

REVIEW

Citizens Plus: Aboriginal Peoples and the Canadian State

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Citizens Plus: Aboriginal Peoples and the Canadian State, by Allan C. Cairns.
Vancouver: U.B.C. Press, 2000.

IN *CITIZENS PLUS*, PROFESSOR CAIRNS attempts a reconciliation of what he perceives to be two competing paradigms of the legal and political relationship between Canadian Aboriginal Peoples and the Canadian state. He characterizes these paradigms as “assimilation” and “territorially based autonomism.” The former he examines historically in terms of the policy of the Canadian government (which predates Confederation), designed to bring about the end of Aboriginal cultures as distinct enclaves Canadian society. The latter he characterizes as the autonomist or “two row wampum” aspirations of some contemporary Aboriginal leaders, who call for the maximum degree of withdrawal from the larger Canadian society into self-governing “Nations.” Cairns’ thesis is that neither alternative is now viable. In this review I shall try to show that in this, he is correct. In his noble attempt to forge a compromise, I submit, the Book fails.

The book divides into five chapters. Chapter One reviews the Imperial colonial enterprise in Canada and relationships with Aboriginal Peoples at and immediately after the time of European contact. Chapter Two deals in considerable historical detail with the colonists’ deliberate project of assimilation, which dates back to the pre-Confederation period, through to the Federal government’s White Paper on Indian Policy of 1969. Chapter Three addresses the

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failure of the assimilationist, project its tragic consequences for many generations of Canadian Aboriginal Peoples, and its final abandonment in by the Federal government in 1973. Chapter Four, in turn, addresses the radical isolationist responses to the policy of assimilation by some Aboriginal political leaders and non-Aboriginal legal scholars, focusing on the Penner Report of 1983,¹ the provisions specifically addressing Aboriginal Peoples embodied in the Constitution Act, 1982, the failed Meech Lake and Charlottetown Accords, and, in particular, on the Report of the Royal Commission on Aboriginal Peoples of 1996 (the "RCAP"). In Cairns' view, the RCAP represents the height of the political backlash against the failed policy of assimilation, emphasizing Aboriginal autonomy and self-government almost to the exclusion of any concept of common Canadian citizenship with the non-Aboriginal political community. Finally, in Chapter Five Cairns presents his proposed compromise, which he views as preserving the maximum degree of Aboriginal distinctiveness (paradoxically, including the very institutions of Aboriginal self-government which he considers a part of the isolationists' agenda), while strengthening the bond of shared citizenship which makes Aboriginal Peoples Canadians.

Cairns begins with the insight that, for Canadian Aboriginal Peoples, the experience of decolonisation was radically different from that of the original inhabitants of other European territorial possessions acquired in the seventeenth, eighteenth and nineteenth centuries. When, late in the nineteenth century European empires began the slow process of withdrawal from their overseas possessions, the original Aboriginal populations of most of these territories constituted an overwhelming majority of the populations left behind. Thus, in India, Africa and Asia, the end of European sovereignty entailed the possibility that formerly colonized peoples could create nation states in forms that accorded with their own cultures, borrowing from the colonisers only those structures of state organization, law and government that seemed useful and could be accommodated in the native context. In Canada, in contrast, the end of British sovereignty did not entail the departure of the colonists. After Confederation (and, in some parts of the country, prior to this), colonists constituted a majority of the Canadian population. Canadian Aboriginal Peoples remained, de facto, peoples under a colonial administration. Their affairs were still administered by an outside authority. A special Department of the Federal government was set up to manage their affairs. The ascent to nation state status enjoyed by other former European territorial possessions was not open to them.

The colonisers' response to this state of affairs was the benign assumption that Canadian Aboriginal Peoples, with their distinctive cultures, were destined in time simply to fade away. Canadian Aboriginals would ultimately become

¹ A. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State*, (Vancouver: U.B.C. Press, 2000) Chapter One, note 5.

indistinguishable from the colonisers. To this end, the colonisers embarked upon a policy designed eradicate the distinction between Aboriginal Peoples and themselves. Cairns identifies this as the genesis of the policy now popularly referred to as "assimilation."

In order to substantiate this thesis, Cairns offers numerous examples taken from the historical record. He is meticulous and careful in his historical documentation of the policy of assimilation, from its origins in pre-Confederation Canada to its official abandonment in 1973. The examples he offers the reader are numerous; for instance, a statute of 1857 of the Legislative Assembly of the United Province of Canada, appositely styled "An Act to Encourage the Gradual Civilization of the Indian Tribes in the Canadas."² Its stated purpose was "to remove all ... distinctions ... between Indians and Her Majesty's other Canadian subjects." The relevant provisions were re-enacted after Confederation in the *Indian Act*.³

Cairns offers the recorded public utterances of politicians and civil servants of the period as proof of the prevailing government position of the day. Prime Minister Macdonald declared in 1887 that "[t]he great aim of our civilization has been to do away with the tribal system and assimilate the Indian people in all respects."⁴ Arthur Meighan later told the House of Commons that the Indian seeking enfranchisement "must have ceased to follow the Indian way of life."⁵ In 1920, Duncan Scott, Deputy Superintendent General of Indian Affairs, told a Committee of the House of Commons that "I want to get rid of the Indian problem Our object is to continue until there is not a single Indian in Canada who has not been absorbed into the body politic *and there is no Indian question*."⁶ [Emphasis added]

Pursuant to this stated policy, Cairns notes that, well-intentioned, but coercive, measures were enacted. Various traditional Aboriginal practices were prohibited by penal sanction (for instance, the Potlatch in 1884 and the Sun Dance in 1895).⁷ A system of residential schools was established with the goal of ridding Aboriginal children of their native languages and severing the connection with older generations, who were considered as essentially irredeemable. Indian reservations were established, conceptually as holding areas, until

² *Ibid.* at Chapter Two, note 4.

³ First enacted as the consolidated *Indian Act* in 1876; now R.S.C. 1985, c. I-5.

⁴ Cairns, *supra* note 1 at Chapter One, note 12.

⁵ *Ibid.* at Chapter Two, note 5.

⁶ *Ibid.* at Chapter One, note 13.

⁷ *Ibid.* at Chapter Two, note 13.

such time as their inhabitants were willing and culturally equipped to participate in "mainstream" Canadian society.

Cairns also astutely notes that the argument for assimilation was bolstered by anthropologists of the period, who worked from the premise that Canadian Aboriginal societies were fragile, backward, and ultimately destined to disappear. To take but one example from the large body of the contemporary anthropological literature he surveys, he takes as representative the opinion of Grenfell Price, a student of comparative Aboriginal policies, who concluded in the late 1940s that "the ultimate fate of the Canadian Indian must be absorption."⁸

The apotheosis of assimilation policy came in 1969, with the introduction of the Federal Government's White Paper on Indian Policy. The White Paper was radical.⁹ It proposed the repeal of the *Indian Act*, the abolition of the Department of Indian Affairs, and the dismantling of the reservation system. Aboriginals were to be assimilated over a period of a very few years into mainstream Canadian society by a form of cultural "shock treatment." Cairns describes how the White Paper met with vigorous resistance from Canadian Aboriginal organizations. By now these organizations had achieved a degree of political organization and potency. Largely as a result of their strenuous objections and political mobilization,¹⁰ in 1973 the White Paper was officially withdrawn. Cairns regards the withdrawal of the White Paper of 1969 as the turning point in Federal government policy, which marked the abandonment of the failed policy of assimilation, which had lasted for more than a century.

At this point, Cairns describes the backlash by some Aboriginal political leaders (and some legal academics) against the officially abandoned policy of assimilation. Since 1973, he perceives the policy initiative as having moved from governments to newly politically mobilized Aboriginal Peoples and their leaders. The emphasis has now become the polar opposite of assimilation. Self-government, withdrawal from the larger Canadian polity, and a quasi-separatist ideology based on the symbolic "two row wampum" have become the new orthodoxy. Cairns views both the abandoned policy of assimilation and this new orthodoxy as equally unacceptable.

Cairns devotes Chapter Four to a critique of the recommendations of the RCAP, which he considers to represent a statement of the new orthodoxy in its most highly articulated form. The RCAP called for constitutional amendments to establish a third order of government. Approximately 80 self-governing First

⁸ *Ibid.* at Chapter Two, note 56.

⁹ *Ibid.* at Chapter Two, note 18.

¹⁰ And as a result of that year's Supreme Court of Canada decision in *Calder v. Attorney General of British Columbia*, [1973] S.C.R. 313, in which a majority of the court rejected the government's position that Aboriginal title to land did not exist at common law in Canada.

Nations were to be established with land bases and legislative competence comparable to that of the Provinces. A third House of Parliament was to be established to represent Aboriginal Peoples, and apparently Aboriginal Peoples were to be given representation on the Supreme Court of Canada.

Cairns' critique of the RCAP proposals is both practical and philosophical. First, he correctly notes that the RCAP recommendations effectively ignore the fact that a majority of Aboriginal Peoples now live in Canadian cities. They are, perforce, excluded from the proposed self-governing territorially based First Nations. Secondly, the proposed new territorial units would not be economically viable, without massive fiscal transfers from the other orders of government, for the foreseeable future.¹¹ More fundamentally, Cairns notes that the proposed self-governing First Nations would not be open societies. Membership in them would be governed by ancestry (i.e., race). Cairns poses the pertinent question as to what the political incentive will be for the larger Canadian society to support, and fund, self-governing First Nations which have chosen the maximum degree of withdrawal from the larger society from which they will need funding and support: "Assuming its (the RCAP recommendations) implementation, what will sustain our feelings of responsibility for each other?"¹² "[I]t seems undeniable that a considerable validity attaches to the thesis that there is some positive relationship between our willingness to help each other and the degree to which we feel ourselves to be members of a common community of citizens."¹³ [Emphasis added]

The Book is conceptually weakest in its final chapter, where Cairns attempts to forge a compromise between what he perceives as the equally unacceptable positions of assimilation and isolationism. He refers to this as "Modernizing Aboriginality." Under this proposed new paradigm, focus of reform would shift from the isolationist agenda of the RCAP and emphasize instead common Canadian citizenship as the legal and political basis for relationships between Aboriginal Peoples and Canadian governments. Certain Aboriginal rights (which Cairns does not specify, but which would presumably continue to be determined in litigation) would survive. Aboriginals (especially those in cities) would continue to integrate into the mainstream of Canadian society, but without relinquishing cherished (but unspecified) aspects their cultures. The development of a thriving urban professional Aboriginal middle class is posited as, if not inevitable, at least very likely.¹⁴

¹¹ Cairns, *supra* note 1 at 141.

¹² *Ibid.* at 155.

¹³ *Ibid.* at 210.

¹⁴ Cairns' analysis is weak at this point, as he predicates the emergence of the new Aboriginal middle class upon the assumption that the average Aboriginal level of attainment in the educational systems of the country will rise markedly. One must evaluate the probability of

Paradoxically, Cairns also advocates continued support for systems of Aboriginal self-government, a position difficult to reconcile with his critique of the RCAP recommendations. This he does even to the extent of advocating the third order of government which, in his critique of the RCAP, he so roundly criticizes: "Constitutional policy ... should be both sensitive to Aboriginality ... and a third order of Aboriginal government."¹⁵

The problem is that, in view of Cairns' characterization of the goals and aspirations of the proponents of the old and rejected paradigm of assimilation, the *new* paradigm of "Modernizing Aboriginality" is not really new. It is difficult to escape the conclusion that Cairns' proposed compromise represents simply a gentler, more sensitive, and more respectful version of the assimilation paradigm which he analyses and rejects. This is a comment on Cairns' analysis, and not on the desirability of his suggested path into the future. The Book could more accurately be titled *Assimilation with Dignity*.

This having been said, Cairns' book constitutes a valuable contribution to the continuing political and legal debate over the position which Aboriginal Peoples do, or ought to, occupy in Canadian society. It presents as well a readable and concise summary of how we have arrived at where we are today. For both of these achievements, Cairns is to be applauded.

this happening, without considerable and possibly very coercive) government intervention, in the light of the current rates at which Aboriginal Peoples exit the educational system even before the high school level under current conditions.

¹⁵ Cairns, *supra* note 1 at 211.