

Embedded Nations?
Changing dynamics of Aboriginal governance in Quebec

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“We are opening the door to a new nation to nation relationship based on the common desire of ensuring a flourishing Quebec and a flourishing Cree nation. (...) With this agreement, Quebec and the Cree will be showing the rest of the world a new way to approach relations between aboriginal and non-aboriginal peoples.”

Ted Moses, Grand Chief of the Grand Council of the Cree.¹

In February 2002, Ted Moses of the Grand Council of the Cree (Eeyou Istchee) and then Premier of Quebec Bernard Landry signed an agreement that launched, according to the main protagonists, a “new era of mutual recognition and cooperation in Cree-Quebec relations.”² The Agreement, known as *La Paix des Braves*, took many observers by surprise as it marked a radical change in direction for two parties –the Cree and Quebec nationalists- who had clashed on numerous occasions throughout the previous decade over the very questions tackled by the agreement: territorial jurisdiction, natural resources extraction and boundaries of political communities.

While the *Paix des Braves* was certainly a surprise, it came in the wake of a number of significant developments in Aboriginal-state relations in Quebec. In 2000, the Quebec government played a central role in developing an innovative negotiation framework that led to the signing of a major land claim settlement and self-government agreement with four Innu communities in northeastern Quebec. The negotiation framework, known as *l’Approche commune*, represents a first in Canada as it does not seek, as a precondition to the negotiation of a settlement, the extinguishment of all otherwise existing or potentially existing Aboriginal rights, including title to the land (Maclure, 2005). The Cree agreement was also quickly followed by a similar accord with the Inuit of Nunavik, in the northernmost part of the province. Negotiations between the Inuit, the federal and provincial governments are also ongoing towards the creation of an autonomous, Inuit-lead, territory within the province.

What is the significance of such developments? Are they an indication of a fundamental shift in Aboriginal-State relations in Quebec or simply a blip in what is overall a relation still largely based on colonial premises? This paper suggests that while we might still be far from what some call a “postcolonial” relationship,³ current dynamics of Aboriginal-State relations in Quebec are part of a significant transformation in the *content*, *boundaries* and *scale* of the citizenship regime for Aboriginal peoples⁴ in Canada, and more specifically in Quebec. I argue that the conjunction of Aboriginal mobilizations with major structural changes to Canada’s citizenship regime in the last thirty years have opened opportunities for the development of new configurations where Aboriginal nations are no longer simply subordinated to the broader

¹ Ted. Moses, *Comments on the Signing of the Agreement in Principle*, Quebec, October 23, 2001, Archives of the Grand Council of the Cree, 2001. Available at: www.gcc.ca/archive/archive.php.

² Press Release, Secrétariat aux Affaires autochtones, Gouvernement du Québec, *Entente historique entre le Québec et les Cris*, February 7, 2002. Available at: www.autochtones.gouv.qc.ca/centre_de_presse.htm.

³ For an overview of the theoretical literature on Aboriginal-state relations and the language of postcolonialism, see Ivison, Patton and Sanders (2001).

⁴ “Aboriginal peoples” is generally used as an equivalent to “Indigenous peoples” in the Canadian context. It includes three distinct groups: First Nations, Inuit and Métis. There is no space here to detail the significant differences in the status and history of the three groups, but the distinction will be made whenever relevant.

Canadian ensemble. They can increasingly be considered, as the title suggest, as *embedded* nations.

Central to this transformation is the capacity of Aboriginal nations to set the boundaries and legitimacy of their own political communities within Canadian and international forums through the language of self-determination. Such changes, however, are not the sole result of representation strategies. They cannot be fully understood without taking into account the broader process of restructuring and rescaling of the citizenship regime associated with what I will define as the “new governance” paradigm. While such a process of rescaling is taking place in many political communities, its specific configuration may vary from one place to the other, including within the same state. I suggest the particular context in Quebec, where in effect two citizenship regimes are already competing for legitimacy –the pan-Canadian and Quebec regimes- has opened opportunities for Aboriginal peoples to significantly alter their relation to both the Canadian and Quebec states and develop what in many ways can be defined as their own citizenship regime, not completely separated nor simply congruent with Canada’s. I will use the example of the James Bay Cree and the *Paix des Braves* to illustrate how the combination of Aboriginal self-determination claims, the presence of competing regimes in Quebec and the transformation in modes of governance can lead to new “interscalar arrangements” that are challenging our understanding of citizenship. Of course, the Cree are but one Aboriginal community situated in a very specific context, with its own conception of self-determination. That being said, this case offers significant insights as to the possibilities and constraints facing Aboriginal peoples seeking to redefine their relation with contemporary states.

Citizenship regimes: boundaries, content and scale

Citizenship is a central institution linking members of the political community to a state. The content, nature and extent of this relationship is structured by norms, rules and practices established over time that form what we can call the citizenship regime.⁵ Such regimes have four key dimensions. First, through formal recognition of particular rights (civic, political, social and cultural, as well as individual and collective) it establishes the conditions of inclusion and exclusion in a political community. Second, a citizenship regime prescribes the democratic rules of the game for a polity, such as the institutional mechanisms giving access to the state, legislatures and courts and the modes of participation in civic life and public debates. Third, a citizenship regime also defines the nature of responsibilities between various sectors in society. As such, it set specific standards and norms about the respective role of the state, the market and communities in the production of welfare. Finally, through the recognition of formal status to individuals as well as its representation of cultural and historical elements that define the community, a citizenship regime also contributes to the definition of the shared identity and sense of belonging to a common community among citizens.

By articulating the *rights* associated with political membership, the *modes of access* to such rights, the *responsibilities* between various sectors and the *conditions of belonging*, a citizenship regime not only defines the meaning and content of political membership but it also sets *the*

⁵ I follow here the definition proposed by Jane Jenson in various publications. See, among others, Jenson and Phillips (1996); Jenson and Papillon (2000).

social, cultural and geographical boundaries of the political community. As a boundary-setting institution, citizenship is closely associated with the construction of territorially-defined sovereign national states.⁶ The history of modern citizenship, as T.H. Marshall and others have pointed out, cannot be separated from the history of the modern state and its particular configuration of territorial sovereignty. It is through citizenship-related policies that the state interacts with the different groups, classes and actors of society to produce a sense of common purpose and status essential to its legitimacy. Today, this relationship between nations, states and citizenship is often taken for granted. Studies of transformations of citizenship regimes generally assume the proper scale for change and reconfiguration is the “national” level where boundaries of states authority and political communities correspond (Jenson, 2004).

Far from a static concept however, citizenship is also an historically defined institution that varies according to social and economic forces. Its content, boundaries and scale are thus subject to power relations and challenges by political actors. In other words, while citizenship regimes often embody deeply entrenched institutional configurations, they may well vary considerably not only from one place to another, but also across time within the same political community as they come under challenge.

Aboriginal peoples in Canada and other parts of the world are challenging the content, boundaries and scales of citizenship regimes established in the postwar period in liberal democratic states. Long excluded from citizenship regimes of democratic states because they were not considered capable of beholding the attribute of “good citizens”, Aboriginal peoples progressively gained access to the benefits of citizenship in the postwar period. This incorporation, while dressed in the language of inclusiveness and equality, was nonetheless undertaken with the assumption that their participation in the modern economic and political life of the dominant society would eventually lead to cultural and social assimilation into the broader “community of citizens.” In other words, by “becoming full citizens,” they were in fact expected to become “citizens like all others” to use the very words of the Canadian White Paper on Indian Policy of 1969.

Not surprisingly, Aboriginal peoples have questioned both the conditions and the legitimacy of such inclusion, as they have never agreed to becoming “ordinary citizens” nor have they renounced their own status as distinct political communities. Like other movements in the postwar period, they have used the language of rights and recognition of difference as the key vehicle to establish the legitimacy of their claims. Borrowing from other societies or communities victims of colonial oppression, Aboriginal peoples in Canada have framed their claims in the language of national self-determination.

There is no space here to discuss the intricacies and multiple dimensions of the language of self-determination.⁷ Suffice to say that from an Aboriginal perspective, self-determination is not necessarily a process through which an independent state with the classic attributes of sovereignty is created, but rather one through which a nation or a community *regains control* over its own political destiny through collective choice-making regarding its relations with the

⁶ For a discussion of the relationship between citizenship, states and nations, see Miller (1995) as well as Keating (2001).

⁷ For a discussion of the history of the concept and its application to Aboriginal peoples, see Anaya (1996).

existing state into which it was forcibly incorporated. Given the complex relationship between Aboriginal peoples and the settlers' societies, self-determination cannot be achieved without considering the existing political order. In Canada as elsewhere, the society inherited from the colonial period is here to stay, with its political and economic institutions. This is the complex nature of Aboriginal self-determination: it involves simultaneously the exercise of autonomy and the confirmation of a relationship with existing states, albeit based on new, mutually agreed, terms.⁸

As such, Aboriginal claims for self-determination create a complex challenge for citizenship regimes. It is not simply a claim for recognition of differentiated rights "within" the regime nor simply a claim for "opting out" of the regime altogether. What Aboriginal relational conceptions of self-determination fundamentally challenge is the notion that the rules, norms and practices of citizenship must be defined within the boundaries of a political community which scale corresponds to that of the sovereign state. In other words, Aboriginal struggles are as much about content as they are about boundaries and scales of citizenship regimes. This challenge is obviously met with significant resistance given the interests at play and the strongly entrenched conception of citizenship as the very institution ensuring the correspondence of state sovereignty with boundaries of political community. As I will suggest in the coming pages however, the current context opens opportunities for Aboriginal peoples to mount such challenge. The example of the recent Cree-Quebec agreement will illustrate how such process may unravel.

Rescaling and the "new governance" paradigm

As I mentioned previously, citizenship regimes are closely associated with the national state and as such, their spatial definition is generally assumed to correspond to the boundaries of such states. A growing number of authors have recently called attention to the importance of processes of rescaling (Brenner, 2001; 2004) and what can be defined as the "politics of scale" (Mahon, 2003), that is the capacity of political actors to make claims at multiple levels of governance, thus challenging the assumption that the only relevant space for the exercise of citizenship and the definition of citizenship regimes is the "national" level. While there is nothing new in claims for "rescaling" of citizenship, such dynamics have taken new meaning in an era of globalization and postindustrial restructuring.

For one, the growing interactions and connections between political actors in transnational forums and institutions have opened opportunities for representation and claims-making outside the confines of state-related access mechanisms. Aboriginal peoples have taken advantage of this new dynamic. By going "above" the established boundaries of the state, they are able to create alliances and solidarity networks that stand outside the traditional citizenship-bound framework (Jenson and Papillon, 2000). This "scaling up" process allows them not only to redefine mechanisms of access but also to challenge the very legitimacy of their inclusion within the Canadian citizenship regime as they associate their struggle to that of colonized peoples around the world. It is thus increasingly hard for democratic states as Canada to deny the value of Aboriginal claims in face of global attention.

⁸ Iris Marion Young (2000; 2005) conceives of self-determination as an act of "relational autonomy."

But the politics of scale is not solely associated with the development of transnational networks or regulation mechanisms above the state. In fact, one of the most significant change in the spatial dynamic of governance is the growing importance of the sub-national, regional and local as key spaces for political claims-making and policy definition (Keating, 2001). The growing importance of sub-national and local scale is often associated with economic discourse about the need to create competitive advantage in the global knowledge economy through the building of local infrastructure and learning networks conducive to innovation (Bradford, 2002). It is also associated in the public policy literature with the redefinition of the role of the state as a “partner” rather than a driver in social and economic policy developments (Saint-Martin, 2004). In this emerging “new governance” paradigm, decentralization and the creation of partnerships with communities (and the private sector) are seen as central elements towards the development of more autonomous individuals and communities, less reliant on the state for their social and economic development but also more capable to adapt to the ever changing social and economic conditions (Jenson, 2004 alt. ref).

The discourse of “new governance” suggests a transfer of responsibilities from the state to market, but more importantly for our purposes, to communities, thus a potential reconfiguration and rescaling of the citizenship regime “from below.” Recent analysis of rescaling processes associated with globalization, the new economy and neo-liberal ideology are now suggesting this process does not necessarily involves a one-way transfer of power and capacity from the state to local and sub-national governments but rather a reconfiguration of “power relationship within and between different scales” (...) leading to new interscalar arrangements” that are altering the policy process (Johnson and Mahon, 2004). The nature of these new multilevel governance dynamics is not a given but rather the very object of political struggles. As we will see, Aboriginal policies at the federal and provincial level are very much inspired by this “new governance” logic, creating the conditions for a redefinition of the role of Aboriginal governments and the development of such new interscalar arrangements. Combined with Aboriginal nationalism and self-determination claims, these new configurations can significantly alter the citizenship regime.

Canada and Quebec: two competing regimes

Another key element in explaining the particular nature of current changes in Aboriginal-state relations in Canada, and more specifically in Quebec, must not be underestimated. Since the 60’s, the Quebec state has become the main vehicle of a powerful nationalist movement that is itself challenging the boundaries and legitimacy of the Canadian citizenship regime. In many ways, the provincial state in Quebec has created its own competing regime through its active role in social policy, the development of specific representation mechanisms that foster a close relationship with civil society organizations, unions and the business sector, and finally with the definition of strong symbols and identity markers differentiating the Quebec political community within, and in many ways apart from, the Canadian ensemble (Papillon and Turgeon, 2003). As a result, two regimes, the Canadian and Quebec versions, coexist and compete for allegiance and definition of political boundaries.

While Aboriginal peoples have sometimes been negatively affected by such competitive dynamics, they have also learned to use it to their advantage. At the pan-Canadian level,

Aboriginal organizations have used the political openings created by Quebec nationalism to engage in constitutional politics in the early 80's and 90's and gain significant recognition both in terms of rights and in terms of legitimacy as political actors (Jhappan, 1993; Cairns 2000). In Quebec, they have also learned to play the two "national" states against each other and bargain concessions from one that the other cannot refuse. As we will see further below, the James Bay Cree leadership is particularly effective at taking advantage of federal-provincial disputes in order to further its own interests.

The presence of two competing regimes has, in many ways, contributed to the development of a discursive environment where assumptions about political membership, identities and state sovereignty are constantly challenged and debated. Aboriginal claims to self-determination have found a fertile ground in Quebec politics, as it would be hard for Quebec nationalists to deny Aboriginal peoples what they claim for themselves. As we will see in the next section, this was not lost on René Levesque, the founder and historical leader of the nationalist Parti Québécois. Levesque understood the potential challenge Aboriginal peoples, especially in the northern part of the province, could mount against the territorial integrity of a sovereign Quebec. As such, he was a strong advocate of a politics of "rapprochement" with Aboriginal nations (Gourdeau, 1994). While Aboriginal and Quebec nationalisms often collided in the last thirty years, sometimes negating each other's legitimacy (Whitaker, 1999; Salée, 2003), the political environment created by the presence of the latter has also opened possibilities for the former that are not available elsewhere in challenging the orthodoxy of state sovereignty and the configuration of the citizenship regime.

From incorporation to recognition...to rescaling?

The relationship between Aboriginal peoples and the Canadian citizenship can be divided into four main historical periods. The first moment, predating the formation of the Canadian state, is often defined as a time of *coexistence* between Aboriginal societies and the European colonial powers that fought for control over the land. It was a period where a plurality of legal and political orders cohabitated more or less peacefully in North America. No formal sense of shared citizenship existed beyond ongoing political alliances.⁹

To this period of coexisting orders succeeded a period of *colonial domination* that saw the assertion of British, then Canadian, sovereignty on the land. Aboriginal peoples progressively lost their political status and were simply ignored when time came to negotiate the creation of the Canadian federation. The Constitution Act, 1867 simply granted the federal government jurisdiction over "Indians and Land reserved for Indians" (section 91(24)). From political entities, Aboriginal nations became object of federal jurisdiction (Provincial governments were not expected to play a central role in Aboriginal policy at the time). While Aboriginal peoples have lost their political status in 1867, they were still not considered part of the developing political community. The first Indian Act, adopted in 1873 formally excluded those with the Indian status from the benefits of citizenship.¹⁰ The only way for Indians to gain access to the

⁹ For a detailed and fascinating account of diplomatic relations of the time, see Robert Williams (1997) as well as the volume one of the final report of the Royal Commission on Aboriginal Peoples (1996).

¹⁰ It is worth noting that the Act only applied to Indians (or what we call today First Nations) living on reserves. It thus excluded a number of Aboriginal peoples, most notably those not formally attached to a band, the Inuit in the

benefits of citizenship was through a process of “emancipation” in which they had to renounce their Indian Status, thus losing all formal ties to their communities.

Incorporation

The third significant period in Aboriginal-state relations corresponds to the rapid expansion of the welfare state and social citizenship in the postwar period. It can be defined as a period of formal *incorporation* in the citizenship regime. At a time when egalitarian logic dominated the political landscape, the discriminatory regime of the Indian Act and the dramatic socio-economic situation in many Aboriginal communities became increasingly difficult to defend. As a result, the federal government progressively moved towards expanding most benefits of citizenship to Aboriginal peoples.¹¹ This period finds its apotheosis in the already mentioned White Paper on Indian Policy (Canada, 1969). The federal government then suggested the abolition of the Indian Act and the Indian status, as well as revocation of treaties, in order to transform “Indians into full Canadian citizens”. The White Paper was a product of its time, it saw in equality of status and the principle of universality the best guarantees against discrimination and exclusion. It was also very much in line with the logic of nation-building driving the federal political agenda of the time (McRoberts, 1997). The boundaries of the citizenship regime were expected to match those of the Canadian national state. For Pierre Elliott Trudeau, the Prime Minister of the time:

“It is inconceivable, I think, that in a modern nation, one section of the society have a special status or a treaty with the other section of the society. We must all be equal under the laws and we must no sign treaties amongst ourselves.”¹²

This period also corresponds to the development of the modern nationalist movement in Quebec. To a large extent as a reaction to the federal nation-building project, the provincial state became a central pillar of the “Quiet Revolution.” Successive Quebec governments, following the logic of nation-building, developed their own version of the citizenship regime around Keynesian economic policies and social programs (Papillon and Turgeon, 2003). Not surprisingly, assertion of authority over the territory also became a central policy issue. The development of the resource-rich northern part of the province was central to the nationalist project. Accordingly, Quebec sought to extend its own authority and legitimacy on territories mainly occupied by Aboriginal peoples, whose main governmental interlocutors until then had been federal government agents. In 1963, then Liberal Minister of Natural Resources, René Levesque, created the *Direction Générale du Nouveau Québec*, with the explicit aim of asserting the provincial government’s presence in the North. To do so, the Direction started to provide health, education and social services in Aboriginal (mostly Inuit) communities that often simply reproduced what the federal government or religious communities were already doing (Simard, 2003: 140).

The postwar period is thus characterized by a rapid expansion of the Canadian citizenship regime and a corresponding expansion of the provincial regime in Quebec. While competing,

North and the Métis in the Prairies. The latter groups fell into a constitutional limbo, not considered Indians under the Act nor full residents of provinces, who considered them federal jurisdiction under section 91(24).

¹¹ They gained the right to vote in federal elections in 1960.

¹² Prime Minister Trudeau, speaking in defense of the 1969 White Paper, Vancouver, August 8, 1969.

the two regimes functioned on a similar logic: they sought to “match” the boundaries and scale of citizenship with that of the state. To the language of universal access and inclusiveness corresponded a logic of nation-building to reinforce the direct link between individual citizens and the state, to the detriment of communal links that were still very present in Aboriginal societies. Greater inclusiveness was to be at the cost of yet another loss of collective ties and political capacity.

Recognition

The reaction of the Aboriginal leadership to the White Paper and its integrationist logic marked another turning point in Aboriginal-state relations in Canada, eventually leading to the recognition of Aboriginal and treaty rights in the Constitution in 1982. This period was characterized by Aboriginal use of political and legal forums to seek the entrenchment of their rights and status in the Canadian citizenship regime. It is also a period when Aboriginal political identities became salient as the language of nationalism and self-determination started to occupy more space in the discourse of organizations and community leaders. In many ways, Aboriginal nationalism followed in the steps of its Quebec counterpart, challenging the boundaries of the citizenship regime, with the essential distinction that unlike the latter, Aboriginal organizations could not use the leverage of provincial state institutions. Taking control over their own governance institutions became the focal point of Aboriginal claims in the following years.

In the early 70’s, political and legal battles lead to the negotiation of the first “modern treaty”, the James Bay and Northern Quebec Agreement through which the Cree and Inuit received compensations for hydroelectric development in northern Quebec. The Agreement, while controversial, was nonetheless an important achievement as it was the first time both the federal and provincial governments recognized –then sought to extinguish- Aboriginal land rights. It also contained a number of provisions for the development of what was to become significant governance infrastructure for the Cree and Inuit.¹³

The 80’s and 90’s were dominated by constitutional negotiations and legal battles as Aboriginal organizations, federal and provincial governments sought to give meaning to the Aboriginal rights recognized in the Constitution Act, 1982. A number of key court decisions gave those rights some substance and eventually forced the federal and provincial governments to engage in negotiations with Aboriginal peoples over the settlement of numerous land claims and the implementation of treaty rights. At the same time, the language of self-government progressively became part of the Canadian political landscape. In 1983, a committee of the House of Commons recommended for the first time the negotiation of nation-based self-government agreements with Aboriginal communities (Canada, 1983). Almost ten years later, the failed Charlottetown Accord of 1992 would have *de facto* created a third order of government in the federation through the formal recognition of Aboriginal peoples’ inherent right to self-government in the constitution. A similar proposal was at the core of the final report of Royal Commission on Aboriginal Peoples (RCAP) in 1996. The federal government recognized in a policy statement in 1995 that the rights protected under the Constitution Act of 1982 should include the inherent right to self-government. This new policy approach, focusing on political autonomy as a right, led to the negotiation of a number of self-government

¹³ For a detailed analysis of the Agreement and its impact over time, see Gagnon and Rocher (2003).

agreements in the late 90's, most of them as part of comprehensive land claim agreements considered as treaties under the Constitution.¹⁴

In the meantime, the politics of recognition (and denial) also became an important feature of Aboriginal-Quebec relationships. Quebec became the first provincial government to develop its own Aboriginal policy in 1978, which promoted a greater presence of the provincial government in Aboriginal communities but also recognized the importance of Aboriginal rights and the need to negotiate political arrangements in order to accommodate such rights. In 1985, the National Assembly adopted a motion recognizing the presence and political relevance of "Aboriginal nations" in Quebec.

These developments are certainly important and represent a significant reconfiguration in the content of the Canadian citizenship regime. The recognition of substantive collective rights, especially that of self-government, represents a break from the postwar approach focused on individual rights and formal equality as the key to solving the "Aboriginal problem". The re-emerging of treaties as a mechanism to formally delineate the rights and governance relation between federal, provincial and Aboriginal governments also significantly transforms the political landscape of the federation.¹⁵ In many ways, the past thirty years have witnessed a "paradigm shift" in the representation of Aboriginal peoples' place in the Canadian citizenship regime.¹⁶ This shift from a language of equal rights to a one of differentiated rights has opened new opportunities for Aboriginal peoples to assert the legitimacy of their claim to self-determination and develop new political arrangements within the Canadian federation.

That being said, there are some limits to the logic of rights recognition. For one thing, the Supreme Court has seriously limited its interpretation of the extent and meaning of Aboriginal rights as they are limited to activities, customs or traditions "integral to the distinctive culture of Aboriginal peoples."¹⁷ This interpretation has prompted commentators to suggest Aboriginal rights were "frozen in time" and did not constitute a basis for the development of modern political relationships.¹⁸ Moreover, the Court has clearly stated that Aboriginal rights must be reconciled with the Canadian constitution and federal and provincial jurisdiction.¹⁹ This is precisely where a rights-based approach to transforming the citizenship regime reaches its limits. The Supreme Court's interpretation of Aboriginal rights will always be confined by the parameters in which it operates, that of the Canadian constitution and the sovereignty of the state. In many ways, the politics of recognition stops short of the politics of self-determination, which, as we saw, challenges the very legitimacy of this assertion of state sovereignty. Again, rights, even defined in treaties, are of limited consequences if there are no institutions or mechanisms of governance to give them substantial meaning.

¹⁴ For example, the Nisga'a Agreement and the creation of the Nunavut territory (add refs).

¹⁵ The language of "treaty federalism" is sometimes used to characterize such relations. See Henderson (1994) and Macklem (2001).

¹⁶ See Weaver (1991) and Howlett (1993). For a counter-opinion, see Ladner and Orsini (2005).

¹⁷ This "test" was developed in *R. v. Van der Peet* (1996) 2 S.C.R. 507. In *R. v. Pamajewon* (1996) 2 S.R.C. 164, the Court stated that a similar criteria should be applied to the inherent right to self-government.

¹⁸ For a critique of the Court's Aboriginal rights jurisprudence see Macklem (2001) and Asch (2002).

¹⁹ *Delgamuukw v. British Columbia* (1997) 3 S.R.C. 1010.

Nowhere was this more obvious than in Quebec, where the good intentions of the early 1980's quickly dissolved as Aboriginal rights and self-determination claims came to clash with the economic interest and jurisdiction of the provincial government. When two Mohawk communities near Montreal sought to defend what they saw as their territorial integrity against local economic interests (a promoter wanted to build a golf course on an ancient Mohawk cemetery), it quickly degenerated into an armed conflict pitting Quebec and Mohawk nationalism against each other.²⁰ In the meantime, the James Bay Cree embarked on an international campaign against new hydroelectric developments planned by the Quebec government on their traditional lands. The very successful campaign tied in environmental concerns with Aboriginal custodial rights to the land, associating the Great Whale hydro project -and Quebec policies by extension- with colonial expansionism. The campaign prompted a strong reaction in nationalist circles in Quebec as, once again, territorial integrity was at stake. The James Bay Cree campaign took a whole new meaning once the Parti Quebecois regained power in 1994, promising a referendum on sovereignty. The Cree took advantage of the transnational networks and alliances created in the Great Whale campaign to challenge the legitimacy of the referendum as "yet another imperialistic act by a separatist government who claims the right to self-determination (...) but denies it to Aboriginal nations who were living on the land long before Quebec even existed."²¹ The Cree organized their own referendum and massively voted to stay in Canada in the event of Quebec secession. Again, the two nationalisms collided, this time not only on territorial jurisdiction, but also on boundaries of political communities and the very exercise of citizenship rights.²²

By the late 1990's, Aboriginal nations like the Mohawks and the Cree were thus increasingly challenging the very boundaries of Quebec's surging citizenship regime, questioning their incorporation in such regime but also seeking to assert the boundaries of their own political communities by using the very same language. Nowhere else in the country was Aboriginal nationalism so strong and organized, and such a legitimate part of the political discourse.

From recognition to rescaling?

In parallel to legal developments and macro-constitutional debates, some fundamental, although less visible, changes were also taking place at the policy level. While the federal government engaged in high profile but slow-moving treaty and comprehensive self-government agreements, it also embarked in a logic of progressive decentralization of the administration of government services to Band Councils and Aboriginal organizations. This process started in the mid-80's and gained momentum in the 90's. Decentralization is now one of the most prominent features of Aboriginal-state relations in Canada. Between 1995 and 2004, the federal government signed 460 specific agreements with Aboriginal governments, organizations or councils for the transfer of program management in areas such as education, health, public security, training, economic development and more. In 2002, 75% of the programming budget of Indian and Northern Affairs Canada was in fact administered by Aboriginal governments and organizations (Canada, 2003).

²⁰ The "Oka crisis" is discussed in details in York and Pindera (1991).

²¹ Mathew Coon Come, Harvard speech ref.

²² For a more complete analysis of the impact of the transnational campaign of the Cree on the citizenship regime, see Jenson and Papillon (2000).

Such decentralization is obviously in part a strategic response to Aboriginal claims for political autonomy, but it must also be situated in the broader context of state restructuring and rescaling. The very language of “new governance” permeates these agreements and their policy frameworks. For example, in *Gathering Strength*, its response to the report of the Royal Commission on Aboriginal Peoples, the federal government choose to largely ignore the recommendations of the commission for the creation of a third order of nation-based governments. It did however embark on a series of new programs fostering “the consolidation of Aboriginal communities” through “empowerment” and “partnerships” for the “development of local solutions to local problems” (Canada, 1998). The main areas where such agreements have taken place is further confirmation of the strong influence of the new governance logic and the push for a redistribution of responsibilities in the citizenship regime towards communities and the market. Skills development, local economic initiatives and community support for families are central elements of the federal Aboriginal strategy developed in the wake of the RCAP report.

Interestingly, following the fallout of the 1990’s, the Quebec government embarked on a similar process. It has been at the forefront amongst provinces in developing a policy framework for the negotiation of bilateral or trilateral (with the federal government) agreements on devolution of responsibilities in areas of provincial jurisdiction to Aboriginal governments. In its 1998 aboriginal policy framework, called *Partnership, Development, Action*, the Quebec government proposes a new framework for the delegation of “contractual jurisdiction” to Aboriginal governments in order to “foster economic and social development from and for the communities.” The stated goal of the policy is to build new partnerships between Quebec and Aboriginal nations in order to strengthen the capacity of the latter to control their own development (Quebec, 1998). Quebec has also created a special economic development fund for Aboriginal initiatives creating employment in the communities.²³ After the 1995 referendum, the “bridge building” strategy was back on the agenda. This time however, the logic of recognition was accompanied by a logic of transfer of responsibilities.

What is the impact of administrative decentralization agreements? Many are skeptical about their transformative potential as they do not create a formal structure of autonomy for Aboriginal governments. A number of authors are skeptical about the rhetoric of decentralization associated with the new governance paradigm. In fact, the devolution agreements may well increase the dependency of the latter towards federal and provincial governments since their role is limited to that of administrator of funds for policies developed above them. Funding for such programs depends entirely on the willingness of the federal and provincial governments as they are not part of any constitutionally protected agreement or treaty. These agreements are also accompanied by stringent accountability measures, which lead some Aboriginal leaders involved in such programs to conclude that in fact, it is simply a new way for governments to maintain their “control at distance” over Aboriginal communities.²⁴

That being said, one should not underestimate the long-term impact of such transfers of responsibilities on the place of Aboriginal peoples in relation to the citizenship regime. The

²³ The initial amount of \$125 millions was renewed in 2002 (Check refsand numbers)

²⁴ Personal interview, ref.A122. June 12, 2004.

coupling of decentralization and self-determination may prove to be a powerful one. For one, if they do not formally transfer jurisdiction to Aboriginal governments, these agreements nonetheless considerably increase their role in the daily life of the communities. They are, in effect, becoming the sole governmental presence in those communities. Access to services, and thus to the benefits of citizenship, are now essentially channeled through them.²⁵ Aboriginal governments are also considerably increasing their administrative and political capacity. For example, the Kahnawake Mohawk Council, who has signed a number of administrative agreements with both the federal and provincial governments, has grown from 21 to 110 employees in ten years, with an annual budget of \$35 million for a population of approximately 8 000 people.²⁶ The Cree Regional Authority, the administrative branch of the Grand Council of the Cree (GCC), currently manages an annual budget of \$120 million and has over 140 employees in various sectors of activities for a total population of 16 000 dispersed in 9 communities (GCC, 2003).

Devolution or decentralization also leaves a certain degree of leeway for Aboriginal governments in terms of how the programs will be implemented. This is a key characteristic of new governance practices: decision-making authority becomes a much more fuzzy concept. The implementation stage of the policy process takes new importance as the organization, agency or government in charge of it necessarily reinterprets the objectives of the often broad framework through which the devolution takes place (Rhodes, 1997). As such, the administration of programs does involve a certain degree of political choice. This not only gives a political margin to Aboriginal governments but also foster political debates and deliberation within communities who have been for the most part of the last century stripped of any significant civil society (Simard, 2003). Such dynamics create a closer link between Aboriginal governments and the population, thus potentially increasing their legitimacy. According to the federal government, participation in Band Council elections is on the rise in most communities with significant administrative responsibilities.²⁷ This strengthening of visibility, capacity and legitimacy takes a whole different meaning when coupled with the language of self-determination. With mechanism of access and balance of responsibilities within the citizenship regime increasingly in the hand of Aboriginal governments, they are gaining essential tools to assert the boundaries of their political communities and challenge the state -federal and provincial- as the main space for the production such regime.

Moreover, these new governance structures are significantly altering the nature of the relationship between Aboriginal governments and their federal and provincial counterparts. Administrative decentralization, just like formal self-government arrangements, increases the need for coordination and consultation between governments. Ongoing discussions are necessary in order to assess financial needs and services, but also to coordinate policy objectives and define priorities. These intergovernmental relations are becoming part of the Aboriginal policy landscape and, in many way, they are becoming spaces where significant

²⁵ For example, there are less than 50 civil servants directly employed by the federal and provincial governments in the 14 Inuit communities of Nunavik, in northern Quebec (including Canada Post and other crown corporation employees). All other public services are either run through the Inuit regional administration (Kativik) or through organizations with Inuit-controlled boards.

²⁶ Data are based on comparative analysis of the Council's annual reports.

²⁷ Interview with INAC civil servant, G023. May 2004.

decision-making and policy choices are made (Abele and Prince, 2002). These are the very multilevel arrangements and dynamics the literature on rescaling refers to. Rescaling may involve decentralization or a renewed role for local governments, but more importantly, it leads to new dynamics of multilevel governance where structures of powers are more fluid and formal status less relevant. Once again, in the case of Aboriginal governments, these interscalar dynamics are permeated with the language of national self-determination. The negotiation of the Paix des Braves between the James Bay Cree and Quebec will serve to illustrate the significance of this combination.

The *Paix des Braves*: restructuring citizenship through multilevel politics

As I have discussed throughout the previous section, the relationship between Quebec and the James Bay Cree has not been an easy one. Since their first “encounter” little over forty years ago at the time of Quebec’s foray into the administration of its northern territories, relations have, for the most part, been conflictive. Natural resources extraction and hydroelectric developments are at the core of the conflict. First came the James Bay hydroelectric development project that led to the signature of the James Bay and Northern Quebec Agreement (JBNQA) in 1975, then the aborted Great Whale Project in the early 1990’s that the Grand Council of the Cree successfully fought on the international scene. The conflict culminated during the period leading up to and following the 1995 Quebec referendum on sovereignty. Two projects of self-determination were colliding, that of francophone Quebecois and that of the Cree nation, seeking the right to choose its own political ties, with Quebec or Canada. The implementation of the James Bay and Northern Quebec Agreement has also been an ongoing source of conflict. The Cree have launched judicial proceedings against Quebec and the Federal government seeking compensation for more than 3 billions in Canadian dollars based on the JBNQA implementation. Forestry exploitation in hunting and trapping territories of the most southern Cree communities has long been another source of ongoing tensions between the Grand Council of the Cree and the Quebec Government.

It thus came as a big surprise when Ted Moses the Grand Chief of the Cree and Quebec’s Premier Bernard Landry announced they had reached an agreement over the development of a new relationship in October 2001.²⁸ La Paix des Braves calls among other things for the creation of co-management mechanisms for the exploitation of forestry, a main area of conflict between the Cree and Quebec. Quebec also agreed to the transfer of its obligation under the JBNQA over economic and social development in Cree communities to the Cree Regional Authority, something the Cree had demanded for years but became acceptable for Quebec only within the framework of the new governance paradigm. One important innovation of the agreement is the mechanism through which funding for economic development will be transferred to the Cree. In addition to a basic amount of block funding allocated for the next fifty years, the Quebec government will transfer to the Cree an amount based on the income extracted from forestry exploitation on lands in which Cree rights had been, in legal terms, extinguished by the JBNQA. In addition, in exchange for the definitive cancellation of a major hydroelectric development project (the Nottaway-Broadback-Rupert project), the Cree agreed to

²⁸ The *Agreement Concerning a New Relationship Between the Government of Quebec and The Cree of Quebec* was ratified in February 2002. <http://www.mce.gouv.qc.ca/w/html/w2057004.html>

a much smaller project on the Rupert river. The Cree finally agreed to withdraw all judicial proceedings against Quebec in matters relevant to the agreement.

The agreement also establishes a permanent liaison committee between the Cree executive and the Quebec government. The Quebec representatives on the committee are high ranking civil servants with direct access the Premier. The primary objective of the committee is to facilitate coordination and dialogue in the implementation of the agreement and ensure conflicts regarding its interpretation are solved through political means rather than through the courts. This intergovernmental mechanism is seen by Cree leaders as a key element of the agreement. Such a direct access to the Premier's office guarantees the relationship will be maintained at the political level, ensuring it's primacy over regulatory obstacles at the administrative level. In their view, "what this agreement brings is a political, and not just legal or administrative-bureaucratic relationship with Quebec."²⁹

The agreement, in and of itself, is not revolutionary. It is not a new treaty³⁰ nor does it recognize any form of shared sovereignty over the territory. The federal Parliament and Quebec's National Assembly are still the sole expression of that sovereignty. In its substance, it is an agreement over the governance of social and economic development. Quebec sought guarantees regarding forestry exploitation and hydroelectric development in face of the many legal procedures the Cree had engaged over time. The Cree were seeking more control over the exploitation of their traditional lands and greater levers in fostering economic development in their growing and young communities.³¹ But more than that, the objective of the Agreement was to put an end to ongoing disputes and establish the basis for what had become necessary: coordination and collaboration in social and economic governance of the region. In other words, this agreement is a primary example of the emerging multilevel governance dynamics associated with the logic of "new governance" and rescaling processes.

In this case, as in many others, rescaling is not a simple transfer of power or jurisdiction to Aboriginal authorities. Nor is it a one-time process. This agreement is the result of a long struggle between competing "locales" of governance that started with the negotiation of the JBNQA and is likely to continue in the future. What this agreement embodies, however, is a reconfiguration of power relations. Quebec now recognizes –politically and not just legally- the existence of the Cree nation and the necessity to take it seriously as a political partner. Both Cree and Quebec officials are adamant about the importance of the agreement in instilling a new dynamic in Cree-Quebec relationship.³² According to the preamble of the Agreement:

"Both the Cree Nation and the Quebec Nation agree to place emphasis in their relationship on those aspects that unite them as well as on their common desire to continue the development of Northern Quebec and the self-fulfillment of the Cree nation" (Sec.2.1)

²⁹ Based on a number of interviews with Cree representatives. (A203-09) April-May 2004.

³⁰ In fact, the *Agreement* explicitly states that it does not modify the James Bay and Northern Quebec Agreement and does not affect otherwise the rights of the James Bay Cree (sec. 2.6 and 2.10).

³¹ 35% of the Cree population is below 20. See Trudel and Vincent (2002), an interview with Cree leader Romeo Saganash.

³² Although there is still much suspicion on both sides, and all agree the implementation is a challenge, most peoples involved in Cree-Quebec relations interviewed felt the Agreement had significantly improved the climate of negotiations or policy coordination with their respective counterparts.

Elsewhere, it speaks of “an association based on mutual recognition (...) that is open, respectful and promotes mutual responsibility” (sec. 2.3). Obviously these are words, but as one Quebec civil servant puts it:

“It is still the Minister who is responsible for the money we spend on Cree projects. The National Assembly is still the ultimate authority on the territory of Quebec. But the Paix des Braves creates a whole new political dynamic, we are working with the Cree now, not against them” (my translation).

Bureaucrats and Ministers in Quebec didn't all react well to the agreement. It created additional roadblocks to their daily administrative work, more consultations, more negotiations. Some in Cree communities weren't supportive either. Signing such an agreement was a radical break with the traditional position of the Grand Council. No one was consulted before the agreement in principle was signed. It also legitimizes the authority of Quebec on Cree lands, and authorizes more hydro developments. But despite the resistance it created, more than three years after its ratification, the agreement still holds to its promises according to the Cree leadership. Moreover, the Cree have found a new ally in Quebec (to pressure Ottawa to reach a similar agreement, including regional self-government) and vice versa (the Grand Council of the Cree even supported the Parti Quebecois during the last provincial elections).

What made this agreement possible? Through the JBNQA and numerous administrative arrangements, the Cree had managed over the years to play an increasing role in governing their own affairs. While not an autonomous government in the strict, legal, sense, the Grand Council of the Cree (GCC) and its administrative branch, the Cree Regional Authority (CRA) have been managing a growing number of programs with a significant budget as indicated in the previous section. With successive legal battles and political mobilizations, they had established their credentials and capacity. More importantly, they were able to develop a strong political identity and challenge, through the language of self-determination, the boundaries and legitimacy of both the Canadian and Quebec citizenship regimes. The ongoing Cree mobilization and public stand on Quebec's territorial integrity and legitimacy as a state forced the nationalist government to react and change its approach. Ignoring the Cree didn't work, marginalizing or de-legitimizing them neither. The discourse of self-determination could not be ignored by a government aspiring itself to national self-determination.

But in a sense, what made this agreement possible was also the change in perspective in Quebec City on the role of the government. The Agreement goes hand in hand with the logic of “partnerships” and shared governance that has permeated various provincial governments for the last decade. While the new Liberal government has pushed this logic further than its predecessor, the Parti Quebecois had already embarked on the “new governance” bandwagon (Rouillard, 2003). This agreement was a breakthrough in political terms, but in administration terms, it is very much in continuation with the logic applied in broader policy frameworks of the time in regional economic development. In forestry management for example, centralized governance had long been abandoned by Quebec.³³ The James Bay Cree were able to take

³³ Quebec's forestry policy has long been criticized for leaving the industry “self-manage” the resource, giving only limited leverage to government agents in enforcing environmental regulations. See for example Bergeron, Y. et C. Messier. “Un nouveau régime forestier trop timide pour la protection de la biodiversité. Pour un projet de loi sur les forêts plus audacieux” *Le Devoir*. 5 juillet 2000.

advantage of this new governance logic to make significant inroads in their own political project of gaining greater control over, among other things, the management of forestry on their traditional lands.

It is thus the conjunction of this new governance logic with the politics of self-determination and Quebec's particular vulnerability to such claims given its own political project that opened the door to the Paix des Braves and with it, to a reconfiguration of the interscalar arrangements guiding the relationship between the Cree and Quebec. With this agreement, the Cree have achieved, at least for now, a political status and a governing capacity they could not have hoped for only a few years ago. The direct consequence of this change is a consolidation of the political legitimacy of the Grand Council (and the CRA) and a consolidation of its role in the governance of the communities. With a specific rights regime (the JBNQA and section 35 of the Constitution), effective mechanism of access and governance (the GGC/CRA), mechanisms for the distribution of responsibilities (such as the multilevel arrangements defined in the Paix des Braves) and a very strong national identity setting the boundaries of the political community, it is tempting to suggest the Cree, like other Aboriginal nations, are developing their own equivalent of a citizenship regime.

Conclusion: overlapping regimes?

The James Bay Cree are perhaps a "strong" case of an Aboriginal nation altering its relationship with the Canadian and Quebec citizenship regime. In addition to the considerable leverage they gained from their political experience and the institutions created by the JBNQA, they also happen to sit on a resource-rich territory. By no means am I suggesting that all Aboriginal nations are developing their own citizenship regime in similar fashion. What this paper suggested is more simply that the changing dynamics of governance, especially the current rescaling process, open opportunities for Aboriginal nations to redefine their relationship with the state outside the high profile arena of constitution-making and rights-claims. This is made particularly salient in Quebec where debates over boundaries of communities are already part of the everyday political agenda. Other Aboriginal nations in Quebec and elsewhere are also engaged in similar processes. The Mohwaks of Kahnawake have now adopted their own citizenship law and considerably consolidated their institutions of governance in recent years through similar exercises of bilateral and trilateral negotiations over policy implementation and program devolution. The Nisga'a in British Columbia also have their own citizenship code and, pursuant to their self-government agreement, areas of exclusive jurisdiction and taxation powers. The Inuit of Nunavut have all the attributes of a province except the formal constitutional status and the fiscal capacity.

These developments, as diverse and uneven as they are, lead to fundamental questions about the place of Aboriginal peoples in relation to both the Canadian and Quebec political communities. There are in fact two dominant 'stories' in the existing literature about current changes in Aboriginal-state relations in Canada. The first one, often put forward by critiques of Aboriginal nationalism, depicts a portrait of emerging parallel "micro-nations" and a balkanization of the Canadian citizenship regime that would make democratic governance almost impossible.³⁴

³⁴ This view is best represented by Tom Flanagan (2000), but is also present in a more nuanced and subtle way in Alan Cairn's critique of the Royal Commission on Aboriginal Peoples' final report (2000).

From this perspective, the link between the state and individuals, through a common citizenship regime and a shared identity, is essential for modern democracy to function and must be maintained at all costs. The second view, well-represented in postcolonial critical analysis, is that recent developments are not fundamentally altering the colonial heritage of the Canadian (and Quebec) state. According to this school of thought, current changes are more adequately depicted as a “readjustment” of the various mechanisms deployed to maintain the hegemonic position of the state and to constrain Aboriginal peoples’ struggle for self-determination. New governance mechanisms, with their insistence on state control and oversight, are proof of “paradigm paralysis” (Ladner and Orsini, 2005) rather than substantial reconfiguration.

It is easy to be critical, or perhaps even cynical, in the field of Aboriginal politics. After years of discourses paved with good intentions, it is true that the colonial heritage has displayed a remarkable resilience. It is, after all, deeply ingrained in the very structure of the Canadian state. Between the two positions briefly outlined above however, I suggest a more complex story is emerging. Aboriginal peoples are indeed redefining their relationship within the Canadian federation, some creating what in many ways can be defined as their own citizenship regimes. But this process is nonetheless taking place within the confines of, and in relation to, the state. What the first critique of current developments overlooks is the profoundly relational and interdependent nature of the new regime configurations that are emerging. Despite the rhetoric of some Aboriginal leaders, these are not parallel “sovereign” nations in the classic sense of the word. The Paix des Braves is the best example of the growing importance of this interdependence. And the Paix des Braves is also the best example of how these changes are taking place without fundamentally altering the “hard” constitutional principles. It is through the reconfiguration of multilevel governance dynamics, or interscalar arrangements, that Aboriginal governments and organizations are challenging the status quo. This is also why I think the second critique misses something important about current developments. The Canadian obsession of the last decades with constitutional politics and foundational principles has perhaps driven us to overlook less spectacular changes in what Foucault called the “politics of everyday relations.” After the development of strong political boundaries, at least in terms of identities, Aboriginal communities now increasingly have institutions of governance that can bind citizens together around rules, norms and practices usually associated with state policies and institutions. These emerging regime configurations are not quite separate, yet not completely subjugated to the dominant Canadian and Quebec regimes. As such, it might be more appropriate to speak of “embedded” nations and overlapping citizenship regimes.

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