



May 2010

## Indigeneity-Grounded Analysis (IGA) as Policy(-Making) Lens: New Zealand Models, Canadian Realities

Augie Fleras

*University of Waterloo, fleras@uwaterloo.ca*

Roger Maaka

*Eastern Institute of Technology, rmaaka@eit.ac.nz*

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### Recommended Citation

Fleras, A. , Maaka, R. (2010). Indigeneity-Grounded Analysis (IGA) as Policy(-Making) Lens: New Zealand Models, Canadian Realities. *The International Indigenous Policy Journal*, 1(1) .

**DOI:** 10.18584/iipj.2010.1.1.4

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# Indigeneity-Grounded Analysis (IGA) as Policy(-Making) Lens: New Zealand Models, Canadian Realities

## Abstract

Engaging politically with the principles of indigeneity is neither an option nor a cop out. The emergence of Indigenous peoples as prime-time players on the world's political stage attests to the timeliness and relevance of indigeneity in advancing a new postcolonial contract for living together differently. Insofar as the principles of indigeneity are inextricably linked with challenge, resistance, and transformation, this paper argues that reference to indigeneity as policy(- making) paradigm is both necessary and overdue. To put this argument to the test, the politics of Maori indigeneity in Aotearoa New Zealand are analyzed and assessed in constructing an indigeneity agenda model. The political implications of an indigeneity-policy nexus are then applied to the realities of Canada's Indigenous/Aboriginal peoples. The paper contends that, just as the Government is committed to a gender based analysis (GBA) for improving policy outcomes along gender lines, so too should the principles of indigeneity (or aboriginality) secure an indigeneity grounded analysis (IGA) framework for minimizing systemic policy bias while maximizing Indigenous peoples inputs. The paper concludes by theorizing those provisional first principles that inform an IGA framework as a policy (-making) lens.

## Keywords

Indigeneity as Policy Lens, principles of indigeneity, politics of Maori indigeneity, gender-based analysis framework, Indigeneity-Grounded Analysis

## Acknowledgments

A revised version of this invited paper was presented to the Aboriginal Peoples Research Conference, Ottawa, 9 March 2009

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## **Introduction: The Politics of Indigeneity as a Policy(-Making) Paradox**

The politics of indigeneity<sup>1</sup> are proving a paradox. To one side, Indigenous peoples<sup>2</sup> worldwide remain structurally excluded and culturally marginalized because of a pervasive (neo-)colonialism<sup>3</sup>(Maybury-Lewis, 2002; Maaka, and Andersen 2006). Even in seemingly progressive settler societies like Canada and New Zealand, Indigenous peoples continue to experience punishing levels of poverty and disempowerments whose sources (and solutions) are systemic and foundational rather than attitudinal and incidental (Maaka and Fleras 2005). To the other side of the political divide is a fundamentally different narrative. Indigenous peoples are striding across the world's political stage by capitalizing on indigeneity principles and indigenous politics as catalyst for empowerment and engagement. In a relatively short period of time, Indigenous peoples have managed to achieve all or parts of the following: shed the most egregious dimensions of colonialism; recover and articulate their voices; transform political and public attitudes; secure international support in defense of their claims; enlist international law to prove violations; and propose a specific agenda of Indigenous peoples rights (Xanthaki 2008). The emergence of Indigenous peoples *as peoples with rights* rather than minorities with problems not only attests to this transformation, but also propels the politics of indigeneity to the forefront of policy(-making) debates.

Politically engaging with the principles of indigeneity along policy lines is no longer an option or excuse. Put bluntly, those colonial foundational principles whose governing logic continues to impoverish and disempower will persist without an indigeneity policy lens to challenge, resist, and transform (Turner and Simpson 2008; Ladner and Dick 2008). Insofar as there appears to be a dearth of Indigenous peoples' policy(-making) input (Chesterton 2008), this paper proposes an indigeneity-grounded analysis (IGA) policy model not only too offset

systemic institutional biases, but also to ensure intended outcomes and fair results. The paper contends that an IGA model must go beyond design or content to ensure success. No less critical is a focus on policy process by incorporating multiple indigenous stakeholders in shaping policy outcomes (Chataway 2004). To put this argument to the test, the politics of Maori indigeneity in Aotearoa New Zealand are explored to demonstrate advances in constructing indigenous-sensitive policy(-making) models. This is followed by proposing an indigeneity-grounded analysis (IGA) framework as policy (-making) lens for Canada's Indigenous peoples. The paper concludes by analyzing the application and implications of a policy-indigeneity nexus (an IGA framework) to improve the relational status and well-being of Aboriginal peoples within a post colonial matrix (White et al 2003).

The paper is predicated on simple yet powerful premise. Neither policy nor policy making are neutral or value free. Rather, as socially constructed conventions, policy and policy-making are loaded with dominant values, Eurocentric ideals, and vested interests. So systemically embedded are notions about what is normal, desirable, or acceptable with respect to policy design, underlying assumptions, priorities and agenda, and process that even institutional actors are rarely aware of the logical consequences by which some are privileged, others excluded. In challenging the policy(-making) myth of value neutrality<sup>4</sup> – after all, even evidence-based policy(-making) may prove systemically biasing since a commitment to race neutrality bolsters white Eurocentricity as the norm, while discrediting the legitimacy of Indigenous peoples claims to sovereignty status – the Kungarakany and First Australian scholar, Steve Larkin (2007:178), bristles with indignation when writing of ....

...the systematic and racialised denial of Indigenous sovereignty in evidence-based processes of thinking about/doing things differently, and how things might be different

from the way they are-how Indigenous issues are problematised and subsequently converted into discrete programs. White policy-makers and researchers need to become vigilant to how their whiteness shapes the production of research knowledge and their interpretation of what gets to count as evidence when considering Indigenous health policy.

The conclusion seems inescapable: In that settler/Eurocentric values continue to permeate and guide policy assumptions and processes (see Peters and Walker 2005), the value of a indigeneity-sensitive policy approach is both necessary and overdue – necessary, because of the centrality of dominant values and Eurocentric assumptions in framing policy issues; overdue, because conventional policy agendas continue to fold Indigenous peoples' experiences and realities into the governing logic of a neo-colonial constitutional order. Just as the Canadian government endorses the principle of gender based analysis (GBA) for improving policy outcomes for both women and men, so too should the logic of indigeneity as principle and practice be incorporated into the policy agenda as a principled category of analysis and transformation.

### **The Politics of Indigeneity in Aotearoa New Zealand**

Indigenous peoples around the world are in the throes of re-constitutionalizing their relationship with societies at large. Developments in Aotearoa New Zealand are no exception to this pattern (Fleras and Spoonley 1999; Durie 2005; O'Sullivan 2008). The politics of Maori indigeneity have proven pivotal in securing an indigeneity perspective not only at the political level but also in the design and implementation of policy and programs. Admittedly, the New Zealand state has been slow in coming around to acknowledging the primacy of Maori indigeneity. Much of the reticence reflects a political unwillingness to provoke public anger over perceptions of Maori privilege in seemingly violating the meritocratic principle of equality and

fairness (Durie 2004). Nevertheless, indigeneity as an overall approach to Maori-Crown relations is increasingly embedded in public policy development – not always on the basis of disadvantage or compensation, but because of indigenous rights.

Maori indigeneity politics are not restricted to a single body. Rather they are multi-vocalic in scope and direction, including national Maori advisory bodies (like the Maori Womens Welfare League and the New Zealand Maori Council- itself the only pan-tribal organization to exist under an Act of Parliament (the 1962 Maori Community Development Act)). Despite the importance of the NZMC and the MWWL as forerunners in jump-starting Maori indigeneity, this paper will focus instead on three policy making catalysts, each of which is shown to have advanced the principle of a Maori indigeneity as policy(-making) lens. Included are (a) the presence of Maori in Parliament (including seven guaranteed seats, Maori lists in a Mixed Member Proportional systems, and emergence of a Maori Party), (b) an advisory and advocacy body with policy making influence to review indigenous affairs legislation (Te Puni Kokiri) and (c) a commission of inquiry (Waitangi Tribunal) for ‘righting historical wrongs’ involving Crown breaches to the Treaty of Waitangi principles.<sup>5</sup>

### ***Te Puni Kokiri (TPK)***

TPK or the Ministry of Maori Development was established in 1991 under the auspices of the government’s mainstreaming policy phase. Under mainstreaming as policy, the delivery of services and programs to Maori was conveyed through mainstream agencies that serve the general public, rather than direct service provisions by specific government department like the Maori Affairs Department (Levy 1999). Over time, the core functions of TPK have changed, although TPK remains the only government department solely focused on Maori. As an integrated policy Ministry that advocates on behalf Maori, iwi, and hapu, TPK serves as liaison

with other government agencies for improving Maori outcomes through more responsive mainstream institutions and services. In keeping with its mandate as instrument of Maori development, TPK is strategically positioned to bolster the prospect of Maori succeeding as Maori by aspiring to a sustainable level of success as individuals, in organizations, and as collectivities.

TPK also represents a principal advisor on Crown relationship with Maori hapu and iwi, in part by providing policy advice, in part by monitoring policy and legislation, in part by partnering Maori investment to advance Maori potential. For example, the current Realising Maori Potential program is predicated on the premise that significant potential exists among Maori, thus better positioning Maori to build upon and leverage off their collective resources, knowledge, skills and leadership capabilities (TPK 2008). In other words, rather than *delivering* government policies as was the case in the past, TPK is in the business of *designing* policy advice to Minister of Maori Affairs. In advancing its policy(-making) mandate, TPK also maintains interactive links with Maori across the land through a network of ten regional offices.

### ***Maori Parliamentary Seats and the Maori Party***

Maori constitute one of the few peoples in the world with guaranteed Parliamentary seats (Geddis 2007; Joseph 2008). Four separate Maori electorates were established in 1867 based on the principle of an adult male franchise. Originating for a variety of reasons ranging from the calculating to the expedient, the arrangement was intended to last five years or until the Maori land Court converted communal Maori land tenure into individual freehold, thus entitling Maori to enfranchisement under standard property owning qualifications (Joseph 2008). But the complexities of Maori land ownership, together with the momentum of inertia and a Labour Party stranglehold on Maori seats for nearly 75 years, reinforced the status quo until the

introduction of Mixed Member Proportional in 1993. Under MMP, the number of dedicated Maori seats were allowed to rise to seven (based on an influx of Maori voters to the Maori roll rather than the General roll). As well, a significant number of Maori have appeared as party list members whose placement is based on the proportion of popular vote captured by each political party. The end result is a formidable Maori presence in Parliament. In the 2008 elections, a total of 22 seats in a 121 strong Parliament were held by Maori, thus accounting for about 19 percent of the total in contrast to their proportion (around 15 %) of the total population.

A Maori Party has sat in Parliament since the exodus of Maori MPs from the Labour Party in 2005. Controversy over a Labour government ruling that pre-empted Maori from exercising the right to claim ownership of the seabeds and foreshore resulted in a split from the Labour ranks. As a party for, about, and by Maori, the goal of the Maori Party is “..to achieve self determination for whanau, hapu, and iwi within their own land, to bolster a strong, united, and independent voice, and live according to kaupapa and tikanga handed down by ancestors “(Maori Party 2008). In the 2005 election, the Maori Party won four of the seven Labour-locked Maori seats, including 2.19 percent of the national vote. In 2008, the Maori Party increased its popular vote to 2.39 percent, in addition to capturing another seat from Labour, in the process securing an independent and powerful Maori voice in Parliament (Winiata 2007). With the support of the Maori Party, the National Party formed the government, then promptly rewarded its coalition partner with two cabinet positions, including the Minister of Maori Affairs portfolio (Pita Sharples; co leader of the Maori party) and Minister for Community and Voluntary Sector (Tania Turia, co-leader of Maori Party) .



### ***Waitangi Tribunal: Treaty Principles as Maori Indigeneity***

A restitutive process is currently in place to compensate indigenous Maori peoples for historical wrongs. In securing a basis for resolving long standing Maori grievances in a principled way, the Labour government established the Waitangi Tribunal in 1975 as a Commission of Inquiry to (a) make recommendations on claims to past and present breaches to Treaty principles (b) consider whether any Crown action or proposed legislation was inconsistent with Treaty principles and (c) determine the "meaning and effect" of the Treaty by negotiating the differences between the English and Maori language versions. Bicultural in mandate as well as process and composition (about half of the 16 members are Maori while procedures are conducted in accordance with Maori custom), the Waitangi Tribunal represents an institutional forum in which oppositional readings of the Treaty re-appraise Maori indigenous rights in light of emergent realities. The Waitangi Tribunal can be likened to a 'truth and reconciliation' forum and function (Waitangi Tribunal 2006). A permanent commission of inquiry is in place that registers Maori claims or grievances over Crown breaches to the Treaty of Waitangi, inquires into them through a public forum that tests these claims for legitimacy and validity, publishes reports on the accuracy of the claims, and proposes solutions for righting Crown wrongs.

The importance of Tribunal rulings and published reports have proven critical in unsettling settler-Maori relations. The reports provide a balanced assessment of what the Crown could and should have done in meeting its Treaty obligations, whether the claimant communities suffered harm because of Crown in/actions in breaching the Treaty, and makes recommendations for removing the harm, remedying the grievance, and repairing the relationship. By restoring Maori to the national agenda, so to speak, the cumulative impact of these rulings in 'radicalising history' is consequential - not only in exposing Crown duplicity in compromising Treaty

principles, but also for advocating a new postcolonial contract for living together differently. Admittedly, Tribunal recommendations are neither binding (except in rare cases) nor do they have any legal standing in ruling on points of law over the return of land. Still, these recommendations provide input in shaping subsequent government policy and settlements in ways scarcely conceivable even a generation ago.

In addition to ruling on specific Maori claims, the Tribunal has been charged with promulgating the principles for living together differently. The Tribunal's mandate rests in looking beyond strict legalities for ascertaining the meaning of the Treaty in hopes of harmonizing the differences between the English version (with its *kawanatanga* commitment to state determination) and the Maori version (with its *rangatiratanga* focus on indigenous self determining autonomy) (Maaka and Fleras 2008). Differences in Maori and English texts of the Treaty, coupled with the need to apply the Treaty to specific circumstances, has resulted in Parliament (and the Courts) relying on Treaty principles for guidance and justification rather than the actual texts. Four major principles prevail:

***The overarching (reciprocity-exchange) principle.*** Of paramount importance is the overarching principle or the 'reciprocity-exchange' principle. According to the overarching principle, Maori ceded de jure sovereignty over the land ('*kawanatanga*') in exchange for reciprocal Crown guarantees of Maori self determining autonomy (de facto sovereignty or *tino rangatiratanga*) over land, resources, and 'things Maori'. As far as the Tribunal is concerned, stakeholders in the Treaty process must acknowledge the Crown's sovereign right to govern under Article One. However, stakeholders must also accept the equally unassailable guarantees of *rangatiratanga* under Article Two which qualifies the Crown's power to absolute governance. (Similarly, the *Delgamuukw* ruling in 1997

affirmed that Crown assertion of absolute sovereignty over Canada did not displace existing aboriginal orders, lands, and rights, but puts the onus on protecting them (Henderson 2004)). Admittedly, the Crown possesses overriding rights to exercise kawanatanga ('state') authority over rangatiratanga ('nation') guarantees. But it can only do so when national interests are at stake and by way of consultation, consent, and compensation.

***The principle of partnership.*** At the heart of the Treaty is the promise of a mutually beneficial relationship between Maori and the Crown (New Zealanders) - a partnership based on joint planning and shared vision (Durie 2005). According to the partnership principles, Maori tribes and the Crown (or more generally, Pakeha) must be seen as equal partners - that is, co-signatories to a political covenant - whose partnership is constructed around the sharing of power, resources, and privileges. Reference to the Treaty as a "dialogue between sovereigns" establishes a partnership that obligates both Maori and Crown/Pakeha to act toward each other reasonably, with mutual trust, and in good faith. In other words, the Treaty is not a unilateral declaration involving closure, but entails an obligation on the part of the Crown to engage meaningfully and bilaterally consult.

***The principle of active protection.*** The Crown has a duty to actively protect Maori rangatiratanga rights as set out in Article Two. The principle of Crown fiduciary relationship ('trust') of protection is particularly applicable when one side is weaker and more vulnerable than the other. Two kinds of protection prevail: reactive and proactive. Reactive protection entails the removal of laws, barriers, and constraints that inhibit Maori self determination. Proactive protection includes measures to preserve and enhance

Maori resources and taonga – especially in those cases where developments may imperil Maori taonga.

***The principle of autonomy.*** The concept of *autonomy* is justified on historical and principled grounds. When two people meet, the Tribunal has argued, their joint differences must be worked through in a manner that engages both as equals, invokes the validity of difference, and allows for the mediation of differences through negotiation, compromise, and adjustment. Autonomy cannot be vested in only one of the partners; rather, each partner is expected to recognise, respect, and be reconciled with the autonomy of the other. Reference to autonomy by way of tino rangatiratanga secures the ground for controlling domestic affairs through political arrangements that sharply curtail state jurisdiction while solidifying Maori control over land, identity, and political voice.

To date, Tribunal rulings and reports appear to have initiated a dialogue for rethinking the prospect of living together differently in a deeply divided Aotearoa. Terms of the dialogue include a comprehensive package that emphasizes constitutionalism over conflict, engagement over entitlement, relationships over rights, interdependence over opposition, cooperation over competition, reconciliation over restitution, and listening over litigation (Maaka and Fleras 2005). By balancing morality with practicality (James 2004), Tribunal rulings and reports have proven transformative in two ways: First, in the articulation of four principles for ascertaining which Crown actions were/are inconsistent with the spirit of the Treaty. Second, in advancing a new constitutional order for living together differently by privileging a Maori indigeneity perspective. A post colonial socio-political contract is promulgated that incorporates the policy(-making) principles of power sharing, partnership, property return, and meaningful participation.

*To sum up.* The evidence seems inescapable but subject to debate and resistance. Thanks to the politics of Maori indigeneity, New Zealand is cresting the wave of a postcolonizing from within – at least in theory if not in practice. To one side are those Treaty principles that secure the grounds of Maori indigeneity as policy lens. To the other side is the emergence of numerous stakeholders in directing the policy making process, including a powerful Maori dynamic in Parliament, the policy advisory platform of TPK, and the Waitangi Tribunal in crafting principles to live by. Of course, no is contending that New Zealand has discarded those foundational principles that continue to secure a colonial constitutional order. Moreover, pockets of resistance to the principle of Maori indigeneity continue to persist, as might be expected when collective rights clash with individual rights. Both politicians and the public continue to play the ‘indigeneity card’ by drawing attention to the alleged unfairness of Maori privilege in a democratic society where everyone is formally equal before the law (Durie 2000). But a post colonizing process is in progress (albeit a far from finished project) that promises to fundamentally realign the policy dimensions of Maori-Crown relations (Johnson 2008).

### **Indigenizing Aboriginal Policy(-Making) in Canada**

Are the politics of indigeneity situation specific or generalizable? Can the insights of New Zealand be applied to Canada (Helin 2007; Quesnel 2008)? How feasible is a Maori indigeneity perspective for policy(-making) in a Canada that lacks comparable power brokers within the policy circle? In some ways, not, given the differences between Canada and New Zealand with respect to history, geography, demographics, and politics. Consisting of the different tribes (iwi) and subtribes (hapu) of varying sizes, Maori constitute about 16 percent of New Zealand’s population of 4 million, with the vast majority (about 83 percent) living in larger

urban centres, but often continuing to maintain close ties with their rural-grounded tribal or subtribal origins. Unlike those Aboriginal Peoples in Canada, Maori neither entered into treaties nor experienced the realities of an imposed reserve regime or a centralized registration system. These differences make it difficult to compare the contexts, let alone to assume that what works in one jurisdiction will flourish in another.

Yet differences are not the same as incompatibilities. Like Aboriginal Peoples in Canada, the status of Maori in general reflect similar patterns of poverty and powerlessness, largely because of the institutional and systemic biases that inform a neo-colonial constitutional order (Maaka and Fleras 2008). Moreover, Canada like New Zealand is also in a position to endorse an indigeneity-grounded analysis framework – in part because of indigeneity politics, including a Crown duty to consult, but also by capitalizing on a precedent that already exists within government circles. The existence of a gender based analysis framework (GBA) provides a template for an indigeneity grounded analysis framework involving an aboriginal perspective for policy(-making).

### ***Gender Based Analysis as Policy(-Making): a Gender Agenda***

In 1995 the Government of Canada responded to the challenges emanating from the Beijing Platform to foster gender equality. GBA emerged as an action plan that compelled federal departments and agencies to conduct an impact assessment on policies and legislation (where appropriate) for addressing issues of concern to women (NWAC 2007). By acknowledging significant differences between and within men and women, in effect recognizing that policy cannot be separated from the social context, GBA proposes to examine existing and proposed policies to ensure they are having an intended effect and producing fair results (Annual Report, Immigration, 2008). Insofar as GBA is more than an add-on but applied along

all points of the policy making process, it focuses not only on outcomes but also on the concepts, arguments, and language employed to justify putting gender back into the picture. In short, GBA constitutes a gender-sensitive tool for policy development, in addition to assessing the potentially differential impact of proposed policies on women and men, then responding with options and strategies.

GBA is widely applied across the federal sector, including its inception into INAC in 1999. But aboriginal groups have shown a lukewarm reaction to GBA as it stands. Aboriginal women have argued that a GBA fails to address their needs or to reflect the realities of Canada's Indigenous peoples, in large part by failing to consider the legacy and impact of colonialism. Also glossed over are those policy(-making) frameworks that reflect, reinforce, and advance existing neo-colonial structures – to the detriment of indigenous peoples, nations, and communities (AWHHRG 2007). A cultural relevant GBA is proposed that acknowledges the centrality of colonialism in terms of how gender impacts on indigenous identities (and vice versa). Also implied is an aboriginal inspired GBA that incorporates the politics of indigeneity as principle and practice. The implications are inescapable: Just as the Canadian state acknowledges the gendered basis of policy and policy making, with GBA as a way of neutralizing the bias, so too should central authorities discredit the Eurocentric grounds of current indigenous policy by endorsing an indigeneity grounded analysis (IGA) model for policy(-making).

***Principles of IGA Framework: An Indigeneity Agenda***

Indigenous peoples struggles to sever the bonds of dependency and underdevelopment are widely acknowledged (Niezen 2003). Several innovative routes have been explored for improving Aboriginal peoples–state relations, including indigenization of policy and administration, devolution of power, and decentralization of service delivery structures.

Admittedly, many of the initiatives involve little more a bureaucratic/managerial exercise in offloading government responsibility to indigenous communities, with minimal transfer of power or authority. Still, the shift toward a more decentralized arrangement is not without promise, especially in creating a blueprint for local autonomy and control. Pressure is mounting to discard an positivist policy models for framing Aboriginal peoples–Canada relations. A more flexible and principled approach is advocated that emphasizes negotiation over litigation, engagement over entitlement, relationships over rights, interdependence over opposition, co-operation over competition, reconciliation over restitution, and power-sharing over power conflict (Maaka and Fleras 2005). Of particular relevance is the incorporation of indigeneity perspectives – including the core rubrics of representation, recognition, rights, and resources - within government policy circles. An IGA framework incorporates five first principles that both inform and legitimize a principled indigeneity perspective in policy(-making): *indigenous difference, indigenous rights, indigenous sovereign; /indigenous belonging, and indigenous spirituality (including traditional knowledge)*. These principles are somewhat consistent with other proposals to transcend the paralysis of current policy paradigm <sup>6</sup>

### ***Indigenous Difference***

Indigenous peoples in settler/colonial societies are spearheading an international renaissance in indigenous identity by advocating an essentialized concept of indigenous difference (Niezen 2003; Kowal 2008). Indigenous peoples *are* fundamentally different because of their unique constitutional status as descendents of the ‘nations within/. Acknowledgement of indigenous difference is critical; without constitutional recognition of indigenous difference, Indigenous peoples have no more moral authority than other racialized or immigrant minorities in challenging the governance agenda and the constitutional order upon which it is based. The



politics of indigenous difference are justified on grounds of original occupancy, together with the corresponding rights and power that flow from this constitutional status. Indigeneity difference asserts a special relationship between Indigenous peoples and the state involving a complementary set of unsundered rights and unextinguished powers that inform this relationship. In that Indigenous peoples define themselves as constitutionally different and deserving of differential status and treatment because of displacement and dispossession, these difference must be taken seriously in defining and allocating recognition, reward, and relationships (Macklem 2002).

Not unexpectedly, programs and policies that apply to non-indigenous minority groups are dismissed as inapplicable and counterproductive. No less conflicting are efforts to reconcile the particularistic difference of Indigenous peoples with the liberal universalism of the liberal state (Kowal 2008) Indigenous peoples are neither ethnic minorities with needs nor Canadian citizens who happen to live on reserves. Rather they constitute fundamentally autonomous political communities who are sovereign in their own right with respect to land, identity, and political voice, yet sharing in sovereignty of society by way of concurrent jurisdictions of mutual concern. Unlike ethnic and immigrant minorities who are voluntarily looking to settle down and fit in within the existing social and political framework, Indigenous peoples constitute forcibly incorporated nations who want to 'get out' of imposed political arrangements that deny, exclude, or oppress. Proposed are governance arrangements that bolster their inherent right to indigenous models of self determining autonomy over internal jurisdictions.

Clearly, then, the politics of indigeneity difference transcend the limitations of institutional reform. Rather than a commitment to improve socioeconomic status, indigeneity difference is about power-sharing for initiating transformational change along the lines of a post

colonial constitutional order. A post colonial social contract is endorsed instead based on the foundational principles of partnership, participation, and power sharing. Precise governance arrangements for rearranging power distributions and constitutionally entrenched power sharing are varied, of course, but predicated on the principle of justice rather than technicalities or points of law.

### ***Indigenous Rights***

Indigenous peoples are neither a problem for solution nor a need to be addressed. Rather than framing Indigenous peoples as a disadvantaged minority, proposed instead is view of Indigenous peoples as members of distinct political communities who wish to retain identity, political voice, and land (Humpage and Fleras 2002; O’Sullivan 2006). Indigenous peoples are a *peoples* (or nations) with collective and inherent rights derived in part from a body of common and international law that acknowledges the unique constitutional status of the original inhabitants and their descendents. These indigenous rights include the right to ownership of land and resources, the right to protect and promote language, culture, and identity, the right to political voice and self-governance, and the right to indigenous models of self-determination.

The rights of Indigenous peoples are regarded as *sui generis*, that is, they differ from ordinary citizenship rights by virtue of their status as the original occupants (Borrows and Rotman 1997). The United Nations Declaration on the Rights of Indigenous Peoples (2007) articulates the rights of Indigenous peoples, including the rights to language, culture, and identity; rights to maintain institutions of relevance; rights to pursue development consistent with their level of development; and rights to full and equal participation in all matters of concern to them. These *sui generis* rights are collective and inherent: *collective*, in that Indigenous communities can exercise jurisdiction over the individual rights of community members;

*inherent*, in that they are not delegated by government (Crown, Parliament, or Judicial) decree, but intrinsic to Indigenous peoples because of first principles. The legitimacy of indigenous rights is derived from original occupancy, is bestowed by the Creator, reflects the consent of the people, complies with treaties or international law, and cannot be extinguished even with explicit consent. In other words, Indigenous rights must be accepted as being independently sourced rather than delegated and shaped for the convenience of the political majority or subject to unilateral override (Asch 1997).

### ***Indigenous Sovereignty***

Indigenous peoples constitute (or claim to constitute) a *de facto* sovereign political community (peoples) whose inherent and collective rights to self-governance and nationhood reflect the principles of indigeneity rather than those of need, pity, or compensation. As the original occupants whose inalienable rights have never been extinguished by conquest or surrendered by treaty, Indigenous peoples do not aspire to sovereignty per se. As political autonomous peoples who predated the formation of the nation-state that invaded and dispossessed them, they *are* sovereign because of ancestral occupation and original occupancy (Moreton-Robinson 2007). To be sure, Indigenous Peoples are not looking to separate or become independent. Except for a few ideologues, appeals to sovereignty are largely about establishing relationships of relative yet relational autonomy within a new constitutional order (Maaka and Fleras 2005). The fact that Indigenous Peoples are sovereign - at least for purposes of entitlement or engagement (*de facto*) rather than on the basis of legal recognition (*de jure*) - all that is required for putting the principle of indigenous sovereignty into policy practices are appropriate policy making structures (Shaw 2008).

### ***Indigenous Belonging***

For Indigenous peoples, belonging matters. The protection of the different loyalties and distinctive patterns of belonging may be as important as protection of indigenous rights to land and resources (Xanthaki 2008). Indigenous patterns of belonging to society are anchored in primary affiliation with the group (and their homeland) rather than as individual citizens, thus implying that peoples can differently belong to the parts without necessarily rejecting loyalty to the whole. Patterns of belonging are not only critical in ensuring sui generis relationships with the state (or Crown) from which flow power, recognition, and resources. They also are crucial in securing political and theoretical space for indigenous peoples to establish terms of constructive engagement on the basis of non colonial relations (O’Sullivan 2007). In short, as Dominic O’Sullivan argues, the principle of indigeneity serves a transformative role in allowing Indigenous peoples to frame their belonging to the nation-state in terms of their aspirations and experiences.

### ***Indigenous Spirituality***

Spirituality is crucial to indigenous well-being. Indigenous spirituality can encompass a range of dimensions, including the values of reciprocity, mutual respect, regard for planet earth and all creation as relatives (kin), traditional cosmologies and philosophies, the cultural ethos upon which individual and group identities unfold, and sustainable consumption practices that involve stewardship for all living things (Indigenous Peoples Summit 2008). In terms of a definition, spirituality incorporates an overarching construct involving beliefs and values that provide a sense of meaning, purpose, connectivity, and unity with respect to peoples notions of self, community, nature and the universe (Tse et al 2005). In that its not always formally expressed in doctrine or compartmentalized from everyday life, an indigenous world view of

spirituality often entails a unity of body, mind, and spirit, within the context of Something greater that sustains and guides.

Indigenous spirituality can be expressed in myriad ways. In some cases, the focus of indigenous spirituality embodies the beliefs and practices of introduced religious doctrines. In other cases, spirituality is focused on traditional beliefs and practices derived from a sense of belonging to the land, to people, to culture, and to the creator, including fundamentally distinct ways of thinking about the world and relating to it holistically. In still other cases, a commitment to a formal religion does exclude an abiding belief in traditional spirituality (McPherson 2001). Clearly, then, spirituality for indigenous peoples is not necessarily about a corpus of knowledge. Rather it's about a way of knowing that not only applies a spiritual dimension to all aspects of reality, but also (in)fuses the spiritual with the natural and human in ways that often clash with Western modes of thought. For example, the Dreaming among Australia's First Peoples constitutes a complex network of beliefs and practices that derive from creation stories. These cosmologies pervade all aspects of spiritual and non spiritual life, including structures of society, rules of social behaviour, rituals to nourish the land and resources, and punishment for those who transgressed the rules for living (Penrith 1996).

To sum up: An indigeneity-grounded analysis framework is proposed to ensure that policy issues of relevance to Aboriginal communities are appropriately addressed. The rationale for this proposal is drawn from an existing gender based analysis framework: Just as a GBA is employed to empower women by engendering government policy(-making), so too does an IGA framework put the principles of indigeneity into the policy picture. An IGA framework provides an indigeneity sensitive tool for policy development by analyzing and assessing the potentially differential impact of government policies and programs on Aboriginal communities,

then responding accordingly. Proposing five key constituents for an indigeneity perspective provides a provisional basis for operationalizing the concept of IGA framework as policy lens.

### **The Politics of Indigeneity as Policy Prism**

Indigenous peoples are gradually breaking free of colonial structures and racist strictures (Xanthaki 2008). In Aotearoa New Zealand the articulation of Treaty principles by the Waitangi Tribunal promises a Maori-based framework for national governance, while in Canada, the Courts have articulated a series of enforceable legal principles that serve to protect Aboriginal and treaty rights (Morrelato 2008). The politics of indigeneity/aboriginality in challenging and transforming a settler constitutional order have also proven critical in advancing an indigenous perspective in policy and policy making (see also Marscheke et al 2008). Under an indigeneity perspective, emphasis is focused on advancing a principled relationship by incorporating shifting social realities in sorting out who controls what in a spirit of give and take. A commitment to indigeneity as a visionary policy lens is not intended to displace evidence/empirical based policy research. But a visionary lens may be just as important in advancing the constitutional and policy yardsticks.

An IGA framework intends to improve policy(-making) by assisting policy makers and practitioners to see reality through indigeneity-tinted spectacles. But an indigeneity policy lens as challenge and transformation is likely to encounter resistance and resentment. Of growing concern is a belief that indigeneity as perspective and preference not only runs counter to the democratic principle of universal (identical) equality, but also constitutes a form of racism in a society that aspires to colour blind equality (also Durie 2000). A rethinking of what constitutes equality in settler society may be in order. That in a deeply divided society with competing rights and entitlements, difference is as important as commonalities. Both individuals and groups

must be treated the same (equally) as a matter of course; however, they must also be treated differently (as equals) when the situation demands. Another mindset shift is no less overdue in advancing an indigeneity logic. Indigenous peoples should not be considered a competitor to be jostled or a problem to be diminished, but as constitutional partners sharing the same land as sovereign co equals. In acknowledging that “let’s face it, we are all here to stay,” as former Canadian Chief Justice Antonio Lamer once observed, is there any other option except to nurture the primacy of belonging together separately. The politics of policy cannot be viewed as final or authoritative, any more than they can be preoccupied with “taking” or “finalizing.” (Cassidy 1994) By situating an IGA framework within the context of “power-sharing” “partnership” and “meaningful participation, ” wisdom and justice prevail over politics rather than the other way around.

## **Footnotes**

**(1)** Definitions of indigeneity are intensely political and sharply contested (Shaw 2008).

Indigeneity can take on different meanings, largely because indigeneity as a concept may be difficult to pin down in terms of meaning and substance. Others (Green 2009) argue that with the addition of the suffix *eity* to *indigenous*, indigeneity has joined ranks with equally vacant and essentially empty abstractions like *nationality*. Nevertheless, it remains important for legal purposes, self identification, and understanding social marginalization (Marschke et al 2008). In general, indigeneity refers to the state of being indigenous. More specifically, it can refer to the distinct historical, cultural and political realities of Indigenous peoples, in part because of their unique experiences and relations with European settlers, in part because of their unique relationship to their homelands and their lands as sources of identity, belonging, and subsistence (Turner and Simpson 2007). References to indigeneity can also embrace the idea of politicizing the status of original occupancy as a basis for challenge and change as well as recognition, rewards, and relationships (Maaka and Fleras 2005). Any references to indigeneity as marginalization, indigeneity as identification, and indigeneity as resistance reflect dynamic and evolving processes that vary over time and across space (Marschke et al 2008).

**(2)** An appropriate terminology remains problematic.: Indigenous peoples? Aboriginal peoples? Natives? Native Americans? First Nations? First Peoples? Autochthonous peoples? This paper uses the term Indigenous peoples as a widely accepted category, despite its tendency to suffer from the specificity of its broadness (technically indigenous can include peoples such as Quebecois who, after all, are indigenous to Canada. Even 6<sup>th</sup> generation Anglo-Celtic Canadians might consider themselves indigenous to Canada) (Shaw et al 2006; also Forte 2008). The term Aboriginal peoples is used when referring to Canada's Indigenous peoples (as with Indigenous,



Aboriginal is a loaded term as well, since the prefix *ab* implies ‘taking away’ from or ‘negation’ of original peoples. We prefer the Greek term, *autochthonous* (meaning springing from the earth) peoples but have difficulty envisioning narratives that embrace *autochthoneity* as discourse and politics, despite Indigenous continuity to land (Xanthaki 2008).

**(3)** Colonialism possesses a material and ideological dimension (Turner and Simpson 2007). It can refer to the expansion of one society into the territory of another. It also includes those set of ideas and ideals that are used to justify this expansion and the fundamentally exploitative relationship that exists because of it. Neo colonialism refers to a process by which the most egregious violations of colonialism are eliminated; including the exclusion of the colonized from positions of power. Remaining in tact, however, are the foundational structures and systemic biases that inform a colonial constitutional order. Post colonialism does not refer to the end of (neo)colonialism; more accurately, it involves challenges to the existing patterns of colonialism that continue to privilege Eurocentric notions of identity and belonging based on illegal possession of land and sovereignty. In that the politics of indigeneity is an ongoing and unfinished project rather than a *fait accompli*, it may be more useful to employ the term *post colonizing* to convey the contingent and continuing nature of the process over time and across space (Moreton-Robinson 2007; Kowal 2008).

**(4)** Policy making continues to be informed by a modernist approach with its connotation of rationality, planned intervention, binaries of right and wrong, and assumptions of progress and perceptions of linear improvement as demonstrated by measurable performance indicators (Waters 2007). This commitment would appear to be inconsistent with fragmented, diverse, discontinuities, changing, and contested world of indigeneity.

(5) A political covenant between Maori and the Crown signed in 1840 by representatives of the Crown and nearly 500 Maori chiefs, the Treaty of Waitangi continues to define, inform, and guide Maori-Crown relations, despite the passage of time and shift in power. To be sure, no consensus prevails regarding its importance or scope, except that (a) the Crown has a duty to consult with Maori when required, (b) the Crown is responsible for righting historical wrongs, and (c) Crown actions cannot be inconsistent with Treaty principles (Palmer 2006). However, there is growing consensus that Treaty principles embraced a vision of dual sovereignty: a ‘hard’ sovereignty involving British governorship (*kawanatanga*) and the ‘soft’ sovereignty of Maori ownership of land and resources (Maaka and Fleras 2008). Admittedly, Treaty provisions are unenforceable unless explicitly incorporated into national statute or local law. Nevertheless, the Treaty is widely acknowledged as a constitutional blueprint and foundational document that not only codifies pre-existing indigenous Maori rights, but also secures those principles to live by (James 2004).

(6) Peter Kulchyski (2007) proposes the following progressive changes for indigenizing current policy paradigm: (a) taking aboriginal rights seriously (b) removing colonial power structures (c) providing a base for ongoing financial support (d) sharing the land (e) encouraging urban communities, and (f) developing culturally responsive social programs. Others argue for the need to articulate indigeneity as an alternative worldview (Taiiaike 2005) while sensitizing core indigenous values (relationship, responsibility, reciprocity, and redistribution) to wider audiences and policy circles (Harris and Wasilewski 2004).

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