's book, however, was criticized by the political scientists

claim about aboriginal nationalism, Macklem uses a standard political science definition of nation: "[a] territorially based community of human beings sharing a distinct variant of modern culture, bound together by a strong sentiment of unity and solidarity, marked by a clear historically-rooted consciousness of national identity, and possessing, or striving to possess, a genuine political self-government". [20] To support applying this conceptualization to the aboriginal context, Macklem uses a statement of U.S. Chief Justice Marshall that North America before contact was "inhabited by distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws".[21] Roger Townshend, in a debate held with Thomas Flanagan in a popular political science textbook, confidently confirms these assertions, maintaining that "there is no question that, prior to European contact, Aboriginal nations in North America had stable cultures, economies, and political systems, and that many (if not all) of these were of amazing sophistication in adaptation to their environment".[22]

Some characterizations of aboriginal nationalism stress cultural, as opposed to political, factors,[23] thereby avoiding a discussion of how the small size and economic marginalization of aboriginal groups would make it difficult for them to demand "genuine political self-government". Others reject any attempt to apply a standard political science definition. Kiera Ladner, for example, notes that "traditional (that is, Eurocentric) conceptualizations of the nation typically include territory as an essential component. But, Aboriginal nations are not 'ordinary' nations – nor have they ever been – as they are very different from their European counterparts".[24] But Ladner also, somewhat paradoxically, claims that aboriginal groups should be considered nations in the traditional sense even if they have small populations. This is because, according to Ladner, "the existence of a nation has little to do with size. The majority of students of nations and nationalism do not cite size as a component of their conceptualizations or definitions".[25] Michael Murphy also acknowledges that the size of some aboriginal groups makes it difficult to apply the term nation in a straightforward manner, and that, in many cases, "Aboriginal self-government likely will bear little resemblance to fully constituted territorially concentrated governments…". He goes on to argue, however, that because of aboriginal peoples' continuing "normative claim that their authority to self-government…has not been undermined by the

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Janet Ajzenstat, Taiaiake Alfred and Jeff Corntassel – albeit from very different perspectives. Alfred declares the book is an example of "classic colonial-liberal discourse with liberatory pretences", while Janet Ajzenstat notes it was written as a "legal factum" that "pays little attention to serious challenges". Janet Ajzentat, "Reviews", *Canadian Journal of Political Science*, 35(2), 2002, pp. 426-7 and Taiaiake Alfred and Jeff Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism", *Government and Opposition* 40(4), Autumn 2005.

[20] Macklem derives this definition from Konstantin Symmons-Symonolewicz, "The Concept of Nationhood: Toward a Theoretical Clarification", *Canadian Review of Studies in Nationalism* , 215 (1985), p. 221. Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001), p. 107, note 3.

[21] Macklem, *Indigenous Difference*, pp.107-8.

[22]Roger Townshend, "The Case for Native Sovereignty", in Mark Charlton and Paul Barker (eds), *Contemporary Political Issues, Sixth Edition*, (Toronto: Nelson Education, 2009), p. 37.

[23] See, for example, Menno Boldt and J. Anthony Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians", *Canadian Journal of Political Science*, 18(2), June 1985.

[24] Kiera L. Ladner, "Negotiated Inferiority: The Royal Commission on Aboriginal Peoples' Vision of a Renewed Relationship", *American Review of Canadian Studies*, 31(1-2), pp. 249-50.

[25] She supports this view by citing Ernest Renan and Stasilus and Yuval–David. Ladner, "Negotiated Inferiority", p. 249.

massive changes and disruptions to their societies and ways of life", they have "a greater affinity to more standard examples of nationalist mobilization in Canada and abroad".[26]

But what is the "authority to self-government" that "has not been undermined"? Although this is not specified by Murphy, he is presumably referring to a claim of many aboriginal groups that they have "inherent sovereignty". As Murphy argues, "before the arrival of the first European explorers and traders, North America was occupied by a diverse and thriving assortment of independent self-governing Aboriginal nations, with their own distinct cultures, languages and systems of law and government". He goes on to argue that "it is this status as the original occupants and the original sovereigns in their traditional territories which is most often cited by Aboriginal peoples as the primary source of their self-governing authority, and of all the various other rights, responsibilities and entitlements which flow from that authority".[27]

With respect to assertions about aboriginal peoples being the "original sovereigns", one of the most comprehensive arguments, again, has been put forward by Patrick Macklem. Macklem argues that it is a "complex social fact", a matter of "factual accuracy", and "no doubt true" that aboriginal peoples "exercised sovereign authority over persons and territory" and were "sovereign nations prior to European settlement and colonization".[28] Many political scientists accept Macklem's emphatic statements. Joyce Green, for example, notes that "Patrick Macklem argues that indigenous governance derives from precolonial indigenous sovereignty…". She does not contest this assertion, linking her own arguments about cultural difference to Macklem's contention that "'certain interests are more important than others and, in the case of an Aboriginal right of self-government, [are] worthy of the mantle of constitutional right'".[29]

It is not noted, however, that Macklem uses evidence very selectively to support his claim about the "fact" of pre-contact sovereignty. Only two pieces of evidence are used. One source is an assertion by Francisco de Vitoria in 1539 that aboriginal groups in North America "undoubtedly possessed true dominion, both in public and private affairs". [30] The other is Chief Justice Marshall's claim that "'[i]t is difficult to comprehend the proposition that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered which annulled the pre-existing rights of its ancient possessors".[31] While Macklem does acknowledge that a number of commentators did not accept the claim that indigenous sovereignty existed at the time of contact (because, as was asserted by Flanagan, aboriginal groups were not perceived as possessing the attributes of civilization), he

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[26] Michael Murphy, "Culture and Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights", *Canadian Journal of Political Science, 34(1),* March 2001, p. 114.
[27] Ibid, p. 113.
[28] Macklem, *Indigenous Difference,* pp. 4-5, 119.
[29] Joyce Green, "The difference debate: Reducing rights to cultural flavours", Canadian Journal of Political Science, 33(1), 2000.
[30] The citation offered by Macklem is as follows: "De Indis, 1539, in Anthony Pagden and Jeremy Lawrence, eds, Francisco de Vitoria: political writings (Cambridge: Cambridge university press 1991), p. 251". See Macklem, *Indigenous Difference*, note 43, p. 119.
[31] The citation is "Worcester v Georgia, 31 U.S. (6 Pet.) 515 at 542-3 (1832)". See Macklem, *Indigenous Difference*, note 44, p. 119.

does not analyze the arguments of this position. He merely provides a footnote citing further sources that make the assertion, leaving their criticisms unanswered.[32]

A number of other political scientists also affirm that aboriginal peoples exercised sovereignty before contact. James Tully maintains that aboriginal groups were sovereign according to the traditional political science definition because they had permanent populations, defined territories, effective governments and the capacity to enter into relations with other nations.[33] He maintains that "the sovereignty of the native peoples - to govern themselves by their own laws and to exercise jurisdiction over their traditional lands - was explicitly recognized in Imperial legislation, Royal proclamations and instructions, and Privy Council decisions from 1696 to 1931".[34] Kiera Ladner points to similar colonial actions, including the negotiation of treaties[35] and the Royal Proclamation of 1763's reference to aboriginal groups as nations.[36] Peter Russell also references the Royal Proclamation and notes that the British government gave aboriginal groups autonomy, thereby accepting their aspirations of self-determination.[37]

In addition to the use of colonial historical records, oral histories are pointed to as evidence of precontact aboriginal nationhood and sovereignty. Kiera Ladner, for example, notes that "Treaty Six may be construed to mean that the two parties to the treaty would co-exist peacefully as two sovereign entities within the same territory" since "this interpretation is predominant in accounts of oral history, and has been taken by many to imply a similar status of co-existence to that described in the Two Row Wampum Treaty".[38] Oral history has even been asserted by one political scientist as "akin to the performance of nationhood".[39]

Although Kiera Ladner "…perceive[s] oral tradition to be a source of information which is superior to the written tradition…",[40] this assertion fails to recognize the added difficulties of

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[32] See Macklem, *Indigenous Difference*, note 22, p. 114. The footnote does not discuss their reasoning, but appears as follows: "See, e.g., John Westlake, Chapters on Principles of International Law (Cambridge: Cambridge University Press, 1894), at 136-8, 141-3 (drawing a distinction between 'civilization and want of it'); Hall, A Treatise on International Law, at 47 (international law only governs states that are 'inheritors of that civilization'); Oppenheim, International Law, 126 (the law of nations does not apply to 'organized wandering tribes'); and Charles C. Hyde, International Law Chiefly as Interpreted and Applied by the United States (Boston: Little Brown, 1922) at 164 ('native inhabitants possessed no rights of territorial control which the European explorer or his monarch was bound to respect'). See, generally, S. James Anaya, 'The Rights of Indigenous Peoples and International Law in Historical and Contemporary Persective,' Harvard Indian Law Symposium (1990), 191; Gerrit W. Gong, The Standard of 'Civilization' in International Society (Oxford: Clarendon Press, 1984). Compare David Strang, 'Contested Sovereignty: The Social Construction of Colonial Imperialism,' in Biersteker and Cynthia Weber, State Sovereignty as a Social Construct, 22-49 at 43 ('the imperial moment took place within and was carried forward by a collective delegitimation of the sovereignty of non-Western polities')".

[33] James Tully, "Reviews", *Canadian Journal of Political Science*, 24(2), 1991, pp. 386-388.

[34] Ibid.

[35] Ladner and Dick, "Out of the Fires of Hell". This assertion relies on a discussion by Ladner in another article. See Kiera L. Ladner, "Rethinking Aboriginal Governance," in M. Janine Brodie and Linda Trimble (eds), *Reinventing Canada: Politics of the 21st Century* (Toronto: Prentice Hall, 2003), 45–47.

[36] Ladner, "Rethinking Aboriginal Governance", p. 45.

[37] Russell, "Indigenous self-determination".

[38] Kiera L. Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalisms", in Rocher and Smith (eds), *New Trends in Canadian Federalism*, Second Edition (Toronto: Broadview Press, 2003), pp. 177-178.

[39] Bradley Bryan, "Legality against Orality", *Law, Culture and the Humanities*, June 30, 2011.

[40] Kiera Ladner, *When Buffalo Speaks: Creating an Alternative Understanding of Blackfoot Governance*, Unpublished Ph.D. Dissertation, Carleton University, 2000 p. 41.

using oral accounts in comparison to written documents.[41] The essential problem is that oral histories cannot be "pinned down" or "frozen in time" and are subject to alterations of convenience. As a result, there can be dramatic changes in these accounts over the years. Although written histories reflect the biases of the historian, and can even contain outright lies, no one disputes that written documents continue to comprise the same words as when they were originally created (unless, of course, they are part of a hoax). The original versions of oral histories, on the other hand, can never be retrieved, enabling aboriginal testimonials to be transformed, and even fabricated, to suit the political requirements of the current period. This makes it necessary for political scientists to exercise skepticism when incorporating oral accounts as historical evidence.

In addition to selectively using evidence to support claims of indigenous sovereignty, as well as the uncritical incorporation of oral histories, the term "sovereignty" has been redefined. Patrick Macklem, for example, does not use the standard definition provided in political science textbooks, where sovereignty is conceptualized as the highest source of authority – a bundle of powers that is generally associated with the state.[42] Instead, Macklem maintains that "nothing inherent in the concept of sovereignty dictates a particular institutional form". He defines sovereignty as "allowing the legal expression of collective difference", which does not concern "particular structures of authority" within a political system. This relationship between sovereigns is one "in which each views itself and the other as independent and distinct", whereby "a group's distinctiveness can take many forms…".[43]

An alternate definition of sovereignty also appears in Townshend's debate with Flanagan. Townshend notes that "pre-contact Aboriginal nations unmistakably exercised full control or 'sovereignty' over their traditional lands, although in somewhat different ways than did European nations". This different definition should be accepted, according to Townshend, because "it would be arrogant and ethnocentric to recognize only a European model of political organization as capable of possessing sovereignty".[44] Townshend then contests the Canadian state's claim to sovereignty over aboriginal groups. He maintains that "although non-Aboriginal Canadians rarely question the legitimacy of the Canadian state, most thoughtful people would likely be distressed at how flimsy the logical justification for Canadian sovereignty indeed is". The flimsiness of Canadian political legitimacy, according to Townshend, is due to the fact that claims to Canadian sovereignty are based on the doctrine of discovery and the idea of *terra nullius*, which assumed that aboriginal peoples were legal nonpersons. This requirement of "a judgment that Aboriginal people are not really human for legal purposes", according to Townshend, "is surely repugnant to thinking Canadians".[45] Townshend, therefore, is using an

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[41] One of us has discussed these problems in depth elsewhere, and so this will not be repeated here. For a discussion see Frances Widdowson, "Native Studies and Canadian Political Science: The Implications of 'Decolonizing the Discipline", paper presented for the Canadian Political Science Association", June 4-6, 2008, http://cpsa-acsp.ca/papers-2008/widdowson.pdf [accessed May 2012].

[42] See Thomas Flanagan, "Native Sovereignty: Does Anyone Really Want an Aboriginal Archipelago?", in Charlton and Barker (eds), *Contemporary Political Issues*, p. 43 for the use of a standard political science definition in this context.

[43] Macklem, *Indigenous Difference*, p. 112.

[44] Townshend, "The Case for Native Sovereignty", p. 37.

[45] Ibid, p. 38.

argumentum ad hominem to support his view, as no Canadian political scientist wants to be accused of not being "thoughtful".

Ad hominem arguments, however, disguise the reality that claims about aboriginal sovereignty are based upon a selective reading of historical documents. Justice Marshall, a source used to support the idea that aboriginal peoples possessed sovereignty, also characterized aboriginal groups as "domestic dependent nations", which he explained as follows: "They [aboriginal groups] occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian".[46] Marshall also denied that the American state historically recognized indigenous sovereignty by stating that "the framers of our constitution had not the Indian tribes in view, when they opened the Court of the union to controversies between a state, or the citizens thereof, and foreign states".[47]

The use of the Royal Proclamation to support the existence of aboriginal sovereignty also requires a selective reading of this historical document. Although a number of political scientists have pointed to the fact that the Royal Proclamation referred to aboriginal peoples as "nations", they often omit that the Proclamation's text actually stated "nations *or* tribes [emphasis added]", indicating an absence of distinction or clarity of definition. This means that the British colonial authorities were unsure about the political characteristics of aboriginal groups. The document also referred to the lands reserved for aboriginal groups as being "under [British] Sovereignty, Protection, and Dominion". Reference to this part of the document is avoided because aboriginal groups cannot be both *under* British sovereignty and recognized by British colonial authorities as *possessing* sovereignty.

Flanagan first raised questions about the existence of traditional political indigenous nationhood and, its associated concept, sovereignty. Additional concerns emerged from Alan Cairns in 1999.[48] In a response to Menno Boldt and Anthony Long, Flanagan argued that aboriginal nationhood "is a debatable point which needs to be argued, not asserted".[49] For Flanagan, aboriginal groups would not constitute nations according to political science terminology because they lacked the capacity to "[acquire] a state" and become self-governing,[50] as well as to bring about what Karl Deutsch called "social mobilization". According to Flanagan (following Deutsch),

> the nation creates a new identity for individuals cut loose from the traditional moorings of family, clan, tribe, caste, or village. Self-government is so important to the nation precisely because the other dimensions of identity have become attenuated. The nation can be understood as the people of a mass society who willingly constitute a state or would like to do so if the opportunity arose. As such, the nation is an open society because citizenship can be extended to those who have not acquired it by birth. Indian "nations," in contrast, are closed societies based on birth and marriage. Indian tribes are defined by a myth of common

[46] Cited in Flanagan, *First Nations*, p. 71.
[47] Cited in Flanagan, *First Nations*, p. 72.
[48] Alan Cairns, "Reviews", *Canadian Journal of Political Science*, 32 (1999), 369-71.
[49] Tom Flanagan, "The Sovereignty and Nationhood of Canadian Indians: A Comment on Boldt and Long", *Canadian Journal of Political Science* 18(2), 1985, p. 368.
[50] He refers to the classic essay of Renan, "What is a Nation", whereby "nations do not fully exist unless they are self-governing".

> ancestry, while Indian bands are administrative units artificially created by the Canadian government when it settled Indians on reserves. Neither is anything like the nation in the Western sense.[51]

Flanagan extended this analysis in his book *First Nations? Second Thoughts*. In this work, he notes that the concept "nation" has two meanings – a "cultural/ancestral or ethnic group" and a "political/territorial group"[52] – but that "in the world of the late twentieth century, calling any cultural/ancestral group a nation is automatically associated with political demands for decentralization, autonomy, self-government, or sovereign independence".[53] Flanagan also uses the work of the historian Philip White, who has extensively examined the literature on nationalism. White indicates that five characteristics are associated with nationalism - 1) civilization, 2) significance,[54] 3) territory, 4)[55] solidarity, and 5) sovereignty – and Flanagan points out that none of these circumstances appear to have been present in indigenous political traditions.[56] An examination of White's article, in fact, raises the possibility of whether aboriginal "nationalism" would better be classified as tribalism, since aboriginal groups have been traditionally organized on the basis of kinship,[57] not territory or state allegiance.

These significant challenges to the idea of aboriginal political/territorial nationhood, and the associated concept of sovereignty, are generally ignored in the literature.[58] Attempts to apply standard political science definitions are criticized as "Eurocentric", and reflective of a colonial

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[51] Flanagan, "The Sovereignty and Nationhood", p. 374.
[52] Flanagan, *First Nations?*, p. 69.
[53] Ibid, p. 70. Some similar objections have been made by Alan Cairns in his review of Kymlicka's book *Our Way: Rethinking Ethnocultural Relations in Canada*. According to Cairns, "the common tendency…to couple Aboriginal and Quebecois nationalism together as nationalist challenges to the existing constitutional order has the unfortunate effect that the profound differences between them are overlooked". Cairns notes that Kymlicka's assertion that "the goals of a national group to build and preserve…a territorially concentrated culture" is "within the reach of francophone Quebeckers, but is beyond the capacity of the typical Indian band of less than 1,000 people, and even problematic for the 60 to 80 Aboriginal nations (average population 5,000-7,000, lower limit of 2,000) recommended by the Royal Commission on Aboriginal Peoples". Cairns points out that aboriginal peoples, unlike Quebec, cannot leave the Canadian federation and "the lesser possibility of exit means a greater dependence on the majority society, which limits the distancing from it that is feasible". In Cairns' view, "Aboriginal realities are so varied…and differ so drastically from that of Quebec with over seven million people, a powerful government and an infrastructure superior to that of most of the members of the United Nations, that to huddle them under the common umbrella of multinational Canada contributes to confusion". Alan Cairns, "Reviews", *Canadian Journal of Political Science*, June 1999, p. 370.
[54] This concerns large populations and territories.
[55] It is not just territory, but involves continguous territory, full control, and defined boundaries.
[56] Flanagan, *First Nations*, pp. 84-87.
[57] This can be seen by the constant references to the importance of "kin", "clans" or "families" in the discussion of aboriginal nationalism.
[58] Even political science textbooks that examine Flanagan's arguments criticizing the notion of indigenous political nationhood do not seriously engage with his ideas. Mintz et al., for example, in their introductory political science textbook, note that Tom Flanagan "has challenged the assertion that First Nations have retained their sovereignty. His argument is that Canadian sovereignty has been acquired, in keeping with international law, by long-term continued possession and effective control of the whole country". Eric Mintz et al, *Democracy, Diversity and Good Government*, p. 322. But by stating that Flanagan has "challenged the assertion that First Nations have *retained* their sovereignty [emphasis added]" implies that he accepts the idea that the sovereignty of aboriginal groups existed historically. This is a misrepresentation of Flanagan's position. Flanagan's actual argument is that aboriginal groups could not be sovereign because "sovereignty in the strict sense exists only in the organized states characteristic of civilized societies". Flanagan, *First Nations?*, p. 59.

mentality or racial prejudice.[59] Peter Russell dismisses views that question aboriginal claims to self-determination as being "conservative", and, in the case of Tom Flanagan, of harboring the "traditional white racist view that Aboriginal peoples are too primitive to be recognized as peoples or nations".[60] Similarly, Roger Townshend dismisses Flanagan's objection to the idea of aboriginal nationalism by maintaining that it is an attempt to view aboriginal peoples as "inferior". According to Townshend, "Flanagan appears to be using anthropological vocabulary in a value-laden way to disparage Aboriginal cultures and has ignored the fundamental rejection by anthropology of any kind of ethnocentrism, including conceptual ethnocentrism".[61]

But in political science it is assumed that sovereignty is an attribute of a state, and even advocates of aboriginal national self-determination accept that aboriginal societies before contact were stateless.[62] Kiera Ladner, for example, notes that aboriginal groups "had no need for statehood and they did not covet territorial-bound nation-states…".[63] The absence of this "need" was due, in Ladner's view, to aboriginal peoples being given the land "and the responsibilities that went with it" by "the Creator". As a result, "Aboriginal nations were not implicitly tied to an exclusive territory, and they never viewed territory as the exclusive property of any individual or collectivity (human or otherwise)".[64] This interpretation is also adopted by one introductory political science textbook, which argues that "Aboriginals consider that land was put here by the Creator for the use of *all* people and, therefore, belongs to everyone living today and the unborn to come [emphasis in the original]".[65]

But if it is agreed that aboriginal groups did not have states before contact, why is the argument for inherent indigenous sovereignty being accepted with so little discussion? The reason appears to be political. A linkage is being made between pre-contact sovereignty and the right to self-government within Canada. As Mintz et al. point out, "some First Nations claim that they never gave up their sovereignty (independence) and thus argue that they should not be subject to Canadian law".[66] Accepting sovereignty as an indigenous tradition, therefore, provides a legal foundation for self-government. Political discussions questioning the benefits and legitimacy of aboriginal self-government are defused by assumptions about inherent rights to self-determination.

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[59] Ladner, for example, maintains that colonization had been justified by the "Eurocentric idea that economies of scale are a necessary precursor to self-government…", while Taiaiake Alfred, following Connor, declares that characterizing aboriginal aspirations as tribalism is an attempt to denigrate subordinated societies. Gerald R. Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Toronto: Oxford University Press, 1995), p. 11.

[60] Russell, "Indigenous Self-Determination: Is Canada as Good as It Gets?", in Barbara A. Hocking (ed), *Unfinished Constitutional Business*, note 39, p. 180.

[61] Townshend, "The Case for Native Sovereignty", pp. 37, and note 2, p. 42.

[62] Long, for example, notes that "another important characteristic of the traditional governance process within plains Indian societies was that bureaucratic organization in the sense of modern administrative structures did not exist. Bureaucratic development coincides with the evolution of a political state. Since traditional plains Indian societies were stateless, the conditions for the development of bureaucratic structures were not present". J. Anthony Long, "Political Revitalization in Canadian Native Indian Societies", *Canadian Journal of Political Science*, 23(4), 1990, p. 765..

[63] Macklem, for example, notes that aboriginal groups do not aspire for independent statehood . Macklem, *Indigenous Difference*, p. 123.

[64] Ladner cites Boldt and Long in support of this position.

[65] Jackson and Jackson, *Politics in Canada*, p. 249. No citations are provided for this assertion.

[66] Mintz et al., *Democracy, Diversity and Good Government*, p. 322.

The Inherent Right to Self-Government

Arguments about inherent indigenous sovereignty have led to the conclusion that aboriginal peoples have an "inherent right" to self-government within Canada. Patrick Macklem, for example, notes that assertions that the aboriginal right to self-government is recognized and affirmed by the Canadian constitution is dependent upon the idea that aboriginal sovereignty never was shown to have been extinguished by colonial authorities.[67] According to Macklem, "equality demands that like cases be treated alike",[68] and therefore aboriginal sovereignty must be treated as equivalent to the sovereignty of European powers to avoid ethnocentrism.[69]

Macklem then uses this conceptualization of the continuing existence of aboriginal sovereignty to make a case for aboriginal self-government in Canada. As Macklem explains,

> treating Aboriginal law as paramount over some or all conflicting provincial laws and paramount over federal laws that do not serve a compelling or substantial need conforms to a vision of contemporary Aboriginal governmental authority as a remnant of inherent Aboriginal sovereignty. Despite settlement and the establishment of the Canadian state, Aboriginal law ought to continue to govern Aboriginal people and their lands and, in certain circumstances, ought to be treated as paramount in the event of a conflict with an inconsistent federal or provincial law.[70]

It is maintained that because aboriginal peoples were self-governing before contact, with "sophisticated and distinctive" political systems and "institutionally complete societies",[71] a right exists for the indigenous population to restore their traditional governing practices. As Anthony Long points out,

> the desire to restructure their governments to conform to the traditional governing practices of their respective communities is reflected in nearly every demand by Indian leadership for self-government…This desire is grounded in their belief that Indians, as culturally and politically unique peoples possessing inherent sovereignty, should be allowed to restore governing practices within their communities that are congruent with their cultural distinctiveness. In this sense, the restoration of traditional governing practices stands as a kind of second birth certificate for their political societies and marks their uniqueness within Canadian society.[72]

But if the idea of pre-contact indigenous sovereignty is questioned, what other justification exists to support assertions for aboriginal self-government? Presumably, it could be justified on the grounds that it would be beneficial to both aboriginal and non-aboriginal people.[73] Assertions

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[67] Macklem, *Indigenous Difference*, p. 118.
[68] Ibid, p. 119.
[69] Ibid, p. 121.
[70] Ibid, p. 180.
[71] One political science textbook maintains that aboriginal peoples "were self-sufficient and self-governing" and had "their own forms of government for thousands of years", which were "sophisticated and distinctive". Dyck, *Canadian Politics*, pp. 71-2, 81. Caroline Dick, citing Kymlicka, maintains that aboriginal groups were "institutionally complete societies". Caroline Dick, "Culture and the Courts Revisited: Group Rights Scholarship and the Evolution of s.35(1)", *Canadian Journal of Political Science*, 42(4), 2009, p.964.
[72] Long, "Political Revitalization", pp. 752-3.
[73] As Roger Townshend asserts, "most Aboriginal people firmly believe that the political key to a better future is the recognition of jurisdiction of Aboriginal governments". He maintains that "the continued peace and security of Canada may well depend on accommodating Aboriginal jurisdiction" and that "the sad history of the treatment of Aboriginal people by the Canadian state also cries out for redress in the form of recognition of Aboriginal sovereignty". Townshend, "The Case for Native Sovereignty", pp. 39, 41-2.

about its social benefits, however, require that political scientists understand the nature of precontact aboriginal governance, how it differs from Canadian governance, and the implications of the recognition of self-government for the Canadian political system.

Much of the Canadian political science commentary on traditional aboriginal governance paints it as progressive compared to other political traditions. Aboriginal politics is perceived to be more democratic than political systems developed in Europe. It is explained that aboriginal politics emphasizes egalitarianism, sharing and cooperation in contrast to the acquisitiveness, competitiveness and hierarchical character of western societies. The "regulation of conflict and distribution of benefits" were based upon kinship and carried out by informal processes where the use of coercion was rare and only used for short periods of time.[74] There are statements that "non-interference with individual choice is a strong norm",[75] but this is balanced by an "aversion to division and disunity" and "a powerful emphasis on teamwork, sharing, cooperation and a willingness to subsume individual preferences to the needs of the group".[76]

It is noted in one introductory political science textbook that the collectivist values of aboriginal societies means that decision-making is more participatory,[77] as well as being sensitive to women, the elderly, and environmental protection.[78] Another explains indigenous traditional politics and governance as follows:

> practising their own forms of government for thousands of years, they generally made decisions on the basis of consensus rather than by voting, and, in many cases, women (sometimes called clan mothers) and elders…played a significant role. In their close attachment to the land, they did not think in terms of private ownership: instead, they believed in the shared use of land and saw themselves as trustees of the land for future generations".[79]

Anthony Long even maintains that leaders in traditional indigenous societies were not self-interested, accepting Russell Lawrence Barsh's contention that "in the indigenous American view... leadership is a burden upon the selfless, an obligation for the most capable, but never a reward for the greedy."[80]

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[74] With respect to the Plains Indians, for example, Anthony Long maintains that there was "direct participatory democracy" in their traditional political systems. Long quotes Robert Vachon as asserting that this involved "deliberation, negotiation, cooperation and patience rather than that of confrontation, aggressiveness, impatience and…the 'adversary method.' " When no agreement could be reached, decisions would either be set aside or not be binding upon the community. According to Long, "custom was the instrument that served to ensure that order did not break down through a failure to achieve consensus". This cooperative dynamic was enhanced by the fact that leadership was based on merit and the capacity to contribute to the group. Long, "political revitalization", p. 765.

[75] Graham White, "Traditional Aboriginal Values in a Westminster Parliament: The Legislative Assembly of Nunavut", *The Journal of Legislative Studies, 12(1),* March 2006.

[76] Ibid.

[77] These observations have been made by Graham White, in his study of Inuit political systems. White maintains that consensus in aboriginal societies is very different from the decision-making that you find in countries like Austria or Sweden. According to White, "it entails a highly participatory process in which problems are resolved or decisions emerge through often prolonged deliberations, rooted in a shared framework of values and understandings". This is different from voting, "which is inherently divisive and which implies closing off discussion with a majority-imposed decision". Consensus in Inuit societies, according to White, is similar to "deliberative democracy", which is "talk-centric" as opposed to "vote-centric". Ibid.

[78] Jackson and Jackson, *Politics in Canada*, p. 249.

[79] Dyck, *Canadian Politics*, pp. 71-2.

[80] Barsh, cited in Long, "Political Revitalization".

Like the absence of states in indigenous political systems, cooperation and the relative absence of coercion are explained with references to spirituality – that communal relations "were conceived as a divine creation, not a collective agreement among individuals or between citizens and rulers".[81] Governance is based upon "a holistic worldview which does not distinguish separate realms of the spiritual, the economic, the political and so on"[82] and "spiritualism was intertwined with all tribal activities, including the governing processes" in "direct contrast to the secular individualism of Western democratic institutions…".[83] Equality also was perceived as "originating with the Creator", resulting in opposition to hierarchical bureaucratic structures.[84]

But if traditional indigenous societies were not coercive, and cooperation was achieved voluntarily, how can this be reconciled with assertions about traditional aboriginal law, which, if defined in accordance with the concept in political science, would constitute "a rule of human conduct that is enforced by the community, by means of coercion or violence if necessary"?[85]

This contradiction is avoided by failing to specify the character of "aboriginal law" in the political science literature. Christopher Alcantara (in an article written with Greg Whitfield), for example, is content to declare that "Indigenous legal traditions have a long history in Canada, preceding Canada's legal traditions by many generations".[86] These traditions, according to Alcantara are "complex" and "developed". To support this view, Alcantara and Whitfield cite a number of scholars who maintain that these traditions were destroyed by assimilative practices[87] and are now being "revitalized".[88]

Alcantara and Whitfield also refer to work by Ladner that is attempting "to reconcile Indigenous legal traditions and practices with the existing Canadian constitutional order", maintaining that there is "a large and well-developed literature on Indigenous…constitutional orders".[89] Alcantara and Whitfield, again, do not elaborate on the nature of this literature. There is no

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[81] Long, "Political Revitalization".
[82] White, "Traditional Aboriginal Values".
[83] Long, "Political Revitalization".
[84] Long, "Political Revitalization".
[85] Dickerson et al., *An Introduction* to *Government and Politics,* p. 61. Although its coercive character is generally accepted, the definition of law is contested. As Guy explains, "there are many definitions of law because there is no universal agreement about what law is and what it should do. Some definitions include the role played by administrators, journalists, legislators, and pressure groups in forming and changing law…Most societies see law as a powerful means of maintaining social order, by upholding the rule-of-law principle that no individual or group is ever above the rules governments legislate…Laws codify certain norms, mores, and folkways present in every society…A law differs from custom in the quality of its obligation. A person who violates a custom may be regarded as eccentric but cannot be legally punished for an infraction…laws are customs that persons must abide by or be prepared to accept the consequences. This means that laws must somehow be enforced; they are enforced by a legitimate agency that is recognized as having political and legal authority to do so". Guy, p. 217.
[86] Chistopher Alcantara and Greg Whitfield, "Aboriginal Self-Government Through Constitutional Design: A Survey of Fourteen Aboriginal Constitutions in Canada", *Journal of Canadian Studies*, 44(2), Spring 2010, p. 122. To support this assertion, Alcantara provides the following citation: "(Alfred 2005, 2009; Henderson 2006, chap. 4; Ladner 2005; Law Commission of Canada 2007; RCAP 1996; Slattery 2008; Walters 2009)".
[87] The following are cited: "(Alfred 2009; Borrows 2006, 5-6; Henderson 2006, chap. 1; Ladner 2009)".
[88] He notes that "the mechanisms through which this revitalization is taking place have also been diverse (Hurlbert and McKenzie 2008; Kuokkanen 2007; Ladner 2009; Rafoss 2008; Whyte 2008)".
[89] Alcantara and Whitfield, p. 123.

attempt to show how these constitutional orders comprise "the fundamental law of a political system". [90] They state simply that scholars "have focussed [sic] on the extent to which section 35 of the *Constitution Act, 1982* is capable of recognizing and protecting Indigenous laws and traditions, and whether constitutional reforms or practices are necessary".[91] Alcantara and Whitfield, therefore, do not specify what any indigenous "legal traditions" consist of, how they are different from the Canadian legal system, or how reconciliation between the different systems can take place. They also do not mention that a number of other political scientists have pointed to the irreconcilability of indigenous and western dispute resolution processes.[92]

In these discussions of indigenous political traditions, Kiera Ladner is cited repeatedly; her research on the Mi'kmaw is discussed in more detail below. In addition, the work of two other scholars prominently cited in the political science literature – John Borrows, a professor in the Faculty of Law at the University of Victoria, and Taiaiake Alfred, a professor of indigenous governance and political science at the University of Victoria – will be examined. John Borrows' book *Recovering Canada* will be analyzed with respect to the political traditions of the Gitksan and Wet'suwet'en, while Taiaiake Alfred's conceptualization of Iroquois' ancient *Kaienerekowa* (Great Law of Peace) is discussed.

Kiera Ladner's Conceptualization of the Mi'kmaw Constitutional Order

In 2005, Kiera Ladner's "Up the Creek: Fishing for a New Constitutional Order" was published in the *Canadian Journal of Political Science*. This article continues to be one of the main works on Mi'kmaw political traditions in the discipline. Ladner is a well-known political scientist. She obtained a doctorate in political science from Carleton University and is now an Associate Professor and Canada Research Chair in the Department of Political Studies at the University of Manitoba. As a Canada Research Chair, Ladner is considered to be "an expert in the field of indigenous politics".[93] Due to the high regard granted Ladner by the Canadian political science community, her work is representative of how many in the field conceptualize aboriginal constitutional orders.

In her paper "Up the Creek", Ladner argues that the Mi'kmaw have a distinct "constitutional order and political history".[94] This constitutional order, Ladner asserts, is "similar to the British Constitution" in that "both orders provide both nations and their governments with the rights and responsibilities which they seek to exercise".[95] To support this argument, Ladner cites a 1970s

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[90] Stephen Brooks notes that constitutional law is "'fundamental' because all other laws must conform to the constitution in terms of *how they are made* and in terms of their *substance".* Brooks, *Canadian Democracy,* p. 127.
[91] The following are cited "(Henderson 2006; Minnawaanagogiizhigook 2007; Rafoss 2008; Slattery 2008)".
[92] Graham White, for example, has pointed out that there is a fundamental difference between Inuit and Euro-Canadian society because the former has no "public/private divide". According to White, there is a fundamental conflict because "whereas Western legal tradition emphasises the importance of neutral, disinterested adjudicators, Inuit justice requires that those sitting in judgement are closely familiar with the persons involved in a dispute" White, "Traditional Aboriginal Values".
[93] Canada Research Chairs, *Chairholders,* Government of Canada. http://www.chairs-chaires.gc.ca/chairholders-titulaires/profile-eng.aspx?profileId=2002 [accessed May 24, 2012]
[94] Kiera L Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science* 38(4), p. 936.
[95] Ibid.

declaration by the Mi'kmaw of Nova Scotia. This declaration states that the Mi'kmaw "exercise the rights and prerogatives of a nation and the existence of a nation".[96]

The declaration cited by Ladner was presented to the Canadian government by the Union of Nova Scotia Indians (UNSI). The UNSI, created in 1969, is an advocacy group that works to "provide a unified political voice for the Mi'kmaq people of Nova Scotia"[97] and includes "promoting of the interests of Indian people" in its list of objectives.[98] In her paper, Ladner includes selected quotes from the UNSI document before concluding that "as is suggested in [the] declaration, the Mi'kmaw have their own constitutional order that defines distinct political, economic, educational, property and legal systems".[99] Ladner stresses that the Mi'kmaw constitutional order, which consists of songs, stories, and ceremonies, "emerged from a radically different world and a completely different understanding of that world" than "Western-eurocentric constitutions".[100]

To help understand the complexities of the Mi'kmaw constitutional order, Ladner draws exclusively from Henderson, Benson and Findlay's *Aboriginal Tenure in the Constitution of Canada.* Describing the work of Henderson et al. as "stellar", Ladner cites the authors repeatedly and dedicates a large portion of her paper to drawing conclusions from their book. The chapter on the Mi'kmaw constitutional order in Henderson, et al., adapted from an earlier paper of Henderson's entitled "Mi'kmaw Tenure in Atlantic Canada",[101] relies heavily on oral history. More specifically, it is "derived from discussions" with several key respondents, including Stephen Augustine and "students at Mi'kmaq Studies of University College of Cape Breton".[102]

The concerns associated with relying solely on oral history as the basis for factual arguments have already been outlined in this paper. Other scholars have raised concerns particularly about Henderson's standards of oral history interpretation. In his 2000 assessment of testimony in a Nova Scotia Mi'kmaw case, Alexander von Gernet details how Henderson's selective use of written documents and unquestioning reliance on oral history lead him to make conclusions and assertions that contradict archaeological and anthropological evidence. Von Gernet details how Henderson selectively interprets oral history and accepts wampum belts as written treaties.[103] In his testimony, Henderson uses Mi'kmaw hieroglyphics to analyze the symbols on a wampum belt supposedly outlining a previous agreement or "Concordat" between the Mi'kmaw and the Catholic Church. The hieroglyphics used by Henderson to interpret the wampum belt, however, were not used by the Mi'kmaw until generations after the agreement that Henderson claims to be

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[96] Union of Nova Scotia Indians, *Nova Scotia Micmac Aboriginal Rights Position Paper,* Presented to the Government of Canada, (April 25, 1977), pp. 1-2, quoted in Ladner, p. 937.
[97] Union of Nova Scotia Indians. http://www.unsi.ns.ca/ [accessed October 2011].
[98] "Objectives," Union of Nova Scotia Indians. *http://www.unsi.ns.ca/about/objectives/5* [accessed October 2011].
[99] Ladner, p. 937.
[100] Ibid.
[101] James Youngblood Henderson, "Mi'kmaq Tenure in Atlantic Canada," *Dalousie Law Journal* 18, pp. 196-300.
[102] Henderson et al., *Aboriginal Tenure in the Constitution of Canada,* (Scarborough Ont: Carswell, 2000), p. 412.
[103] Alexander von Gernet, "Oral Traditions, Wampum Belts, Land and Logs: and assessment of testimony in a Nova Scotia Mi'kmaq Case," prepared for *The Province of Nova Scotia in the Provincial Court,* (2000), p. 37.

interpreting had taken place.[104] Such discrepancies prompt von Gernet to assert that Henderson's failure to apply rigorous standards to the interpretation of oral history leads to a "wholly unconvincing argument that at times verges on the preposterous".[105]

Henderson relies heavily on the accounts of Stephen Augustine to form his conceptualization of Mi'kmaw legal and political constructs.[106] In his report, von Gernet draws extensively from archeological evidence, court transcripts, photographic and written documentation, and personal testimony to assess the accuracy of Stephen Augustine's accounts of Mi'kmaw history. Von Gernet outlines in exhaustive detail how Augustine's interpretations of the past through oral tradition are chronologically contradictory and inconsistent with other forms of evidence.[107]

Ladner, therefore, employs only two sources to construct her conceptualization of the Mi'kmaw constitutional order. One of these is an advocacy group and the other is rooted almost entirely in oral history. Furthermore, both sources are strongly tied to the ideas and opinions of one scholar, James Youngblood Henderson. While one would expect Henderson's views to contribute to political science's understanding of Mi'kmaw social structure and resource management, his assertions should be evaluated in the context of a much wider array of historical and archaeological evidence. By not drawing from a broader range of sources to inform her work, Ladner severely limits the scope and credibility of her analysis.

In addition to the limited number and scope of the sources used, Ladner's contribution to political science is constrained by her unorthodox definition of concepts. This can be seen in Ladner's reference to Mi'kma'ki nationhood, which relies on a 1977 UNSI declaration about Mi'kma'ki having "the rights and prerogatives of a nation and the existence of a nation".[108] In quoting the 1977 UNSI declaration, Ladner accepts that "it was as nations [that Mi'kmaw] forefathers dealt with the European immigrants. And it is as nations [that the Mi'kmaw] exist today."[109] She later quotes Henderson's work to assert that Mi'kma'ki "became the concept that the [Mi'kmaw] people called their national territory".[110] This national territory, however, is directly translated as a "space or land of friendship".[111] It is later noted that Mi'kma'ki is more of a "sacred order" than a territory.

Passages from the sources used in Ladner's paper continue to stretch the definition of "nation". A quote from Henderson et al. notes that the Mi'kmaw consider certain animals to be a "separate nation"[112] – an assertion drawn from the work of Chrestien Le Clercq. In Le Clercq's original work, he describes how the Mi'kmaw view the beaver as a separate nation. Le Clercq also notes that the absence of communication between the Mi'kmaw and the beaver had led the Mi'kmaw to "make war upon these animals".[113] By interchangeably defining a nation as a "land of

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[104] David L. Schmidt and Murdena Marshall, *Míkmaq Hieroglyphic Prayers: Readings in North America's First Indigenous Script*, (Halifax: Nimbus Publishing, 1995), pp. 5-9
[105] Von Gernet, p. 37.
[106] Henderson et al, p. 412.
[107] Von Gernet, pp. 39-42.
[108] UNSI, quoted in Ladner, p. 937.
[109] Ibid.
[110] Henderson et al, quoted in Ladner, p. 938.
[111] Ibid.
[112] Ladner, p. 938.
[113] Chrestien Le Clercq, *New Relation of Gaspesia*, (Toronto: The Champlain Society, 1910), p. 277.

friendship", a "sacred order", or a species of animal in a paper addressing jurisdictional and legal questions, Ladner dilutes and confuses the meaning of nation. This makes it difficult to study Mi'kma'ki nationalism comparatively and historically in political science.

In her comparisons of the British and Mi'kmaw constitutional orders, Ladner also stretches the definition of what constitutes a written document. Ladner asserts that "the Mi'kmaq constitutional order is comprised of…written documents such as wampum and pictographs".[114] Wampum and pictographs, according to Ladner, are used in the tradition of oral history as memory aides to elders who "read" them. But many anthropologists have questioned how "literal" these "documents" are.[115] As von Gernet acknowledges, "when it comes to communicating a record of past events, pictographic records pose considerable historical challenges".[116] Because of the absence of an external code, there is the possibility that the "readers" can entirely fabricate the content of these "documents".

Wampum belts are considered by the Mi'kmaw to "carry" words that were "talked" into the belts to later be "read" at meetings. Although wampum belts often have special "keepers" who are supposedly trained in deciphering their pictographic patterns, they hold no code, and the messages of the belts had to be put to memory.[117] The renowned ethnologist Lewis Henry Morgan has asserted that the belts "were of no use except by the aid of those special personages who could draw forth the secret records locked up on their remembrance".[118] Furthermore, "the Mi'kmaq have no internal mechanism to deal with inconsistencies".[119] By describing these documents as "written" instead as aides to oral history, Ladner dismisses the many concerns associated with oral history, and thus risks lending unwarranted credibility to claims about the existence of a Mi'kmaw constitutional order.

Both the selective use of sources and the uncritical use of oral histories, therefore, make it uncertain as to what extent the Mi'kmaw "constitutional order" can be considered to be a legal framework by political scientists and compared to documents such as the *Magna Carta*. In fact, Ladner maintains that "Indigenous constitutional orders…emerge from indigenous worldviews that explicitly deny the dominion of humans over earth and of one human over another".[120] This statement contradicts the claim that this is a constitutional order – i.e. "the fundamental law of a political system" – since, as was mentioned earlier, a "fundamental law" requires that rules must be enforced "by means of coercion or violence if necessary".

These assertions about "indigenous law" also plague other studies of aboriginal political traditions. This problem, in fact, can be seen in the work of the legal scholar John Borrows and

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[114] Ladner, p. 937.
[115] William Fenton, for example, always uses "read" in quotation marks when he is referring to wampum. See, for example, Fenton, "Wampum, The Magnet That Drew Furs From the Forest", in William N. Fenton, *The Great Law and the Longhouse* (Norman: University of Oklahoma Press, 2010), p. 224.
[116] von Gernet, p. 14.
[117] Ibid, p. 18.
[118] Ibid.
[119] Ibid, p. 11.
[120] Ladner, p. 937. To support this assertion, Ladner cites her own work, "Governing Within an Ecological Context: Creating an AlterNative Understanding of Blackfoot Governance." *Studies in Political Economy* 70, 2003, pp. 125–152.

the political scientist Taiaiake Alfred. Borrows' work with respect to the Gitksan and Wet'suwet'en will be examined below.

John Borrows' Analysis of Gitksan and Wet'suwet'en Political Traditions

Although the political traditions of the Gitksan and Wet'su'weten have not been studied extensively in political science, work on this subject by the legal scholar, John Borrows, merits attention. This is because Borrows' book, *Recovering Canada: The Resurgence of Indigenous Law*, won the Donald Smiley Prize in 2003. In awarding *Recovering Canada* the prize, it was noted that "Recovering Canada should become a staple for students of aboriginal studies and constitutional politics in Canada". Peter Russell, a prominent political scientist, also maintains, in an endorsement on the back of the book, that "as a Canadian scholar accomplished in Aboriginal and non-Aboriginal law, John Borrows has no peer. His book is a persuasive invitation to rethink the foundations of a distinctive Canadian system of law by considering the interaction of its native and settler components".

In *Recovering Canada*, Borrows devotes a chapter to Gitksan and Wet'suwet'en political traditions. The context of this examination are the *Delgamuukw v. British Columbia* cases, which involved the "Gitksan and Wet'suwet'en peoples' claim to Aboriginal title and self-government" in north-central British Columbia.[121] The treatment of the court decisions involved is extensive, and pre-contact Gitksan and Wet'suwet'en law and sovereignty are discussed in this context. This section will examine how Borrows conceptualizes Gitksan and Wet'suwet'en law and sovereignty, and then analyze the evidence that he uses as support for his views.

Attempting to understand Borrows' conceptualization of Gitksan and Wet'suwet'en political traditions is difficult because his comments about these aboriginal groups are interspersed with assertions about aboriginal peoples more generally. He also examines a number of Canadian court decisions, which may or may not involve the Gitksan and Wet'suwet'en specifically. As these discussions are buttressed with 280 endnotes, many of which contain multiple sources on a variety of aboriginal groups, investigating all this material would be impossible in the context of this paper. Therefore, Borrows' discussion of Gitksan and Wet'suwet'en law and sovereignty will focus on the pages that are specifically identified as pertaining to these groups.[122]

Borrows maintains that Gitksan and Wet'suwet'en laws and governments are found in their oral histories.[123] These "respositories of …law" are referred to as the *adaawk* (Gitksan) and *kungax* (Wet'suwet'en). The *adaawk* and *kungax* are supposedly recited to reveal "unwritten collections of important history, legends, laws, rituals, and traditions of Gitksan and Wet'suwet'en House organizations". They contain "legal standards",[124] Gitksan and Wet'suwet'en "proprietary rights and responsibilities", and "the Indigenous legal regimes that govern relationships in their homelands."[125] More specifically, included are "rules of

[121] Borrows, *Recovering Canada*, p. 79.
[122] In the index it is asserted that the Gitksan and Wet'su'weten are discussed on pages 79-81, 84 and 89.
[123] Borrows, *Recovering Canada*, pp. 89, 109.
[124] Ibid, p. 89.
[125] Ibid, p. 89.

property"[126] and "legal entitlements" that can be transferred through performances carried out in Feasts.[127]

Aside from the references to property, however, Borrows does not really discuss the nature of Gitksan and Wet'suwet'en governance. The notion of "consent' is mentioned briefly,[128] but what are the "legal standards"? How are relationships "governed" within Gitksan and Wet'suwet'en territories? How can these be compiled in "unwritten collections"?

Although Borrows' does not specify the character of the Gitksan and Wet'suwet'en legal order, he maintains that these groups were nations[129] asserting sovereignty before contact. According to Borrows, there is "…detailed evidence concerning Gitksan and Wet'suwet'en sovereignty over specific people and territory", and this evidence consists of "Houses, clans, chiefs, Feasts, crests, poles, laws, and so forth".[130] Gitksan and Wet'suwet'en oral histories, according to Borrows, "[contain] a competing jurisprudential narrative that have strained Canada's claim to exclusive jurisdiction over Gitksan and Wet'suwet'en lands".[131] Because precontact "sovereign nations" like the Gitksan and Wet'suwet'en "were not conquered and never agreed to relinquish their governmental rights", Borrows asserts that their "sovereignty should be placed on a footing equal or superior to Crown sovereignty."[132]

But do the arguments used by Borrows to claim the existence of pre-contact Gitksan and Wet'suwet'en legal systems and sovereignty meet the standards of evidence demanded in political science? Does he bring in all the evidence that is available? Does he define "law" and "sovereignty" in a manner that enables these systems to be compared with other political traditions, thus making his claims about the "competing jurisprudential narrative" valid?

Borrows' conceptualization of Gitksan and Wet'suwet'en political traditions is derived largely from two kinds of sources - Delgamuukw court decisions[133] and Antonia Mills' *Eagle Down is Our Law*.[134] Borrows' use of both these sources is problematic. With respect to the Delgamuukw cases, Borrows uses this information selectively. While he includes material that supports his arguments, he ignores, without explanation, material that is contrary to his position.[135] Furthermore, using information from court cases causes difficulties more generally because legal processes are inherently adversarial, and so lawyers on both sides have "every incentive to overstate the weakness of the other's case". This is very different from the scientific

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[126] Ibid, p. 96.
[127] Ibid, p. 79.
[128] Ibid, p. 108.
[129] Ibid, p. 84.
[130] Ibid, p. 104.
[131] Ibid, p. 89.
[132] Ibid, pp. 104-5
[133] In the citations relating to the Gitksan and Wet'suwet'en on pages 79-81, 84, and 89, 25 out of 38 endnotes refer to these court decisions.
[134] Borrows, p. 89. Although Borrows' book provides extensive endnotes, no citations are provided when he discusses the nature of the *adaawk* and *kungax*. One assumes that this discussion is drawn from Mills' *Eagle Down is Our Law,* as this is the source cited at the top of the page.
[135] For example, Borrows uses arguments from Allan McEachern to support various assertions about Gitksan and Wet'suwet'en political traditions, but then notes that McEachern's decision was a "much criticized judgment" (p. 81). McEachern, in fact, disputes the contention that Gitksan and Wet'suwet'en law exists, as Borrows relates on pp. 3-4.

enterprise, where "facts are established by incremental adjustments and carefully bounded negotiations among communities who share a commitment to closure" because of their common interest in determining an accurate understanding of the world.[136] Therefore, much damage is done to political science when academic disagreements within the discipline are decided in the courtroom.[137]

Reliance on Antonia Mills' work is even more problematic. Mills was one of the anthropologists hired by the Gitksan and Wet'suwet'en to provide evidence for their case, and her work has a blatant advocacy orientation. As the anthropologist Michael Kew unabashedly points out,

> this book breaks new ground in that it is BC's first published ethnographic account commissioned by a First Nation primarily to present evidence supporting a plea for Aboriginal rights…what is new in this present case is that the masters are also the subjects of the study. It should be no surprise that those masters intend to put this study to work in their interest. They have no 'hidden agendas' – their purpose is clear for all to see.[138]

This raises questions about how Mills' research would deal with data that did not support the "interest" of the Gitksan-Wet'suwet'en. One would assume that this evidence would be buried, seriously compromising Mills' assertions about the nature of Gitksan-Wet'suwet'en political traditions.

Furthermore, in this work, Mills' assertions are based almost exclusively on the oral histories of the Wet'suwet'en people. These particular oral histories should be regarded with additional skepticism because they were collected with an understanding that what was said would have an impact on the ruling of the courts with respect to aboriginal title and rights to self-government. This creates the possibility that memories could have been embellished to make a more convincing legal case for aboriginal title and self-government.

Borrows, however, dismisses criticisms about the reliability of oral histories as being "biased" and "contemptuous",[139] and he approves of the Supreme Court of Canada's decision to "place them 'on an equal footing' with the types of historical evidence that courts are familiar with". Borrows justifies the uncritical use of oral histories with the postmodern assumption, supported by the work of Jan Vansina and Penny Petrone, that all views of history are culturally determined, and that a critical evaluation of oral histories is contrary to aboriginal culture and disempowering for the native population.[140]

Borrows argues that facts differ according to the culture in which they are embedded and this "may make it difficult for a person from a different culture to accept the same information as a fact", resulting in a "potential for misunderstanding". This potential is particularly likely in court cases, according to Borrows, because the judiciary is a colonial institution with beliefs and

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[136] S. Jasonoff, "What Judges Should Know about the Sociology of Science," *Jurimetrics*, 32 (1992): 345–59, cited in John E. Dodes, "Junk Science and the Law," *Skeptical Inquirer* (July 2001): 32.
[137] See, for example, James Clifton's comments on his role as an expert witness in court cases involving aboriginal claims in the United States. Clifton, "Introduction: Memoir, Exegesis," in *The Invented Indian,* 7.
[138] Michael Kew, "Preface", in Mills, p. xvi.
[139] Borrows notes that Nicholas Perrot, Robert Lowie and Hugh Trevor-Roper are critical of oral histories, maintaining that "these contemptuous attitudes towards non-written history are persuasive and they have found expression in the context of courtroom practice and jurisprudential principle". Borrows, p. 86.
[140] Ibid, pp. 86-87.

values that are contrary to the interests of most aboriginal peoples.[141] Judges are bound to be particularly insensitive to aboriginal viewpoints if they "do not recognize the cultural foundation of knowledge, and acknowledge their own biases". This was the case with the much criticized decision of British Columbia Justice Allan McEachern, in Borrows' view.[142]

While the biases of all historical sources, including oral histories, should be scrutinized by political scientists, Borrows' culturally relativist argument does not hold. This is because Borrows is trying to appeal to both aboriginal and non-aboriginal people with his arguments. It is essential for political scientists to separate myth from history, and Borrows' relativist position blurs this distinction. His argument that "the potential for misunderstanding exists because each culture has somewhat different perceptions of space, time, historical truth, and causality",[143] for example, is supported with the following:

> in spatial terms, early Christians visualized the Garden of Eden as being in Mesopotamia and thus attempted to explain all human migration as somehow stemming from this point. But many Ojibway people trace their origin to Michilimackinac Island in the Great Lakes and reference their migrations from this place. Temporally speaking, Christianity, Islam, and Judaism have tended to view time as being linear, progressing and 'marching on.' Other cultures such as the Maya, Ainu, or Cree have thought of time as being cyclical and repetitive.[144]

Is Borrows suggesting that the dominant "European" view of history accepts the belief of Christian creationists? What about the scientific theory that humanity evolved out of Africa? Is this "fact" culturally determined? Should it be held "on equal footing" with the Ojibway origin myth he mentions?

This problem is compounded by Borrows' acceptance of the idea that "to directly challenge or question elders about what they know about the world and how they know it… is a substantial breach of one of the central protocols within many Aboriginal Nations … [demonstrating] a disrespect and disdain for the structures of the culture they represent".[145] Borrows thus maintains that the critical evaluation of oral histories is disempowering. This is because "when another culture is allowed to authoritatively judge the factual authenticity and meaning of Aboriginal narratives, Aboriginal people lose some of their power of self-definition and determination".[146] The acceptance of these assertions in political science should cause concern about the intrusion of advocacy into the discipline. To accept that any source of historical data should be protected from scrutiny will have a negative impact on political science's capacity to acquire knowledge about indigenous political traditions.

The impact of advocacy on Borrows' analysis of the Gitksan and Wet'suwet'en is also indicated by how he defines "law" when applying the concept to indigenous political traditions. Borrows opens up his book with the following statement:

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[141] Borrows, p. 89.
[142] To support this, Borrows provides the following quotation from the anthropologist Robin Ridington: "Mr. Justice McEachern revealed a world view and an ideology appropriate to a culture of colonial expansion and domination. The judgment is well suited to be an apology for that culture. It is not well suited to find a place where [A]boriginal law and Canadian law can reach a just accommodation". Borrows, p. 91 quoting Robin Ridington, "Field work in Courtroom 53".
[143] Borrrows, p. 90.
[144] Ibid, p. 120,
[145] Ibid, p. 91.
[146] Ibid, p. 92.

> each [indigenous] group created its own distinctive ceremonies and formalities to renew, celebrate and transfer, or abandon their legal relationships…The diverse customs and conventions which evolved became the foundation for many complex systems of law, and contemporary Canadian law concerning Aboriginal peoples partially originates in, and is extracted from these legal systems.[147]

To support the assertion that indigenous peoples developed "complex systems of law", Borrows, once again, refers readers to an endnote. In this note, Borrows first provides a definition of law from the *Oxford English Dictionary* – i.e. "the body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects". Borrows then goes on to provide two articles "commenting on First Nations law".[148] After citing these two sources, Borrows refers readers to a source by Roger F. McDonnell "for a contrary view", [149] offering the following quotation from the *Delgamuukw v British Columbia* (1991) case: "What the Gitksan and We'suwet'en witness[es] describe as law is really a most uncertain and highly flexible set of customs which are frequently not followed by the Indians themselves".[150] He then directs readers to a source by Michael Asch with the words "but see also", presumably because this source contradicts McDonnell's views. Finally, he mentions the aforementioned source by Antonia Mills, which is supposed to "provide a fuller description of Wet'suwet'en law".[151]

But Borrows does not address any of the objections of the sources to which he has referred in the endnote. What about McDonnell's views, and the statement, relayed in *Delgamuukw v. British Columbia*, that the Gitksan and We'suwet'en people do not follow their "law" when the definition Borrows appears to accept stipulates that law is "binding on its members or subjects"?

McDonnell's work, in fact, provides significant evidence that is never incorporated into *Recovering Canada.* McDonnell notes that the decision to record Gitksan "customary laws" in the 1980s was motivated, in part, to "provide a clear picture to the provincial and federal governments that a customary system of land occupancy and resource use continued to serve the needs of the Gitksan and Wet'suwet'en Tribes". This was necessary "both in the interests of developing their land claims and because, at the time, a powerful argument had been developed which claimed that evidence of self-governance as manifest in a *lex loci*, or local or customary law, was a foundational element in the establishment of an aboriginal right". McDonnell also points out that this created difficulties because no notion of "law" existed in the Gitksan language. The term "*adaawk*" was chosen as the closest representation even though it did not mean "rules" but a "socially approved history of …relationships" involving how rank was inherited and deployed.

It is apparent, from both Borrows' selection of evidence and his redefinition of words such as "law", that political science's understanding of Gitksan and Wet'suwet'en political traditions has been seriously compromised. The advocacy orientation of *Recovering Canada* has meant that developing a case for land claims and self-government has trumped a systematic analysis of

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[147] Ibid, pp. 3-4.
[148] Borrows cites the following: "Bradford Morse and Gordon Woodman, eds., *Indigenous Law and the State* (Providence, RI: Foris, 1988 and Michael Coyle, "Traditional Indian Justice in Ontario: A Role for the Present? (1986) 24 *Osgoode Hall Law Journal* 605"
[149] Borrows cites the following: "Roger F. McDonnell, "Contextualizing the Investigation of Customary Law in Contemporary Native Communities" (1992) 34 *Canadian Journal of Criminology* 299".
[150] *Delgamuukw v. British Columbia* (1991), 79, D.L.R. (4th) 185 (B.C.S.C) at 455, quoted in Borrows
[151] Antonia Mills, *Eagle Down is Our Law*.

these indigenous political traditions. As will be seen below, similar problems occur with Taiaiake Alfred's research on the Iroquois.

Taiaiake Alfred and Iroquoian Political Traditions

In examining political science's portrayal of Iroquois political traditions, the most significant scholarship has been developed by Taiaiake Alfred. A prominent indigenous intellectual who is lauded as "one of Canada's foremost Aboriginal scholars",[152] Alfred has a doctorate in political science from Cornell University and is a cross-listed professor in the Department of Political Science at the University of Victoria.

Although Alfred is concerned about indigenous political traditions generally, his Mohawk identity leads him to be particularly concerned about the nature of the Iroquois Confederacy and its historical development. In this regard, Alfred has published three books[153] that are regarded as authoritative in the study of aboriginal peoples, as is indicated by how many times they have been cited.[154] Furthermore, a number of political scientists have included Alfred in debates about the discipline and used his work in the development of their own arguments. [155] One of Alfred's books has been reviewed in the *Canadian Journal of Political Science*; this review maintained that the book constituted "good political science" and "should be widely read".[156]

But in what way is Alfred's conceptualization of Iroquois political traditions "good political science"? Is his portrayal of these traditions rigorous, and do they meet the standards of the discipline? This section will summarize Alfred's view of pre-contact Iroquois politics and governance, and then examine the evidence that he uses.

A major element of Iroquois political traditions is the *Kaienerekowa*, also known as the Great Law of Peace. The *Kaienerekowa*, opines Alfred, is "the basic reference point for all traditional Iroquois values on government and social organization". He maintains that "the *Kaienerekowa*…remains a masterpiece of political theory. Through a blend of symbolism and specificity, this oral law stemming from the 14th century detailed the formation of a truly democratic system of political organization and the first genuine North American federal system".[157]

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[152] For two bios of Alfred from speaking engagements at Canadian universities see "First annual indigeneity lecture", http://www.ryerson.ca/new/events/General_Public/20120215_indigenous.html [accessed May 2012] and "Leading Aboriginal scholar to discuss reclaiming Indigenous identity", February 12, 2012, http://www.wlu.ca/news_detail.php?grp_id=37&nws_id=8982 [accessed May 2012] . The recognition of his expertise resulted in him receiving a Canada Research Chair in the Studies of Indigenous Peoples between 2003 and 2007.

[153] *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (1995), *Peace, Power and Righteousness: An Indigenous Manifesto* (1999, 2008), and *Wasáse: Indigenous Pathways of Action and Freedom* (2005).

[154] Alfred's books were cited 137, 549, and 198 times respectively.

[155] Alfred was invited to speak at the 2012 conference of the Canadian Political Science Association in the Political Theory Workshop, "Decolonizing Political Theory", where he would respond to lectures given by participants. This is especially the case with respect to the work of James Tully, Rita Dhamoon and Glen Coulthard.

[156] John Crossley, "Reviews", *Canadian Journal of Political Science*, 29(2), 1996, pp. 385-6.

[157] Alfred, *Heeding the Voices*, pp. 77-78.

With respect to relations between the Iroquois, the *Kaienerakowa* stipulates the "complex strictures of proportional representation of nations, veto powers, rules of order, and precedence in debate…". This organization ensured that there was "extensive democracy", the "perpetuation of…popular sovereignty" and that "chiefs directly represented the will of their people".[158] According to Alfred, it "had created a system to manage…conflict through a rigid condolence ritual and procedural protocol geared toward achieving consensus-based decisions".[159]

A confederal form of organization for the Iroquois was essential, asserts Alfred, because this was the only way to resolve "the primordial struggle between good and evil". He maintains that "the incompatibility of racial groups or 'nations', are the basis for the Iroquois' formation of nation-oriented government structures". The Iroquois believe, according to Alfred, that "each race, or 'nation', should determine its own separate existence in harmony with the different but equally valid existences of the other 'nations'". Confederation is necessary for the Iroquois because it is assumed that "self-determination and national autonomy provide the only guarantees of peaceful co-existence".[160]

In addition to its outline of the structural characteristics of the Iroquois Confederacy, Alfred asserts that the principles of the *Kaienerekowa* have influenced governance within the various Iroquoian groups. With respect to the Mohawk, for example, two major aspects of its governance – accountability and leadership – are articulated in the *Kaienerekowa.* Accountability concerns the Mohawk tradition that embraces participatory democracy, where all members were involved in decisions. These decisions were made on the basis of consensus and that "near-unanimous consent must be obtained for legitimacy to be granted". Accountability is not brought about by impersonal bureaucratic procedures as in western political systems, in Alfred's view, but by "cultivating and maintaining relationships", making sure the people know they are being heard, and "respect[ing] the appropriate protocol and procedures within the context of that culture".[161]

Leadership in Mohawk communities also, in Alfred's view, "reflects the *Kaienerekowa*". Alfred maintains that, in the *Kaienerekowa*, leaders were "seen as servants of the collective will", where they act as "conciliators between various interests and factions within the community". They do not have "elevated status or privilege", and are selected on the basis of their "patience, courage, fairness, and generosity" and "oratorical skills, intelligence, aggressiveness, and demonstrated respect for others". Traditional leaders, therefore, are altruistic in their relationship to the community,[162] which "differs radically from the power-wielding model" found in western societies that "[encourage] the fundamentally immoral pursuit of self-interest and the acquisition of resources to secure a strategic advantage over others". It is also maintained that leadership selection is controlled by women, indicating a respect for gender equality.[163]

The reason why these traditions can continue today, despite the fact that the political and economic imperatives of the 21st Century differ radically from what existed 600 years ago, is that

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[158] Ibid, p. 78.
[159] Ibid, p. 36.
[160] Ibid, pp. 80-81.
[161] Ibid, pp. 78, 89; Alfred, *Peace, Power and Righteousness*, pp. 116-17.
[162] Alfred states that the word chief is translated as "he who is of the good". Alfred, *Heeding the Voices*, p. 79.
[163] Alfred, *Heeding the Voices*, p. 89; *Peace, Power and Righteousness*, p. 114.

they are perceived to be determined by transcendental spiritual forces. Iroquois political traditions like the *Kaienerekowa* constitute "instructions from the Creator", since "justice enforced is the will of the Creator and has his sanction".[164] This also informs Iroquois notions of nationality, since it is believed that indigenous peoples were placed on their traditional territories by the Creator. As Alfred explains,

> Indigenous philosophies are premised on the belief that the earth was created by a power external to human beings, who have a responsibility to act as stewards…The stewardship principle, reflecting a spiritual connection with the land established by the Creator, gives human beings special responsibilities within the areas they occupy as indigenous peoples, linking them in a 'natural' way to their territories.[165]

Alfred's acceptance of spiritualism in his work, however, indicates one of the major problems with his scholarship – the use of mythology as historical evidence in the discussion of Iroquois political traditions. Alfred uses history selectively, as well as confusing mythology with history, in all of his books. This, along with the redefinition of concepts to obfuscate appropriate comparisons, distorts Alfred's portrayal of Iroquois political traditions.

Many problems with Alfred's use of historical evidence can be seen in his discussion of the *Kaienerekowa*. Excerpts from the *Kaienerekowa* are provided by Alfred as if it were an officially recognized document, which obscures the fact that there are actually eight versions that differ according to the person/group who committed the "oral law" to writing.[166] This is only briefly acknowledged by Alfred in a footnote, and it is not incorporated into his analysis. The version that Alfred uses is the one compiled by John Buck in 1984 and published by the North American Indian Travelling College (NAITC). [167] This version was published later than all the others, yet Alfred makes no attempt to explain why he has chosen NAITC's interpretation to represent the "authentic" *Kaienerekowa*.[168]

Regardless of the version chosen, none can be assumed to represent Iroquois views from the 14th Century, as Alfred claims. It is evident that all versions reflect the preoccupations of the time in which they were written down, not imperatives from 500 years earlier. As the ethnologist William Fenton explains, "like all oral documents it changes with each telling, it erodes with time, and interpolations are inserted. Nevertheless, it is regarded as gospel, although

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[164] NAITC, 1984, p. 18, cited in *Heeding the Voices*, p. 80.
[165] Alfred, *Peace, Power and Righteousness*, pp. 85-6.
[166] The eight versions are as follows: Newhouse version (1897); the Gibson-Hewitt version (written in the Onandaga language in 1899); the Chiefs' version (prepared by a committee of Rodiyaner in 1900); the Gibson-Goldenweiser version (dictated in 1912 and published in English in 1992); the Arthur C. Parker version (that amalgamated and completely reorganized the Newhouse and Chiefs' versions in 1916 and renamed it "The Constitution of the Five Nations (the Great Binding Law, Gayanashagowa)"; the Hall version (written by Louis Karonniaktajeh Hall in 1974); the John Mohawk version (published in 1975-76 with Akwasasne Notes and entitled "The Great Law of Peace of the Longhouse People"); and John Buck's version (NAITC, 1984).
[167] Alfred also refers to an "Iroquois prophecy" (Alfred, Peace, Power and Righteousness, p. 52), which he maintains is from the 15th Century, but this actually is found in Parker's *The constitution of the Iroquois*, p. 103. Alfred also provides quotation from the "Great Law of Peace", which he maintains comes from the 15th Century. Alfred, *Peace, Power and Righteousness*, p. 149. Alfred states in *Heeding the Voices of Our Ancestors*, that the *Kaienerekowa* originated in the 14th Century.
[168] Even the most "authentic" version of the Kaienerekowa, written by Seth Newhouse in 1897 and entitled the "Dekanahwideh Government for the Iroquois Confederacy", is seriously flawed since it was rejected many times by the chiefs' council as it was perceived to be biased in favour of the Mohawks. For a discussion see Elisabeth Tooker, "The United States Constitution and the Iroquois League", *Ethnohistory*, 35(4), 1988, p. 331, footnote 4.

demonstrably it is composed of part myth, part historical legend, part projection of nineteenth century political structure and ceremonial observances into the prehistorical past".[169]

One of the main preoccupations that influenced the written versions of the *Kainerekowa* was the Iroquoian response to colonial attempts to exert control over their political systems. As is pointed out by Teyowisonte (Thomas Deer) – a source recognized by Alfred[170] - constructing the document in terms of numbered sections was "to prove to the Dominion of Canada that the Haudenosaunee had an organized constitution and were well equipped and able to govern themselves". This was to enable Iroquois groups to have "ammunition to resist Canada's plan to dissolve the traditional council and replace them with an elected council under the authority of the newly established Indian Act".[171] Fenton also points out that all the versions of the *Kaienerekowa* "represent an effort to justify the continuance of the hereditary system of chiefs on the Six Nations Reserve, to codify the laws, and to bring system to tradition. All of these efforts were under attack from reform elements in the native population who were seeking representative government".[172]

Alfred, however, does not provide any information about the material or historical influences on the *Kaienerekowa*. This occurs, in part, because his use of sources is very narrow. The major anthropologists who studied Iroquois political traditions – Lewis Henry Morgan, Horatio Hale, J.N.B Hewitt, Arthur Goldenweiser and William Fenton – are not examined by Alfred. Instead, he relies almost exclusively on the testimonials of Mohawk leaders and elders,[173] asserting that oral accounts are more valid than written documents in representing Iroquois traditions.[174]

But Alfred does not recognize the problem with incorporating oral traditions uncritically - that there is no way to determine whether the stories told by elders are myth or historical fact. This can be seen in his uncritical recounting of the myths in the *Kaienerekowa*. Alfred refers to a "Peacemaker" who supposedly provided a message encouraging the Iroquois to share power and strive for unity in the 14th Century. But how is it known that this occurred in the fourteenth century, or even if the Peacemaker existed? The story of the Peacemaker, in fact, refers to a number of mythological elements, including a stone canoe and a person named Tadadaho who had snakes growing out of his head.[175] Because of this problem, oral testimonies about the

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[169] William N. Fenton, "The Lore of the Longhouse: Myth, Ritual, and Red Power", *Anthropological Quarterly*, 48(3), July 1975.

[170] Alfred maintains that "Teyowisonte and Konwatsi'tsá:wi are two young Kanien'kehaka who embody in their minds and in the practice of their lives all of the truths I have discovered in my quest to understand what it is to be Onkwehonwe and a warrior". Alfred, *Wasase*, p. 270.

[171] Teyowisonte (Thomas Deer), "Tracing the White Roots of Peace". http://tuscaroranationeyog.yuku.com/topic/422/Tracing-the-White-Roots-of-Peace-by-Teyowisonte [accessed May 2012]

[172] Fenton, "Lore of the Longhouse".

[173] In his three books, Alfred incorporates long, unedited interviews with aboriginal peoples as evidence of what Iroquois traditions consisted of.

[174] Alfred, *Peace, Power and Righteousness*, p. 171.

[175] Another indication of the mythological nature of the tale of the Peacemaker is that "Haudenosaunee protocols and the Kaianerenkowa warn against using the true name of the founder of the Confederacy. For in times of great need, should the name of the Peacemaker be whispered by the Longhouse People, the Founder of The Confederacy will return to help his people". It is for this reason that Lemelin asserts the following: "therefore, the name of the Peacemaker will not be utilized in this paper; rather the terms 'Founder of The League' and 'Peacemaker' will be

Kaienerekowa cannot be accepted verbatim; they must be placed alongside written accounts and then questions must be asked as to whether they are consistent with the body of knowledge that has been accumulated in social scientific disciplines, including political science.

In addition to providing a selective reading of history that makes it difficult to separate fact from fiction, Alfred's work suffers from redefining concepts in a way that makes them very different from those in political science. This leads to certain unorthodox characterizations of Iroquois political traditions, making comparisons with other political systems difficult. Particularly significant are Alfred's assertions about nationalism and law in Iroquois political traditions.

In all three of his books, Alfred claims that Mohawk nationalism exists. Throughout his discussion of this, however, Alfred is inconsistent about what he perceives to be its characteristics. On the one hand, Alfred maintains that the Mohawk concept of nation is consistent with political science definitions; he argues that "the Mohawk nation is one in the fullest sense of the term as it is used in international law".[176] He also equates Mohawk nationalism with a quote from Ra'anan, who sees nationalism as "the self-assertion of ethnic groups, ranging from primary cultural, religious and educational endeavors, via political organization, to the ultimate step of struggling for territorial or state power".[177]

On the other hand, Alfred maintains that Mohawk nationalism is "a 'non-statist' nationalist ideology" that has "a distinctive concept of sovereignty".[178] Similarly, he notes that he is opposed to "outmoded conceptions equating nationalism with statehood and territory".[179] As was mentioned earlier, Iroquois nations are perceived in terms of "race" or kinship relations[180] – characteristics that are associated more with tribes than nations. Alfred claims that Mohawk conceptions of nationalism, where there is accountability to one's family, is different from liberal democratic notions where "the primary relationship is among rights-bearing citizens, and the core function of government is to integrate pre-existing social and political diversities into the singularity of a state…".[181] He also argues that aboriginal conceptualizations of nationalism are different from western ones because the latter reject cultural diversity" – a strange assertion when one considers Canada's multiculturalism policies and promotion of aboriginal autonomy.[182]

Although Mohawk nationalism is largely conceptualized as "non-statist", Alfred maintains that Iroquois nations possess sovereignty - a characteristic that is associated with states in political science. This claim can be made because Alfred redefines the concept "sovereignty" so that it will not be "saddled with the burden of conforming to a Euro-American institutional and legal model". According to Alfred, "state sovereignty depends on the fabrication of falsehoods that exclude the indigenous voice. Ignorance and racism are the founding principles of the colonial

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used it its place. Raynald Harvey Lemelin, *Social Movements and the Great Law of Peace in Akwesasne,* Unpublished Master's Dissertation, University of Ottawa, 1996, p. 31.

[176] Alfred approvingly quotes Atsenhaienton that the Mohawk "use all those elements of nationhood – treaty-making, population, government". Quoted in Alfred, *Peace, Power and Righteousness*, p. 134.

[177] Ra'anan 1990, p. 8, cited in Alfred, Heeding the Voices, p. 10.

[178] Alfred, *Heeding the Voices*, pp. 9, 104.

[179] Ibid, p. 10.

[180] Ibid, pp. 79, 81; Alfred, *Peace, Power and Righteousness*, p. 49.

[181] Alfred, *Wasase*, p. 155.

[182] Alfred, *Heeding the Voices*, p. 8.

state, and concepts of indigenous sovereignty that don't challenge these principles, in fact, serve to perpetuate them".[183]

Sovereignty for Mohawks, asserts Alfred, is best represented by the word *tewototowie*, which means "we help ourselves".[184] Rather than the "adversarial and coercive…notion of power" found in Western nations, Mohawk sovereignty has the "political and cultural imperatives….[of] a flexible sharing of resources and responsibilities in the act of maintaining the distinctiveness of each community".[185] Therefore, "traditional indigenous nationhood stands in sharp contrast to the dominant understanding of 'the state'" in that there is "no absolute authority, no coercive enforcement of decisions, no hierarchy, and no separate ruling entity".[186]

This absence of coercion in traditional Iroquois political traditions raises questions about references to the *Kaienerekowa* as an Iroquois constitution. The *Kaienerokwa* would not be considered to be a constitution in non-aboriginal contexts because it is not "law" as it is defined in political science. It is actually defined as "the big warmth", "the big harmony", or "the great good way",[187] and merely espouses principles that some Mohawks believe will lead to a peaceful existence. There is no way of ensuring that all members of the Mohawk "nation" will follow these principles, as is the case when laws are enforced by a state.

Because of the absence of legitimate coercion, leaders in Iroquois societies must "rely on their persuasive abilities to achieve a consensus that respects the autonomy of individuals, each of whom is free to dissent from, and remain unaffected by, the collective decision". Dissent, however, was rare in the past, according to Alfred, because of a cohesive culture. If there was dissent, it was "resolved by exemption of the individual from the implementation and implications of the particular decision" or the individual would break away and form a separate society.[188] This circumstance has been recognized by the ethnologist Elisabeth Tooker, who maintains that

> basic to the Iroquois system of governance, as also that of other North American Indians, was the principle of unanimity. Unanimity was not merely an ideal; it was a necessity. Communities were small and lacked any duly instituted police force to deal with potentially divisive actions. Lacking that "coercive force" to prevent dissenters from simply moving out of the community and hence greatly weakening its ability to defend itself, considerable effort was devoted to finding consensus.[189]

As a result, Alfred recognizes that "governance in an indigenist sense can be practiced only in a decentralized, small-scale environment among people who share a culture".[190]

But if this is the case, what are the implications of incorporating Iroquois political traditions in the modern context, when thousands of people live in Iroquois communities, and some members are not Iroquoian? How can matters be resolved if there are conflicts between Iroquois communities and outlying communities, when no overarching decisions can be made and

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[183] Alfred, *Peace, Power and Righteousness*, p. 83.
[184] Alfred, *Heeding the Voices*, pp. 102-3.
[185] Ibid, pp. 102-3; Alfred, *Peace, Power and Righteousness*, p. 83
[186] Ibid, pp. 80-88.
[187] Ibid, p. 126; Alfred, *Wasase*, p. 287.
[188] Alfred, *Peace, Power and Righteousness*, pp. 49-50.
[189] Tooker, "The United States Constitution and the Iroquois League".
[190] Alfred, *Peace, Power and Righteousness*, p. 50.

enforced? Although Alfred maintains that Iroquois communities acted according to a "federal principle", it was, in reality, a confederation without any ultimate political authority. It was an anarchistic system that lacked a central command. The lack of any overarching political authority will have significant implications for self-government arrangements.

Implications for Political Science, Political Activism and Policy Development

In examining political science's general portrayal of indigenous political traditions, as well as the specific literature on the Mi'kmaw, Gitksan-Wet'suwet'en and the Iroquois, it appears that this scholarship is not consistent with the rigour that is demanded in the discipline. Historical documents are selected according to whether or not they support aboriginal aspirations for land claims and self-government, and oral histories are used uncritically for the same purpose. Both written and oral sources are provided as substantiation for the argument that aboriginal peoples were sovereign nations before contact who practiced egalitarian and consensual forms of governance circumscribed by legal systems and constitutional orders.

In addition to the selective use of historical evidence and uncritical incorporation of aboriginal testimonials, conceptual definitions in political science are distorted when applied in the case of aboriginal traditions. The term nation is attributed to small kinship-based groupings; legal systems and constitutional orders are argued to have existed, when it was custom and conventions, not law, which determined dispute resolution. Changing the application of these definitions means that like is not being compared with like. As a result, disciplinary comparisons are undermined.

This raises questions about why this dominant portrayal of indigenous political traditions is being accepted with so little criticism. With the exception of Thomas Flanagan, and to some extent Alan Cairns, no political scientist in Canada is challenging these romanticized accounts of indigenous political traditions. If understanding aboriginal-non-aboriginal relations is so important for Canadian political science, why are there not more exhortations to uphold disciplinary standards in this area?

The main reason for this circumstance is that the study of aboriginal peoples has become intermingled with advocacy, and this amalgamation is often applauded for political reasons. This is related to the influence of what has been called "communitarianism" in the social sciences. Communitarianism, according to Stephen Brooks, is "the belief that communities and communal identities are essential to individual dignity and the maintenance of truly democratic societies…". It maintains that "groups within society should be recognized as having rights and status different from others and, moreover, that they should think about themselves and be thought of by others in terms of their cultural and other differences from the majority".[191] As a result of this ideology, a number of interdisciplinary, advocacy oriented programs emerged in North America in the 1970s. These programs often have the word "studies" in their description – i.e. Ethnic Studies, Black Studies, Women's Studies, Queer Studies, and Disability Studies.

While not all programs that study ethnicity, gender or disability are advocacy-oriented, those that do embrace three characteristics destructive to academic disciplines – identity authenticity, epistemological relativism, and political activism. Advocacy studies programs maintain that

[191] Brooks, *Canadian Democracy*, p. 491.

members of an oppressed identity group are best able, because they are the "authentic" representatives of that identity, to understand the circumstances of that group. Therefore, women should study the feminist movement, and aboriginal peoples are best positioned to comprehend native prehistory. This is related to the demand for epistemological relativism. Aboriginal peoples are best able to understand native prehistory, the argument goes, since they have different "ways of knowing" in comparison to non-aboriginals, and denial of their culturally based "facts" results in disempowerment. Finally, political activism is prized by advocacy studies. The purpose of research, according to this viewpoint, is to support the political aspirations of oppressed identity groups. This activist orientation leads to selecting only data that is believed to have the desired political effect.

With respect to the portrayal of indigenous political traditions, these advocacy considerations have meant that claims made by indigenous scholars, or at least those that are believed to support land claims and self-government negotiations, are more likely to be accepted than research that might lead to a questioning of these goals. This tendency is exacerbated by epistemological relativism, which claims that any attempt to evaluate research according to universal standards is "Eurocentric".

It should be noted, however, that epistemological relativism is used only when advocacy research is being challenged. Ladner, Borrows, and Alfred, for example, all make claims that they expect will be accepted. They assert the existence of a Mi'kmaw pre-contact constitutional order and Gitksan-Wet'suwet'en law, as well as the notion that the "answer to our problems is leadership based on traditional values".[192] It is only when their views are challenged that epistemological relativism is deployed as a back-up; first, there is an attempt to assert arguments based on reason, evidence and logic, and then, when this founders, disciplinary standards are labeled as harbouring a cultural/colonialist bias.

One of the main targets of advocacy-driven scholarship is the notion of development. As mentioned earlier, political development is a major area of study within the discipline, but using this framework is rare in the study of aboriginal politics in Canada. The communitarian advocacy for "difference" has led to the purging of developmental ideas from the study of aboriginal-non-aboriginal relations. It is argued that "Aboriginal people have different values from mainstream Canadians because of their unique history in a hunting-and-gathering economy",[193] but there is rarely any recognition that hunting-and-gathering is far less productive and complex than modern economies. The assertion of the existence of pre-contact institutions, laws, constitutional orders, environmental management regimes, "trade in goods and capital",[194] and so on, prevents political scientists from linking material circumstances to systems of politics and government.

While the use of a developmental framework to conceptualize indigenous political traditions could be found in political science textbooks ten years ago, it is not so today.[195] This is likely

[192] Alfred, *Peace, Power and Righteousness*, p. 20.
[193] Jadckson and Jackson, *Politics in Canada*, p. 249.
[194] Ladner and Dick, "Out of the Fires of Hell".
[195] See, for example, the difference between the 7th (pp. 20-21) and 8th editions of *An Introduction to Government and Politics: A Conceptual Approach* (p.33).

due to the intrusion of advocacy into the discipline, where notions of development are perceived to be a value judgment used to justify colonialism.[196]

But political scientists cannot allow political advocacy to impede their pursuit of the truth. Either a developmental framework contributes to our understanding of aboriginal-non-aboriginal relations or it does not. The question must be evaluated on the basis of all the evidence that is available, not because a political scientist's findings are believed to be contrary to the aspirations of certain aboriginal leaders. And what if an advocacy position is based upon an inaccurate understanding of aboriginal-non-aboriginal relations? What will it mean for future political activism and public policy formulation if a realistic assessment of indigenous political traditions is impeded?

One of the main areas where a mischaracterization of indigenous political traditions appears to have serious practical consequences is with the idea of "aboriginal sovereignty". Many discussions of aboriginal sovereignty in the discipline maintain that opposition to the concept is due to an irrational fear. Roger Townshend, for example, asserts that "it is puzzling that the idea of Aboriginal sovereignty should be so threatening to non-Aboriginal people" since a division of powers already exists in Canada. In his view, the recognition of aboriginal sovereignty would simply entail dividing sovereignty further to include aboriginal groups.[197] Patrick Macklem makes a similar point, arguing that

> one can be both 'Aboriginal' and 'Canadian'; to constitutionally acknowledge these collective affiliations need not transform membership in one collectivity into an exclusive experience. Intersecting and overlapping collective affiliations can and obviously do exist among individuals and communities; the fact of one collective affiliation should not deny the possibility of another. To hold otherwise would be to do violence to the experience of many Aboriginal people who hold multiple allegiances to many different categories of experience. Moreover, some forms of federalism already accept the notion that citizens have overlapping identities. Reflecting the multidimensionality of citizen allegiance by distributing internal sovereignty into multiple and discrete units of political governance is a common occurrence in contemporary political life.[198]

This optimism, however, is made possible by the distortions in political science that have disguised the differences between indigenous political traditions and modern governance. Another division of power cannot be made easily, as has been the case for the creation of provinces, because aboriginal governments are ethnically based, not defined according to a territorial principle. As a result, one must deal with questions of which laws will apply to whom, and this requires that there be an ultimate source of authority – sovereignty – to resolve disputes between aboriginal and non-aboriginal peoples, and within aboriginal communities themselves.

The problems with these conflicting conceptualizations of sovereignty can be seen in a case that Macklem discusses – *Norris v. Thomas*. This case concerns a circumstance where a man of Salish descent was abducted, forcibly confined, and subjected to a violent spiritual ceremony against his will. The man's estrangement from this indigenous tradition led him to try to seek justice within the Canadian legal system, while his Salish band asserted that the imposition of the

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[196] For a summary of this view see Mintz et al, *Democracy, Diversity and Good Government*, p. 342 and James Tully, "Aboriginal Peoples: Negotiating Reconciliation," in J. Bickerton and A.-G. Gagnon (eds), *Canadian Politics* (Toronto: Broadview Press, 1999).
[197] Townshend, "The Case for Native Sovereignty", p. 39.
[198] Macklem, *Indigenous Difference*, p. 124.

ceremony was "informed by ancient forms of sovereignty" and therefore they had aboriginal "rights to enforce Aboriginal law against unwilling individuals".[199]

Macklem recognizes these conflicting authorities by stating that "the plaintiff in *Norris v. Thomas*…was a member of the Coast Salish Nation but, by seeking redress in Canadian courts according to Canadian law, he also asserted a Canadian legal allegiance". Macklem does not, however, seem to think that this is a problem. He makes no attempt to show how these conflicting "legal allegiance[s]" can be reconciled, and evades the issue by stating that "such [cultural] allegiances are constructed in part by law but they continually cut across and frustrate efforts at legal definition".[200]

Similar problems can also be seen in the three cases discussed by Borrows, Ladner and Alfred. With the Gitksan-Wet'suwet'en, for example, competing claims to their traditional territories appeared soon after the filing of the court case. "Aboriginal sovereignty" cannot be relied upon to resolve disputes rooted in the lack of a defined territory that traditionally existed in these stateless societies. Using indigenous political traditions to resolve territorial conflicts will be insufficient in the modern context, wherein political authority is linked to a geographical area and not a matter of kinship relations and hereditary entitlements.

In addition to being unable to resolve disputes between the Gitksan-Wet'suwet'en and other groups, there is the problem of trying to use indigenous political traditions to deal with modern problems within the groups themselves. McDonnell, a source referred to in passing by Borrows, points out that the capacity of the *adaawk* to guide decision-making is very limited because the problems that exist today are very different from those that required attention in the past. As McDonnell explains, "there is no reason to suppose that their ada'awk [sic] are even remotely attuned to dealing with the problems and complexities associated with child neglect, alcohol and drug abuse, domestic violence and so forth". McDonnell also points out that some aboriginal people are opposed to having hereditary leaders control their lives.[201]

Similarly, the disputes that occurred over fishing resources in the case of the Mik'maw cannot be resolved through references to a pre-contact "constitutional order", even if it was shown to exist. As the Mi'kmaw are embedded within the Canadian state and must interact with non-Mi'kmaw, some overarching authority is needed to determine how resources will be allocated. References to "inherent rights" to fish are essentially a demand that such overarching authority should not apply to Mi'kmaw. This scenario heightens the possibility of violence – the mechanism used to settle disputes in lawless societies lacking cultural cohesion and common interests.

The case of "Mohawk sovereignty" has brought similar problems to the fore. The land dispute at Oka, Quebec, for example, was claimed by the Mohawk Warriors to be "a question of sovereignty". As Charlton and Barker point out, "the Mohawks occupied sovereign territory that had never been surrendered to any British or Canadian government. Thus, the Mohawks had every right, as any other sovereign nation, to take up arms to defend themselves".[202] But how can these demands be addressed if the Mohawk cannot assert independence, and must co-exist with others under the rubric of the Canadian state? If sovereignty did not exist in precontact

[199] Macklem, *Indigenous Difference*, p. 50.
[200] Ibid, pp. 52-3.
[201] Roger F. McDonnell, "Contextualizing the investigation of customary law", p. 313.
[202] Charlton and Barker, "Native Sovereignty", p. 34.

indigenous stateless societies, rejuvenating indigenous traditions will result in the creation of lawless zones in Mohawk territories. The smuggling of people, guns, and drugs in these areas are examples of what can happen when Canadian sovereignty is undermined. Attempting to grapple with these problems is not helped when political scientists call attempts to assert an overarching authority a "backlash" against aboriginal rights.[203]

The intrusion of advocacy into political science has prevented an honest discussion of some of the possible problems with the recognition of "aboriginal sovereignty". There is no recognition of the likelihood that, if the standard terminology in political science were applied, "Indigenous self-determination" would not be considered self-determination at all. As the New Zealand political scientist Richard Mulgan points out, "though we can talk readily of degrees of autonomy and devolution, there are no degrees of sovereign statehood. A people either has it or does not have it. Thus, the idea of 'self-determination within a wider state' or 'self-determination under a wider law' is in principle self-contradictory".[204]

Assertions of indigenous self-determination, according to Mulgan, are attempts to "deny the legitimacy of governments established by colonial settlers, or their right to acquire obedience from the descendants of those whose ancestors had been there earlier". He notes that this is a key issue that must be settled before solutions can be proposed to improve aboriginal-non-aboriginal relations.[205] Political scientists need to ask how the current political system can be made legitimate, rather than embracing the unrealistic demand of "indigenous sovereignty" within the Canadian state.[206]

This will require that the Canadian system be changed to be acceptable to both aboriginal and non-aboriginal citizens. How this can be done is uncertain, and requires serious attention by political scientists. Before a real discussion can begin, however, there needs to a realistic assessment of indigenous political traditions, and how they intersect with modern requirements. Rigorous and evidence-based approaches must be used to determine how people with very different traditions can learn to live with one another in one country.

[203] Peter Russell, for example, notes that "another example of the backlash effect on the Supreme Court is its decision overruling rulings of the Federal Court and the Federal Court of Appeal that had recognized the traditional immunity of the Akwasasne Mohawk to paying duty on goods crossing the Canada/USA border". Montreal Gazette, May 25, 2001, p. A1, cited in Russell, p. 180.
[204] Mulgan, "Should Indigenous Peoples Have Special Rights", *Orbis*, 33, Summer, p. 383.
[205] Ibid, p. 384.
[206] Ibid, p. 386.