

Aboriginal Self Determination: Individual Self and Collective Selves

Val Napoleon

ABSTRACT

The aboriginal political discourse regarding self-determination would be more useful to communities if it incorporated an understanding of the individual as relational, autonomous, and self-determining. That is, a developed perspective of individual self-determination is necessary to move collective self-determination beyond rhetoric to a meaningful and practical political project that engages aboriginal peoples and is deliberately inclusive of aboriginal women.

RÉSUMÉ

Les discours politique autochtone au sujet de l'auto-détermination serait beaucoup plus utile aux collectivités s'il incorporait une compréhension de la personne en tant que relationnelle autonome et auto-déterminante. C'est-à-dire, créer une perspective de l'auto-détermination individuelle de la personne est nécessaire pour faire avancer l'auto-détermination collective au-delà de la rhétorique vers un projet significatif de politique qui engage les peuples autochtones et qui inclus de façon délibérée les femmes autochtones.

INTRODUCTION

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(Draft UN Declaration 1994)

Self-determination is a broad political principle with application to both individuals and groups. As a collective principle, self-determination is usually articulated politically or legally according to international law and various political ideologies. As an individual principle, self-determination is articulated best in terms of agency, conceptions of autonomy, and relationships (Nedelsky 1989; 1990). I propose to explore these two perspectives on self-determination from an aboriginal community standpoint. The aboriginal political discourse regarding self-determination would be more useful to communities if it were to incorporate a practical and developed understanding of individual self-determination. In other words, an individual perspective on self-determination could perhaps shift collective self-determination beyond rhetoric to a meaningful and effective political project that engages aboriginal peoples and is truly inclusive of aboriginal women.

Self-determination is an immense and complex concept. The challenge before me is to carve a "slice" of self-determination from the discourse that is small enough to fit the confines of this paper but still contains enough substance to maintain its coherence as a subject. First, I will outline the generally more abstract political and legal conceptions of collective aboriginal self-determination. Second, I will outline Jennifer Nedelsky's feminist legal theory of individual self-determination and relational autonomy. Third, I will discuss several self-determination issues that arise from the experiences and present circumstances of Saulteau First Nation, a Cree, Saulteaux, and Dunneza community (and my own) in northeast British Columbia. Fourth, I will consider how both the collective and individual approaches to self-determination may be applied to on-the-ground community development strategies for Saulteau First Nation.

ABORIGINAL SELF-DETERMINATION

[S]elf-determination is identified as a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies. Self-determination

gives rise to remedies that tear at the legacies of empire, discrimination, suppression of democratic participation, and cultural suffocation.

(Anaya 1996, 75)

This section describes the broad contours of indigenous self-determination as it has developed in the international political and legal discourse.¹ According to James Anaya, self-determination is a principle of the highest order within the international system, but its meaning and application remain bitterly contested by nation states and indigenous peoples (75). Cree activist Ted Moses argues that self-determination is not just a political or an economic right, but rather encompasses all aspects of human development and interaction - cultural, social, political, and economic (Muehlebach 2003, 253). Further, it is "a complex of closely woven and inextricably related rights which are interdependent, where no one aspect is paramount over any other. It is a right that forms the basis of all other rights" (253). Similarly, according to the Royal Commission on Aboriginal Peoples (the Royal Commission), self-determination entitles indigenous peoples to negotiate their status and form of representation with existing states (Canada 1996, 172).

Historically, the term "self-determination" was associated with "Western liberal democratic ideals and the aspirations of European nationalists" and formed an important part of the international political discourse around the time of World War I (Anaya 1996, 76). However, early use of "self-determination" was not limited to advancing western capitalism. In the context of socialist struggle, Lenin and Stalin also used the term "self-determination" to further the goal of class liberation (McDonald 2001, 4). With the creation of the United Nations (UN) following World War II, "the self-determination of peoples" was included in the founding principles of the Charter of the United Nations (Anaya 1996, 76).

Early international law concerned itself primarily with the sovereignty of the then-emerging nation states, but recent human rights activism has expanded the application of self-determination to individuals and groups of people. This more recent and presumptively universal principle of self-determination applies to all governments for the

benefit all human beings living under those governments (Anaya 1996, 76). As a significant international principle, self-determination justified the division of Germany and the Austro-Hungarian and Ottoman empires, and guided the ensuing remapping of Europe (Anaya 1996, 76). Since then, the meaning of self-determination has continued to evolve significantly, and there is a very broad range of self-determination claims as well as claimants (Muehlebach 2003, 243).

Nation states resist indigenous peoples' claims to self-determination by raising fears about the potential loss of territorial integrity, internal political instability, violent chaos, and secession. There are many criticisms of self-determination, including those that claim it creates reactionary, essentialist, and segregationist politics (Muehlebach 2003, 245). According to Anaya, this fear is rooted in a narrow conception of self-determination which is shaped by extremist political posturing and ethnic chauvinism (1996, 75). Alternatively, self-determination can be understood as enhancing interconnectedness between diverse cultures, and "increasing linkages, commonalities, and interdependencies among people, economies, and the spheres of power" (1996, 79). The Royal Commission noted that self-determination does not normally include the right of secession (Canada 1996, 172). In other words, the right to self-determination and the right to secession are distinct and should not be conflated in the indigenous international discourse.

Self-determination is concerned with peoples. Since the terms "self-determination" and "peoples" are not defined in international law, the current debate is about what "peoples" means (Anaya 1996, 79). Does it mean only those peoples organized in an independent statehood, or does it also apply to indigenous peoples in various cultural configurations? Within this controversy, three problematic approaches narrow the conception of peoples to (i) those in a colonial territory under foreign domination, (ii) the whole of the population of an independent state or colonial territory, or (iii) cohesive ethnographic groups with historic territorial sovereignty (Anaya 1996, 77-78). All of these conceptions are premised on a division of the globe into mutually exclusive sovereign territories that denies recognition of self-determination to substate groups that are not state centred (Anaya

1996, 78). Unfortunately, in their resistance, the nation states assume that the "self" in self-determination is limited to a sovereign state containing bounded peoples. Consequently, the ongoing UN debates focus on two questions: (i) To whom should self-determination be granted? (ii) What should self-determination entail (Muehlebach 2003, 247)?²

Anaya argues that in the context of self-determination, the term "peoples" must encompass the broad range of "associational and cultural patterns actually found in the human experience" (78). In the same vein, Muehlebach suggests that the evolving definitions of self-determination reflect how indigenous peoples understand themselves as marginalized and culturally distinct rights-bearing groups under international law (246). In other words, it is the self that is at stake in the self-determination debate. According to Anaya: "Properly understood, the principle of self-determination, commensurate with the values it incorporates, benefits groups - that is, 'peoples' in the ordinary sense of the term - throughout the spectrum of humanity's complex web of interrelationships and loyalties, and not just peoples defined by existing or perceived sovereign boundaries" (79).

In Canada, the Royal Commission recognized self-determination as a right held by all aboriginal peoples, including Métis and Inuit (Canada 1996, 172). While the Royal Commission is careful to point out that an aboriginal nation cannot be identified in a mechanistic manner according to objective criteria, it did recommend that self-determination should be vested in nations, not in small communities such as Indian bands created by the *Indian Act*.³ According to the Royal Commission, an aboriginal nation is a "sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or collection of territories" (1996, 178).⁴ This definition comprises three elements: a collective sense of identity, an adequate population size to ensure group capacity, and a geographic base (178-179).

According to James Tully, while the goal of self-determination continues to drive the decolonization struggles internationally, including those in Canada, the United States, Australia, and New Zealand, support from the UN is minimal

(2003, 294). Despite glimmers of hope such as those afforded by the International Court of Justice *Western Sahara* decision,⁵ various UN working groups and draft declarations, indigenous peoples are still not recognized as colonized peoples for the purposes of self-determination (294). Basically, international law, the UN, and its committees remain the creations of the nation states, and oppose any threat to their exclusive jurisdiction.⁶ Most importantly, Tully adds a critical perspective to how colonial imperialism has been able to successfully refashion its outward appearance so as to seem non-imperial, and to pervade indigenous political projects with concepts of self-determination that are modeled on the basic structure and behaviours of colonial imperialism (Tully 2004). In other words, indigenous peoples have adopted a form of self-determination that closely resembles the earlier model of colonial imperialism - arguably with the consequence of undermining the overall indigenous political struggle.

Tully's thesis is that European colonialism deliberately developed into a "post-colonial global competitive system of formally independent and equal, capitalist and constitutional, states bound together by international law" (2004, 4). Basically, this was a process of colonialism growing up and engaging in more sophisticated forms of imperial expansion wars in combination with the imposition of western legal regimes, the introduction of commercial competition, and the general westernization of non-westernized states. This post-colonial transformation is currently described and advanced in the language of self-determination and popular sovereignty. For example, Woodrow Wilson promoted freedom and openness to free trade under the dominance of the United States as a universal goal in the competition with European empires. To this end, Wilson declared that "every people should be left free to determine its own polity, its own development, unhindered, unthreatened, unafraid, the little along with the great and powerful" (Tully 2004, 25).

In these new and superior global circumstances, colonies could overthrow colonial rule and achieve liberation "based on the consent and popular sovereignty of the people, and thus [move] into a world system of similar nation states" (Tully 2004, 5). In the tradition of popular sovereignty, although former European colonies

could liberate themselves from colonial rule, they remained imprinted with the basic imperial institutions and relationships from the colonial period (Tully 2004, 17). Colonies adopted the language of self-determination, but achieved only formal equality while being substantially unequal (Tully 2004, 23-24). According to Tully this path to self-determination is a dead end:

This whole way of thinking, then, of freedom as liberation from all relationships of dependency: the independent self-determination of some subject (individual, people, nation, civilization, or, more recently, the multitude) is itself a European script that has been self-contradictory and dangerous from the beginning. (Tully 2004, 43)

Within this global picture is the internal colonization of indigenous peoples who have never stopped resisting, but who have also adopted the same language of self-determination. Basically, the world power structure is not explicitly acknowledged and indigenous peoples are represented as free agents within it, but such freedom is imagined only in relation to global imperialism (Tully 2004, 44). Obviously, this vision of freedom is too narrow and indigenous peoples must move far beyond the conceptual constraints of colonial imperialism.

INDIVIDUAL SELF-DETERMINATION

In this section, I outline the "on-the-ground" individual dimension of self-determination. Jennifer Nedelsky argues that a new conception of autonomy is required in feminist legal theory (1989, 1). According to her, the western liberal conception of autonomy is limited to the idea of atomistic, self-determining individuals who form the basic units in political and legal theory.⁷ Since the value of individual autonomy is critical to feminism, the challenge is to develop an autonomy theory without the usual liberal ideological baggage. Nedelsky advocates the development of an understanding of autonomy that recognizes the inherently social nature of human beings (1989, 1). Given this goal, how does the constitutiveness of social relations

combine with the value of individual self-determination (1989, 2)?

Essential to the liberal autonomous individual is the freedom to be self-determining and self-making, and no one is willing to abandon the powerful idea of people making their own lives (Nedelsky 1989, 2). Indeed, this is one of the tenets of feminism - that women define themselves rather than solely being defined by their relations with others (1989, 2). According to Nedelsky, in order to become autonomous, people must develop and sustain the capacity to find their own internal law, and the work is to figure out what social relationships and personal practices foster this capability:

The necessary social dimension of the vision I am sketching comes from the insistence, first, that the capacity to find one's own law can develop only in the context of relations with others (both intimate and more broadly social) that nurture this capacity, and second, that the "content" of one's own law is comprehensible only with reference to shared social norms, values, and concepts. (1989, 3)

Nedelsky's new conception of autonomy is that it does not derive from isolation since people do not live in isolation. Rather, the manifestation of a person's self-determining autonomy is through relationships with others (1989, 4). Individual, self-determining autonomy is not threatened by the collectivity, but is constitutive of it. Therefore, reconceived autonomy has a social component built into it.

There is an erroneous but prevailing belief in a dichotomy between individual independence and security from collective power: "[T]he choice is posed between admitting collective control and preserving autonomy in any given realm" (Nedelsky 1989, 6). While there is a tension between the individual and the collective, this dichotomy constrains the range of possibilities for various social arrangements, and the result is an unfortunate "poverty of imagination" (Nedelsky 1989, 7 & 11). Indeed, the imposition of such a false dichotomy has been a formative factor in the experiences of aboriginal women. In other words, in colonial

aboriginal communities, rights characterized as collective (usually those rights held by males) have been held to override rights characterized as individual (usually those rights claimed by females) - to the detriment of aboriginal women collectively.

To add to this regrettable state, much of the literature that examines aboriginal membership issues appears to accept the exclusive *Indian Act* membership model or the more recent derivative band membership codes as representative of aboriginal cultural practices. These authors seem to fail to understand that the exclusive membership model is a colonial creation that has been internalized by aboriginal groups at the cost of displacing their own models of citizenship. Instead, academics develop arguments around the exclusive membership model and pose questions as to whether aboriginal people should have the right to adhere to such discriminatory membership practices on the basis of difference (Eisenberg 2003; Macklem 2001).

Nedelsky argues that the community is both a source of individual autonomy and a danger to it. Given this, the new forms of autonomy within a collectivity will involve choices and trade-offs. But she also predicts that individual autonomy in a collective model will be different from the individualistic, oppositional model of the liberal, capitalist state (1989, 12).

Turning to the actual individual experience and feeling of being relationally autonomous and self-determining, Nedelsky writes that "the underlying concern...[is] the actual experience of autonomy. We cannot attend to what gives citizens a sense of autonomy, to what makes them feel competent, effective, able to exercise some control over their lives, as opposed to feeling passive, helpless, and dependent" (1989, 14). Self-determining autonomy, then, is a capacity that exists in the context of our social relations and only in conjunction with the internal sense of being autonomous - and this sense of being autonomous is felt (14).

SAULTEAU FIRST NATION

[T]he struggle over indigenous self-determination will ultimately be fought out on the ground. (Muehlebach 2003, 249)

According to the Royal Commission, three types of disputes can arise when an aboriginal group identifies itself as self-determining - identity of the group, representation of the group, and membership in the group (Canada 1996, 183). This next section explores several of the local leadership and membership policies that raise these self-determination disputes - and while gender has not been identified explicitly in the disputes, it is certainly an implicit factor. I begin by providing a brief background for *Treaty 8* and *Saulteau First Nation*.

Treaty 8

Beneath the surface of jurisprudence addressing the form and substance of treaty rights are deeper questions about the normative significance of the treaty process. Aboriginal people are alone among Canadian citizens in having entered into treaties with the Crown; participation in the treaty process thus constitutes one aspect of indigenous difference, an aspect that has constitutional significance.

(Macklem 2001, 136)

Treaty 8 covers a vast area of land including northern Alberta, the southwest part of the Northwest Territories, and the northeast corner of British Columbia (BC) that is east of the Rocky Mountains (*Treaty 8*). As with the other treaties in Canada, the negotiations for *Treaty 8* were precipitated by colonial expansion - in this case, the Klondike gold rush and the advent of non-aboriginal settlers (Madill 1986). The federal government conducted the treaty negotiations with Cree, Dunneza, and Chipewyan peoples.

Northeast BC is the homeland of the Dunneza. According to the oral histories of Saulteaux elders, their spiritual leader, Kahkajokwanis, saw a vision of the "Two Mountains that Sit Together," now called the Twin Sister Mountains. So Kahkajokwanis guided a group of Saulteaux on a ten-year search across Canada until, in 1911, they found these mountains in northeast BC at the eastern end of Moberly Lake (Napoleon 1998, 28-29). According to Saulteaux elder Fred Courtoreille, the Saulteaux lived at Moberly Lake for three years before they were

persuaded to enter into *Treaty 8* - or according to Madill, were "admitted" without the negotiated adhesion process (Madill 1986; Napoleon 1998, 32). In 1918, this area was set out as a 7,646-acre reserve, now Sauteau First Nation (Indian and Northern Affairs Canada, 2).

SAULTEAU FIRST NATION: BACKGROUND AND POLICIES

Sauteau First Nation has approximately 644 members, but fewer than half of them currently reside on the reserve (*Napoleon v. Garbitt* 1977, paras. 4-5). While there are a few small businesses located on the reserve, most band revenues are generated through a number of agreements negotiated with oil and gas, forestry, and other corporations that are in the business of extracting resources from *Treaty 8* lands.⁸ The area surrounding Sauteau First Nations is rural, but includes a number of mid-sized towns.

The other bands in the BC Treaty 8 Association are Doig, Halfway, Blueberry, Fort Nelson, and Tsa'a Tse K'nai (Prophet River). These five communities are predominantly Dunneza and are located in more isolated areas much further north. In 2000, the Tse'Khene First Nation (McLeod Lake Band), a community of Sekani people located south of Sauteau First Nation, negotiated a modern-day adhesion to *Treaty 8*.⁹

With the goal of maintaining Sauteaux cultural practices, Sauteau First Nation has structured its election policy around its original five founding Sauteaux families. In 1988, Sauteau First Nation passed a band bylaw pursuant to s. 2(3)(a) of the *Indian Act* which recognizes the inherent power of a band to establish custom election procedures rather than follow the procedures provided for in s. 74 of the *Indian Act* (*Napoleon v. Garbitt*, paras. 7-9). Basically, the Sauteau First Nation system of custom elections was codified into the Sauteau Indian Band Government Law containing procedures for each of the five founding families to nominate and elect a "headman" (who could be male or female) to serve as a band councillor for the band. In turn, voters from the entire band then elect one of the five headmen as chief (Sauteau Indian Band Government Law 1996). In practice however, all the chiefs have been male and the majority of

headmen selected have been male, but to date this has not been challenged. It is important to note that the women of the founding families participate actively in the selection of the headmen.

For the past two years, the band has been discussing amendments of the original Sauteau Indian Band Government Law.¹⁰ There has been considerable disagreement within Sauteau First Nation about its election procedures, including several acrimonious legal actions (*Napoleon v. Garbitt*; *Sauteau Indian Band v. Totusek*).¹¹ To date, these disputes have been largely procedural rather than substantial. That is, the disputes have not directly challenged the founding family structure, but rather have focussed on the legitimacy and interpretation of the amendments to the Sauteau Indian Band Government Law, candidate eligibility requirements, and accountability of the headmen and chief. Nonetheless, I think the procedural disputes are directly connected to the same overall issues raised by the founding family structure. The band council structure is founded on assumptions regarding western style leadership, representational democracy, and accountability. Even when filled with family headmen, it is primarily intended to meet the external bureaucratic and legal demands of the federal government as opposed to the need for a local political project.

While I understand that cultural change is necessary to respond to challenging contemporary issues, I think that there are larger questions about the distortion and reification of cultural institutions in the Sauteau First Nation Band Government Law which require serious study, but are far beyond the scope of this paper.

In 1986, Sauteau First Nation passed the *Sauteau Indian Nation Citizenship Act* (approved by the minister) pursuant to s. 10 of the *Indian Act*, which was amended in 1985 to allow local membership codes. This bylaw enables the band to determine who is a member, rather than rely on the procedures provided for in s. 6 of the *Indian Act*. (While the bylaw uses the term "citizen" in place of "band member," the document still describes a band member, not a citizen.)

According to the *Sauteau Indian Nation Citizenship Act*, the people qualified to be band members are those who were entitled prior to the April 1985 *Indian Act* amendment, or were born after April 1985 to parents who are both members

of Saulteau First Nation. Persons may apply for membership if they (i) have one birth parent who is a member of Saulteau First Nation, or (ii) are under 19 years and are adopted by a Saulteau First Nation member. In reality, the 1985 *Indian Act* amendment failed to substantively rectify the discrimination against aboriginal women, and instead, the discrimination is delayed and borne by their grandchildren (Napoleon 2001).

Given this, the current membership list for Saulteau First Nation, and other bands, is arguably still founded on past discrimination, but this has not yet been interrogated. The first step is to determine whether the applicant is a descendant of a Saulteau First Nation member. If the applicant is an adult, the enrolment officer shall consider whether the applicant:

- 1) can speak Saulteaux or Cree;
- 2) is knowledgeable about Saulteau First Nation customs and traditions; and
- 3) agrees to a five-year probation period during which time he or she will acquire knowledge about the community's way of life.

Additionally, in the case of adult or non-adult applicants, the enrolment officer may consider how long the applicant has lived with Saulteau First Nation, and the social and cultural ties that the applicant has with Saulteau First Nation.¹² (Interestingly, the membership criteria do not actually deal with the establishment of descent. There are a number of obvious technical problems in the *Saulteau Indian Nation Citizenship Act* criteria, but these are not the focus of this paper.)¹³

SELF-DETERMINATION ISSUES

Saulteau First Nation is attempting to use its leadership and membership practices to protect itself in a colonizing world by determining the authenticity of its members. It would be easy to characterize and dismiss their efforts as essentialist, but the community's experience and perspective have merit and deserve serious consideration. The ultimate goal of Saulteau First Nation is profoundly important, but I contend that trying to accomplish this goal with the founding-family election policy

and exclusive-descent membership standard is fundamentally flawed.

Size of Community

Looking at Saulteau First Nation's history and present circumstances brings to light a number of critical self-determination issues. The first has to do with size and scale of community. Saulteau First Nation is a tiny community not unlike many of the other six hundred Indian bands in Canada. Although its population includes Cree and Dunneza, it is the only predominantly Saulteaux community in northern British Columbia.

Cole Harris has described how the colonial government purposely set out small reserves in BC to avoid having to deal with large congregations of aboriginal people. Harris writes (2002, 102), "Large reserves, moreover, would enable Indians to 'combine against whites'...[and] 'the safety of the settlers in BC lies in the disunion among the tribes.'" According to the 1876-78 Joint Indian Reserve Commission (Sproat 1877, 121), "[t]he efforts of the Indians to combine and the hope of safety presented by our efforts to separate the tribes is a practical commentary upon that argument." Another rationale for the fragmentary reserve allocation was to ensure that aboriginal labour was widely distributed and available to colonial undertakings (1877, 101& 265).

This early colonial tactic still informs and shapes the aboriginal political landscape in BC today. For example, the BC Treaty Commission is negotiating treaties with aboriginal groups that vary in size from 136 to 7,517, with a median size of 800 (Chartrand 1996). This means that larger aboriginal nations¹⁴ were (and are) effectively fractured into smaller political and administrative units for the purposes of the *Indian Act*, and while many are negotiating collectively as nations, others are negotiating separately as bands. For example, in northwestern BC, the Tsimshian nation is divided into seven bands and the Gitksan nation is divided into six bands. The elected band structures and reserves cut across both the Tsimshian and Gitksan legal orders and political structures.¹⁵

Given issues of scale and the complex demands of self-government, it is extremely difficult for such small groups of people to effectively negotiate and implement treaty

agreements. In fact, Chartrand argues that it is simply impossible for such small communities to negotiate or implement substantive self-government measures.

Citizenship

Another self-determination issue is how the people of Saulteau First Nation are defining themselves. While it is important to locate this issue within the larger political and historical context, it is critical not to lose sight of how colonialism was imposed in gendered forms with aboriginal women bearing the primary consequences. Historically, aboriginal people have been forced to defend themselves against relentless land theft and marginalization by a colonial regime. Now, aboriginal people are engaged in ongoing struggles to reclaim land and resources, self-government, identity, and language and culture. These struggles have resulted in many aboriginal people relying on colonially imposed, gendered (at least explicitly so until 1985), and exclusive definitions of "aboriginal" to defensively draw around themselves boundaries such as blood quantum and *Indian Act* membership formulas. I think the metaphorical boundaries of blood and descent may be usefully likened to Nedelsky's metaphor of boundaries as an attempt to comprehend and protect the basic values of freedom and autonomy (1990, 1).

I contend that pre-contact aboriginal societies practised forms of nationhood that were deliberately inclusive in order to build strong nations with extensive international ties (Napoleon 2001, 113). From a pragmatic perspective, had aboriginal peoples practised the exclusive and sexist forms of membership that are in place today via the *Indian Act*, they would not have survived and North America would have been truly *terra nullius*.¹⁶ One of my arguments is that the membership conflict could be eliminated by properly contextualizing it within an understanding of aboriginal citizenship and nationhood, and applying the goals contained in aboriginal legal orders. I am speaking very generally here because obviously there is no one aboriginal society. Each aboriginal nation will have to conduct its own analysis of these concepts according to its culture, history, and present circumstances.

Today's membership issues derive from colonial history and the relationship between aboriginal peoples and the Canadian state. The legal and political establishment of the Canadian state included the division of powers according to the *Constitution Act* of 1867. Under this arrangement, Indians and Indian lands were classified as a federal responsibility in s. 91(24). The federal state administers revenues to the bands, which distribute these funds locally to those who qualify as members.

With the establishment of bands under the *Indian Act*, aboriginal conceptions of inclusive citizenship also devolved into constructs of exclusive, usually gendered, membership practices.¹⁷ Over the years, membership has been further conflated and interpreted to mean ethnicity, blood quantum, and descent (Alfred 1999, 85). I think this can be likened to the "clientalization" of citizens, which has been rightly criticized for making them dependent and passive (Borrows 1998, 142). In and of itself, membership for the purpose of receiving benefits does not build a nation. The membership model is simply incapable of developing or encouraging the kind of reciprocal relationships necessary for strong social and political cohesion.

There is extensive literature about First Nations communities' membership practices and also extensive case law in both Canada and the United States where aboriginal peoples have turned to the courts to sort out band membership disputes (Imai 1996, 21-30). According to Carole Goldberg, the most "paralysing conflicts" in the American Indian constitutional reform efforts were about the criteria for membership (2002, 437). As with Nedelsky's boundary metaphor, the membership-as-boundary for aboriginal communities is destructive and fails to address the real problems of relational autonomy (1990, 1).

Michael Ignatieff argues that the inclusive civic nationalism model enables a nation to comprise a diverse citizenry because ideology, law, and a shared set of political practices and values hold it together (1994, 3). In contrast, in a nation held together by exclusive nationalism comprising ethnicity and (the abstraction of) "blood," unity is based on pre-existing ethnic characteristics, not shared rights. In the essentialist ethnic nation, an individual's characteristics are inherited rather than

chosen (7-8). Ignatieff goes on to argue that ethnic nationalism cannot create social cohesion or community, and when it fails to create unity, ethnically nationalistic regimes turn to force (8).

Nedelsky suggests that the institutions, social practices, and relations that foster the feeling of autonomy may vary considerably across cultures and over time within a culture (1989, 14). Given the predominance of the western construct of citizen and citizenship, the first challenge for aboriginal groups is to develop their own constructs that are drawn from their own cultures and histories. I have argued elsewhere (2002, 149) that, in decentralized societies such as many in BC, the main rights-enforcing relationship is not between the individual and the state. Rather, the rights (and responsibilities) of individuals are enforced collectively through the relationships in the social structure. I am not advocating a return to some mythical golden past, but I do think that cultural principles and values should be articulated and critically examined for possible application to the problems and demands of today's world, governance and justice being only two examples.

According to John Borrows, citizenship is more than the existence of rights (2003, 227). He advances an interesting argument for expanding aboriginal citizenship to comprise three facets: some type of formal relationship among citizens and groups within the state; the freedom to act with others in any variety of groups not created by the state; and respectful acknowledgement of their self-identity, even without state sanction (2003, 227 & 229). In addition, Borrows argues that "citizenship must also concern itself with social cohesion, which includes concerns about social stability, political unity, and civil peace." This expands citizenship from an individual level to a collective, political level that is concerned with society as a whole (2003, 229-230).

Saulteau First Nation and other aboriginal groups face the same challenge that is before Canada, namely, to "develop intercultural norms that allow for deep diversity, while at the same time creating societies that have certain shared horizons and civic engagement" (Borrows 2003, 249). Another major challenge before aboriginal communities and the rest of Canada is to develop a theory of citizenship that moves beyond the dysfunctional, passive, rights-based model to an

"activity-based citizenship [that] requires some kind of social space that permits people to freely come together for their own purposes and to pursue goals that may not be officially pursued by the state" (Borrows 2002, 142).

I do not think Saulteau First Nation's current membership and leadership policies facilitate a larger conception of citizenship that allows for diversity and the assumption of collective political responsibility for society as a whole. Nor do I think that room or support is created for women to overcome the colonial legacy of double oppression. But I do think that the principles contained in Saulteaux, Cree, and Dunneza conceptions of citizenship can be articulated to form the basis for the development of an activity-based citizenry.

LOCAL APPLICATION OF THE SELF-DETERMINATION PRINCIPLES

Christoph Möllers writes that while modernity has raised doubts about the justification of government, it has actually increased its scope. Consequently, "[c]ommon goods like peace, welfare, efficiency or social equality are either too abstract or too contested to produce legitimacy for public action" (11). Rather than defining common goods further, modern political theory has focussed on the ideas of individual and political freedom, autonomy or self-determination. In turn, standards for government justification stem from the self-determination of individuals and collectives rather than from any social change involving the common or public good.

I think Möllers' insight offers an important caution to aboriginal people about the importance of grounding theory in a political project. Failure to do so may result in theory being reduced to an abstract distraction that obscures the more difficult challenges of the day, or worse, is simply reduced to rhetoric.

Collective Self-Determination

According to the criteria set out by the Royal Commission, Saulteau First Nation does not qualify as a nation capable of self-determination because its population is too small and it does not comprise the predominant population of a territory

or geographic base. Arguably however, Saulteau First Nation can engage in a larger self-determination project with the Dunneza in *Treaty 8* lands. Since the Dunneza are part of the much larger Dene nation, with territories spanning provincial and territorial borders into the Northwest Territories and Alberta, practical and strategic political consideration must be given to this larger affiliation. June McCue, a member of the Ned'u'ten people, has argued that international self-determination principles may form the foundation for a smaller aboriginal group's proposed peace treaty negotiations with the federal government (McCue 1998). Located along Babine Lake, the Ned'u'ten number about 1,300 persons. McCue rejects the BC Treaty Commission process as a conquest treaty model (196). Instead, she applies Anaya's substantive/remedial self-determination framework to the Ned'u'ten:¹⁸

Anaya has articulated that the theoretical scope and content of the right to self-determination must be expanded to include peoples outside the decolonization regime context. At the same time he argues that self-determination for indigenous peoples means the abandonment of existing conceptions of sovereignty, statehood and decolonization processes. He posits that these concepts are out of date given a world where state boundaries mean less and less and are by no means coextensive with all relevant spheres of community.

(184)

In this framework, decolonization processes form the remedial arm of self-determination. The other arm is formed by the substantive self-determination processes, whereby legitimate aboriginal governmental entities are subjected to human rights standards extending from the core values of freedom and equality (McCue 1998, 185). In Canada, it is usually aboriginal women who have been on the frontlines of human rights struggles demanding the application of human rights standards. For aboriginal women, the basic issues continue to be safety and protection from violence, social benefits and housing, and participation in governance and economic development. Consequently, many aboriginal

women take the position that the *Canadian Charter of Rights and Freedoms* must apply to Indian bands and all other aboriginal governance initiatives (Nahanee 1993).

In the Ned'u'ten case, the constitutive aspect of substantive self-determination would be the political ordering of the *bah'lats* (clan governing structure). The *bah'lats* would be continued and adapted to meet the contemporary needs of the Ned'u'ten (McCue 1998, 185). Turning to the remedial arm of self-determination, McCue writes that recognition of Ned'u'ten territorial boundaries would be restored, but that it remains to be seen just how denial of self-determination could be remedied outside the UN colonial context (1998, 187). Nonetheless, McCue argues that a conceptualization of self-determination that contains substantive and remedial aspects, "can be seen as a creative and imaginative way to maneuver around the existing obstacles of state practice that has not historically, since the UN came into existence, extended the right to self-determination to peoples that are indigenous and colonized in their homelands" (189).

McCue proposes that the political relationship between the Ned'u'ten and Canada is an international one, and requires that the Ned'u'ten's status be legally and politically equal to Canada's. The building of the future relationship between the Ned'u'ten and Canada would be predicated on the recognition of the Ned'u'ten's *bah'lats* as self-determining (1998, 189). McCue does not address the issue of the small Ned'u'ten population or the nation criteria posed by the Royal Commission. Nonetheless, she does outline a comprehensive Ned'u'ten-Canada treaty process according to Ned'u'ten law.

McCue's thesis introduces an interesting approach to Saulteau First Nation's consideration of collective self-determination possibilities. Basically, the process of working out what a substantive/remedial framework would look like for Saulteau First Nation is an important step in political development. At the very least, this could involve imagining and thinking through questions about forms of governance, relationships with the Dunneza and Canada, and gender and human rights conflicts. Given Saulteau First Nation's history and circumstances, people would also have to begin working out internal cultural relationships and practices, and guiding legal principles. Examining

the Saulteaux people's move into Dunneza lands in 1911 could provide some critical insights. What was required according to Saulteaux law and governing practices, and how were these terms met? Similarly, what was required according to Dunneza law and governing practices, and how were these terms met?

Again, while it is unlikely that Saulteau First Nation would ever be recognized as self-determining, this is a way for the community to engage in a self-determination political project beyond the struggles and confines of the *Indian Act* structures and the destructive boundaries created by the membership laws (Nedelsky 1990, 17). This is also a way for Saulteau First Nation to deliberately and reflexively build social cohesion and expand the capacity of its citizenry by promoting concerns about social stability, political unity, and civil peace (Borrows 2003, 229-30). The work of governing must necessarily include thinking about how to ensure enough distance between people to enable consideration of the public good and accountability beyond any immediate matters in dispute (Saul 1995, 173). For small communities, this necessarily means thinking on a nation basis rather than on a village or band basis.

Individual Self-Determination

Nedelsky's reconceptualization of autonomy and individual self-determination is directly applicable to Saulteau First Nation. At root, Nedelsky redefined autonomy with a social component that reflected the individual's surrounding relationships, and as a capacity that existed inside our social relationships in conjunction with an internal sense of autonomy. So first of all, members of Saulteau First Nation, including women, have to feel autonomous, which engagement in larger self-determining projects can foster. And second, the relationships that foster relational autonomy in terms of freedom and support to create one's own life must be identified and recognized as self-determining.

For Saulteau First Nation, what is particularly important about this approach is to consider cultural values and institutions, as well as what the damages caused by colonization are. Since change has occurred and there was no golden age anyway, the next question to consider is how to

compensate for the damages caused by recent history. Again, this work is ongoing and there is no arrival. Instead, it enables people, and this must deliberately include women, to engage on a personal and individual level with a larger self-determination project. As Nedelsky predicted, her reconceptualization of individual self-determination is infinitely compatible with collective self-determination when it is imagined at the community level (1989, 12). (This is in contrast to Möllers, who writes (2003, 13), "Individual autonomy and collective autonomy have a complicated relationship...There is no general rule to solve this conflict [between individual liberty and the liberty of others]. Political theory may have to choose between liberal or communitarian concepts of society.")

Nedelsky makes the cautionary observation that participation is extremely time-consuming, and once people think that their participation has been effective, their level of participation may decrease (1998, 18). The tension is that protecting individual and collective self-determination ultimately depends on ongoing participation, but this is difficult to maintain over the long term (1998, 20).

CONCLUSION

According to Tully, alternative conceptions of indigenous nations are relational (internally and externally), whereby "'freedom' is not the property of an independent subject (individuals, peoples, nations) outside of relationships of mutual dependency, but a quality of mutually constitutive dialogical relationships of interdependency among partners" (2005, 50-51). As with other aboriginal communities in Canada, Saulteau First Nation has its share of social problems (for example, addictions, poor health, and unemployment) created by the soul-crushing powerlessness of colonialism and conflict as demonstrated by the internal litigation in recent years. Any future self-determination project must be built on the conflicted reality of people's experiences - in relationships, families, and communities.

Overall, I think that intentionally identifying a Saulteaux-Cree-Dunneza relational autonomy with the goal of encouraging individual

self-determination that corresponds with a developed, collective conception of self-determination is a huge political step to undertake. I am very optimistic about the possibilities, but I am under no illusions about the enormous work that such a development would entail. Nor am I under any misconceptions about the willingness of aboriginal communities, including my own, to undertake this very difficult work.

ENDNOTES

1. In this paper, I distinguish self-determination from the closely related concept of self-government. "Self-determination" is the right of an aboriginal nation to choose how it will be governed. In other words, "Self-determination refers to the collective power of choice; self-government is one possible result of that choice" (Canada 1996, 175).
2. The resistance in South Africa continues despite that fact that apartheid there was successfully countered with self-determination arguments (Muehlebach 2003, 248).
3. The Royal Commission noted that the current *Indian Act* band structure is an obstacle to its nation-based approach: "[O]ne of the effects of the band orientation of the *Indian Act* has been to foster loyalties at the level of the local community, at the expense of broader national affinities arising from a common language, culture, spirituality and historical experience" (1996, 235).
4. The Royal Commission acknowledged that aboriginal nations have been fragmented and dispersed under the impact of colonialism. Given this, the Commission recognized that aboriginal nations needed an opportunity to deal with the impairment of internal political ties and common identity in order to reconstitute themselves as modern political units (1996, 178).
5. At issue was whether the territory of Western Sahara (Rio de Oro and Sakiet El Hamra) belonged to no one (*terra nullius*) at the time of its colonization by Spain. In its advisory opinion, the Court unanimously held that the Western Sahara was not *terra nullius*.
6. The International Institute for Self-Determination estimates that there are eighty-four current conflicts around the globe that centre around issues of self-determination.
7. According to Ian Brownlie, the concept of individual self-determination can be traced back to the French revolution (1970, 3).
8. Saulteau First Nation initiated a legal action challenging the Oil and Gas Commission's approval of an application to drill an exploration well in an area that is, as yet, pristine and important for its hunting and trapping values to band members. The band is arguing that the cumulative impacts of the well drilling are an infringement to its treaty rights because while the well only has a twenty per cent chance of productivity, drilling means building roads, bridges, and industrial infrastructure. The Oil and Gas Commission is arguing, among other things, that impacts of exploration are negligible and do not have to be considered unless the well is productive. The lower court ruling against Saulteau First Nation has been appealed. At the time of writing, the appeal decision had not yet been handed down (*Apsassin v. B.C. Oil and Gas*).
9. This adhesion was negotiated as a treaty entitlement agreement with the federal and provincial governments. There is considerable hostility between Saulteau First Nation and the McLeod Lake Band, largely stemming from very different approaches to economic development on treaty lands. Many Saulteau First Nation members consider themselves to be traditionalists and are opposed to major industrial development. See the *McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement Act*.
10. There are two drafts with proposed amendments: (1) Saulteau First Nations Interim Election Procedures (4 April 2002), and (2) Saulteau First Nations Election Procedures: Post Election Amendments to the April 4, 2002 Version. Amendments may be initiated by a minimum of fifty band members or by chief and council. In either case, a process is set out in the proposed amendments for required time frames, notice periods, and sixty per cent approval rate by band members eligible to vote.
11. This latter case was limited to dealing with a request by the plaintiffs for a summary judgment that subsequently was denied. Given this, it would appear that the original cause of action is still outstanding since it was not dealt with in these proceedings. The legal issues in this cause of action were to determine (1) whether the band's custom law permitted the removal of chief from office and if so, by what procedure; and (2) whether a claim of declarative and injunctive relief by the former elected chief, Robin Pacquette, was supportable. However, Blais J. stated that Robin Pacquette failed to demonstrate that he was entitled to file an action on behalf of Saulteau First

Nation, and he recommended resolving the question as to whether the band should be a plaintiff or a defendant through a case-management process. The Band Government Law in place at the time of Pacquette's trial did have a provision to challenge the selection/election of the chief, but it did not have a provision for the removal of the chief from office.

12. The *Saulteau Indian Nation Citizenship Act* includes provisions for appeals and amendment processes. To hear appeals, a five-member citizenship committee will be established with two elders (minimum 55 years old), one representative for chief and council, and two band members.

13. For example, in s. 6, the enrolment officer is required to consider ("shall") the list of criteria, but there is no guidance as to how to actually decide membership based on the criteria. Does an applicant's ability to speak only a little Cree or Saulteaux qualify? More importantly, the way the section currently reads, even if the applicant is fluent in either language as well as knowledgeable about Saulteaux customs, traditions, and "way of life," there is no requirement that the enrolment officer accept him or her as a member. It is also unclear whether the applicant must meet all three criteria or just one.

14. Different histories and cultures have produced different ways for large groups of people to define themselves and relate to others, and to non-human life forms, space, and land. Hence, western and aboriginal constructs of nationhood are profoundly different, and therefore care must be taken not to simply apply a western definition. One cultural difference is in divergent cosmologies. For instance, many aboriginal nations make no fundamental distinction between the history of humans and the history of the world, and they fuse human power with the power of the land. Another critical cultural difference is in the structuring of social and political regimes (e.g., hierarchical vs. non-hierarchical and decentralized vs. centralized). In order to emphasize the difference in constructs of nationhood, some authors use the term "peoples" rather than "nations" when referring to groups of aboriginal people.

15. I use the term "legal order" in this paper to describe legal rules and procedures that are undifferentiated from social life and from political and religious institutions. Legal systems, on the other hand, may be described as distinct, integrated bodies of law, consciously systematized by professionals with specialized institutions, legislation, and the "science of laws" (see Berman 1983, 49-50.).

16. According to John Borrows, "The doctrine of discovery has been - and still is - rigorously advanced by various authors, jurists, legal scholars, nation states and domestic courts as the foundation upon which English, Canadian or American sovereignty in North America is based. The basic premise is that the first state to 'discover' an uninhabited region with no other claims to it automatically acquires territorial sovereignty. Originally the doctrine was limited to *terra nullius* - literally, a barren and deserted area .. The concept of *terra nullius* was expanded later, without justification, to include any area devoid of 'civilized' society. In order to reflect colonial desires, the New World was said by some courts to fall within this expanded definition" (1998, 6).

17. According to Carole Goldberg, "membership" is used instead of "citizenship" for aboriginal people in the United States because the Bureau of Indian Affairs does not perceive aboriginal people as self-determining, but as equated with various social and non-profit groups (2002, 437).

18. McCue also considers Anaya's internal/external self-determination model, but rejects it as inappropriate to the Ned'u'ten. According to Anaya, "[t]he internal/external dichotomy views self-determination as having two discrete domains: one having to do with matters entirely internal to a people (such as rights of political participation) and the other having to do exclusively with a people's status or dealings vis-à-vis other peoples (such as freedom from alien rule). The internal/external dichotomy effectively is premised on the conception, rejected earlier, of a limited universe of 'peoples' comprising mutually exclusive spheres of community (i.e., states)" (81).

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Living Language

She tells us the Ojibwe word for blueberry pie
is the recipe to make:

miiniibashkimiinasigunbatagiingwesijiiganbiitooingwesijiiganibakwezhigan

as we pick the delicate fruit from each calyx
indigo bulb hanging from a perfect five-pointed star
a gift to relieve children's hunger
selecting each one, each star-berry staining our fingers purple-red
we can't help but pop some in our mouths.

She had said the juice could cure a cough
and the leaves could be tea — would be good for our blood.
In the summers they'd dry them and store for long winters.

We trod through marshy ground searching for the next lowbush
can taste the pie already, baking slowly in her stove
can see her careful thumbs creating the wave that edges the crust
sliding the fork through the top in four directions
holes for breath

as we punch ours out now — blueberry hunting.
We are this language of progression, this recipe
renewed each time our pails are filled and
our fingers drip hard blood in gratitude at the end of days.

Molly McGlennen