

# Mainstreaming Indigeneity by Indigenizing Policymaking: Towards an Indigenous grounded analysis framework as policy paradigm

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## Abstract

Engaging politically with the principles of indigeneity is neither an option nor expediency. The emergence of Indigenous peoples as prime-time players on the world's political stage attests to the timeliness and relevance of mainstreaming an indigeneity agenda in advancing a new constitutional governance for living together differently. Insofar as the politics of mainstreaming indigeneity are pivotal in indigenizing policymaking, this paper argues that reference to an indigenous grounded analysis (IGA) framework as policy paradigm is both necessary and overdue. The paper also argues that the mainstreaming of indigeneity by indigenizing policymaking may enhance the operationalizing of indigenous self-determining autonomy as governance principle. To put these arguments to the test, the politics of mainstreaming indigeneity in Aotearoa New Zealand are analyzed and assessed within the framework of an emergent Maori-centered policymaking framework. 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 central authorities are committed to a gender-based analysis (GBA) for mainstreaming policy outcomes along gender lines, so too should the mainstreaming of indigeneity (or aboriginality) secure a corresponding agenda-setting formula for minimizing systemic policy bias while maximizing indigenous inclusiveness. The paper concludes by situating the concept of an indigenous grounded analysis (IGA) framework within the broader context of competing 'determinations' – 'self' vs 'state' – in promoting a postcolonial policymaking governance.

**Key Words:** *The Politics of Indigeneity; Mainstreaming Indigeneity as Indigenizing Policymaking; Mainstreaming Maori Indigeneity; Gender-based Analysis Framework; Indigeneity-Grounded Analysis Framework; State determination versus Indigenous self determining autonomy.*

## Introduction: Indigeneity Agenda as a Policy Paradox

Conflicting narratives contest the politics of indigeneity.<sup>i</sup> A prevailing narrative is that of poverty and powerlessness. Indigenous peoples<sup>ii</sup> worldwide remain structurally excluded and culturally marginalized because of a pervasive (neo-)colonialism<sup>iii</sup> (Maybury-Lewis, 2002; Maaka, and Andersen 2006). The systemic discrimination that dominates political and policymaking spheres through inaction, silence, and indifference generates both misery and marginalization at individual or group levels (Battiste 2009). 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). Nevertheless, formal initiatives to address systemic barriers and neo-colonialist mindsets by incorporating an indigenous centered policymaking agenda are rarely tested or theorized.

A sharply different narrative also prevails. Indigenous peoples are striding across the world's political stage by capitalizing on the principles and politics of indigeneity 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 advances: shed the most egregious dimensions of colonialism; recover and articulate their voices; challenge 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). Nowhere is this progress more evident than in the adoption in 2007 of the UN Declaration of the Rights of Indigenous Peoples – not only in transforming Indigenous peoples from 'victims' to 'actors' but also in reframing the debate over indigeneity as one of 'rights' rather than 'claims' (Gilbert 2006; Barelli 2009). The emergence of Indigenous peoples *as peoples with rights* rather than minorities with problems or needs propels indigenous peoples politics to the forefront in debating the mainstreaming of indigeneity by indigenizing policymaking.

The mainstreaming of indigeneity along indigenous policymaking lines is no longer an option or excuse. Mainstreaming constitutes an indigenous-centered experience that challenges the deeply ingrained Eurocentric mentality behind policymaking. As a principled approach to collaborative engagement, the principle of mainstreaming also recognizes the need for indigenous concerns and realities to be incorporated into the design, implementation, monitoring, and evaluation of all policies; encourages policymakers to adopt an indigenous perspective; and promotes the full participation of indigenous stakeholders in policymaking so that indigenous peoples' needs and aspirations migrate from the margins to the centre (see also Hanson 2007; Poole 2008). In short, without the catalyst of an indigenous grounded policy lens to challenge, resist, and transform, there is no foreseeable end to those neocolonial foundational principles whose governance logic continues to impoverish and disempower (Turner and Simpson 2008; Ladner and Dick 2008).

A commitment to mainstreaming indigeneity is critical in bolstering an indigenous policymaking framework. Insofar as there appears to be a dearth of initiatives for analyzing Indigenous peoples' policymaking input (Chesterton 2008), this paper proposes the necessity and feasibility of an indigenous-grounded analysis (IGA) framework as policy model to offset systemic information-processing biases, while spearheading a move toward an indigenous self-determining autonomy as an alternative governance framework. The paper also contends that an indigeneity policy agenda must go beyond design or content; equally critical is a focus on policymaking process by incorporating multiple indigenous stakeholders in shaping policy outcomes (Chataway 2004). To put these arguments to the test, the politics of indigeneity in Aotearoa New Zealand are explored to demonstrate advances in constructing a Maori-centered policymaking milieu. An indigenous-grounded analysis (IGA) framework as policymaking paradigm for Canada's Indigenous peoples is then proposed, based on the precedent-setting principles of a gender based analysis (GBA) equivalent. Lastly, the debate over state determination versus indigenous self determining autonomy as competing governance models provides

insight into the politics – and pitfalls - of mainstreaming indigeneity within an IGA policymaking framework.

### **Indigeneity as Policymaking ‘From Below’**

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. (UNDRIP Sept 13, 2007)

Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. (UNDRIP Sept 13, 2007)

The field of international relations is witnessing a growing trend toward participatory governance. Viewed from an engaged governance perspective, policymaking is no longer simply seen as a public intervention in the social or economic sphere, but rather as a complex interaction among a wide variety of both public and private (non governmental) actors (Tommel and Verdun 2009). Yet, despite this commitment to the meaningful participation of civil society in collaborative policymaking, Indigenous peoples continue to be excluded from the policymaking process, including the design, implementation, and evaluation of policies and programs that directly impact on their lives and life chances (UN Workshop 2005). Indigenous peoples and communities are often adversely affected by government policies and programs because of top-down policymaking approaches that gloss over their distinctive visions, ways of life, needs and experiences, and aspirations. Even policies and programs that are specifically targeted toward indigenous communities often operate in a non inclusive manner, in the process intensifying patterns of powerlessness and poverty, eroding any progress toward sustainable development, and further destabilizing the social and cultural integrity of first peoples’ communities. The consequences of a ‘we know what is best for you’ policymaking mentality are all too obvious in perpetuating a (neo)colonial status quo. Sociologically speaking, Indigenous peoples constitute ‘involuntary minorities’ who have been forcibly incorporated against their will into someone else’s system. Dispossessed, disempowered, and oppressed, they want to escape an exploitative political arrangement by challenging both the conventions that refer to the rules as well as the rules upon which conventions are based (Fleras 2010). Rodolfo Stavenhagen (2009:2) captures the enormity of the struggles ahead:

The historical inequities and inequalities that led to the dispossession of their human rights and dignity; the genocides, the massacres, the conquests and colonization, the enslavement and the enforced labor, the land grabs and removals and displacement, the kidnapping of men, women, and children, the incarceration, the policies of assimilation, the racism and the denial of their humanity, the criminalization of their protests and resistance

These injustices are so deeply embedded in the design, organization, and functioning of modern societies that their effects continue to systemically intrude on their lives - despite reforms to remove the most egregious abuses. Not surprisingly, a colonized status quo is likely to persist without an inclusive policy paradigm that operates on the principle of mainstreaming indigeneity by indigenizing policymaking.

The world's Indigenous peoples may be among the poorest and most vulnerable sectors of society. But Indigenous peoples around the world are also in the vanguard of re-constitutionalizing their relational status in society through struggles to preserve their communities, improve their socioeconomic status, retain or regain their rights, and rebuild their nationhood on their terms (Anderson and Barnett 2006). In response to the surge in Indigenous peoples politics, the politics of policymaking in countries like New Zealand or Canada have shifted accordingly, at least in theory if not always in practice. Rather than contesting indigenous claims to land and nationhood as once the case, what has emerged instead are protocols for negotiating indigenous rights alongside a growing perception that settling indigenous claims is less of a 'cost' and more of a capacity building 'vehicle' for addressing political, economic, social, and cultural concerns. The implications of this 'bottom-up' turn is growing commitment to partner with indigenous communities in the hopes of constructively engaging Indigenous peoples as co-participants in policymaking processes and outcomes.

A critique of top-down policymaking is predicated on simple yet powerful premise. Neither policy nor policy making are neutral or value free. Rather, as socially constructed conventions, policy and policymaking are infused with dominant values, Eurocentric ideals, institutionalized biases, and vested interests. So deeply embedded are racialized notions about what is normal, desirable, or acceptable with respect to policy design, underlying assumptions, priorities and agenda, and process that policymakers are rarely aware of the systemic consequences that privileges some, disempower others (Wallis and Fleras 2008). Even evidence-based policymaking may prove systemically biasing when an uncritical commitment to 'objectivity' bolsters white Eurocentricity as the norm, while discrediting the legitimacy of Indigenous peoples knowledge and ways of knowing (also Kowal 2008). In challenging the myth of value neutral policy<sup>iv</sup> the Kungarakany and First Australian scholar, Steve Larkin (2007:178), bristles with indignation when referring to 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 inform policy assumptions and processes (see Peters and Walker 2005), the value of a indigenous-centered policymaking approach is both necessary and overdue.

This shift in policymaking focus from top-down to 'from below' is clearly consistent with developments at the United Nations. The promotion of collaborative policy frameworks for

democratizing participation is premised on a human rights informed approach to policymaking (see also UN Workshop 2005). A human rights approach acknowledges the centrality of indigeneity to successful policymaking, including the involvement of indigenous peoples as partners in shaping both the process and outcomes. The UN Permanent Forum on Indigenous Issues has long promoted the participatory policymaking principles of free prior and informed consent in all policy matters of concern to indigenous communities. As noted above, Articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples confirm this broader embrace of an indigeneity agenda by reinforcing the priority of free prior and informed consent as a principled means of operationalizing a human rights approach to policymaking. The Forum has also recommended incorporating the concerns and experiences of Indigenous women to augment their perspective and participation in creating an inclusive policymaking governance.

### **Indigeneity as Policy Agenda in Aotearoa New Zealand**

Developments in Aotearoa New Zealand are not exempt from the politics of indigeneity (Fleras and Spoonley 1999; Durie 2005; Smith 2007; O’Sullivan 2008). The politics of indigeneity have proven pivotal in securing a Maori-centered 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 acknowledging the primacy of Maori indigeneity in accelerating a bi-national governance arrangement (Fleras 2009). Much of the reticence reflects a political unwillingness to provoke public anger over perceived Maori privilege for seemingly violating the meritocratic principle of equality and fairness (Durie 2004). Nevertheless, Maori policy development is increasingly animated by the dynamics of indigeneity as a principled approach to Maori-Crown relations. Three policy making catalysts are foregrounded, each of which is shown to have mainstreamed Maori indigeneity as policy lens, including: (a) a Maori presence 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 policymaking influence to review Maori affairs legislation (Te Puni Kokiri) and (c) a commission of inquiry (Waitangi Tribunal) for ‘righting historical wrongs’ over Crown breaches to Treaty principles.<sup>v</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 it remains the only Maori-focused government department. As an integrated policy Ministry that advocates on behalf Maori and Maori tribes (‘iwi’) and ‘subtribes’ (‘hapu’), TPK serves as liaison with other government agencies for improving Maori outcomes through more responsive mainstream institutions and services. Its mandate as instrument of Maori development strategically position TPK 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 the Minister of Maori Affairs. In bolstering its policymaking mandate by broadening its scope and reach, TPK also maintains interactive links with Maori iwi, hapu, and whanau ('extended family') through a network of ten regional offices.

The establishment of Whanau Ora Health Impact Assessment tool (WOHIA) operationalizes the emergence of Maori-centered policy framework (Ministry of Health 2007). In contrast to the past when policy makers lacked the requisite tools to identify policy impacts on Maori health, much less to incorporate these trajectories into the policy making process, WOHIA provides a culturally sensitive methodology ('tool') for identifying the potential health impact of government policies and sectoral programs. WOHIA operates on the premise that public policies of benefit to the general population at large can generate unintended negative effects by inadvertently intensifying disparities on Maori health and wellbeing (Public Health Advisory Committee 2007). In taking steps to indigenize Maori health outcomes, WOHIA empowers policy makers with a checklist of questions pertaining to screening (what needs doing), scoping (identify key issues related to health determinants), appraisal, and evaluation. Mindful that health impacts should be an explicit consideration in the design, implementation, and evaluation of all public policies, WOHIA also seeks to secure the input from a range of sectors and stakeholders on grounds that health is largely determined by decisions in other sectors. In addition to intersectoral collaboration and community involvement, Maori participation is actively solicited at each of these policymaking levels to ensure (a) health needs as identified by Maori including a spiritual dimension and cultural focus and (b) involvement of Maori stakeholders in attending to their health priorities, alongside a corresponding course of action *for advancing Maori specific outcomes and indicators rather than upholding generic ideals* (Durie et al 2002; Durie 1998).

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

Maori constitute one of the few peoples in the world with a guaranteed Parliamentary presence (Geddis 2007; Joseph 2008). The establishment of four separate Maori electorates in 1867 originated 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). The political quo remained largely in tact until the introduction of Mixed Member Proportional in 1996. Under MMP, the number of dedicated Maori seats was allowed to rise to seven (based 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).

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

A restitutorial process is currently in place to compensate 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 which Crown actions disagreed with Treaty principles and (c) determine the "meaning and effect" of the Treaty by negotiating the differences between the English and Maori language versions. A permanent commission of inquiry is in place - akin to a ‘truth and reconciliation’ forum in function (Waitangi Tribunal 2006) - that registers Maori claims or grievances over Crown breaches to the Treaty of Waitangi, processes 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. Admittedly, its 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 mainstreaming the government’s Maori policy and Treaty settlements in ways scarcely conceivable even a generation ago.

In addition to ruling on specific Maori claims, the Tribunal has been charged with the responsibility of formulating the principles for living together differently. The Tribunal’s mandate rests in looking beyond strict legalities or literal interpretations. Its mission lies in a reading ‘between the lines’ of the Treaty, so to speak, in hopes of harmonizing the differences between the English version (with its *kawanatanga* (‘governorship’) commitment to state determination) and Maori versions (with their *tino rangatiratanga* (‘chiefly’) focus on indigenous self determining autonomy) (Maaka and Fleras 2008). Differences in Maori and English texts when applied to a Treaty reading of specific circumstances have generated four Treaty principles for guidance and justification, including:

*The Overarching (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'.

*The Principle of Partnership:* 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.

*The Principle of Active Protection* The Crown has a duty to actively protect by way of positive action Maori rangatiratanga (self determining autonomy) rights as set out in Article Two.

*The Principle of Autonomy* Reference to self determining autonomy by way of tino rangatiratanga secures the ground for Maori control over domestic affairs though political arrangements that sharply curtail state jurisdiction while solidifying Maori control over land, identity, and political voice.

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 transformation from within – at least in theory if not always in practice. A new constitutional governance is taking shape along two fronts: To one side are those Treaty principles that secure the mainstreaming of Maori indigeneity as policymaking lens. To the other side is the emergence of numerous stakeholders in indigenizing the policymaking 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 neocolonial constitutional order. Nevertheless, a postcolonizing process is in progress (albeit a far from finished project) that promises to fundamentally realign the interactional basis of Maori-Crown relations (Johnson 2008).

### **Indigenizing Aboriginal Policymaking in Canada**

Are the politics of indigeneity situation specific or generalizable? Can the Aotearoan insights of New Zealand be applied to Canada's 'policyscape' (Helin 2007; Quesnel 2008)? How feasible is an indigenous Maori perspective for policymaking in a Canada that lacks comparable power brokers within policymaking circles? 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 of varying and fluid 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 without necessarily abrogating linkages with their rural-tribal connections. Unlike Aboriginal peoples in Canada, Maori neither entered into land-for-benefits treaties (like the numbered treaties in Canada) nor experienced the realities of an imposed reserve regime or a centralized registration system. These differences complicate the process of making comparisons; after all, what works in one jurisdiction may not 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 indigenous-grounded analysis framework – partly because of indigeneity politics, partly because of a Crown duty to consult, and partly because of a precedent that already exists within government circles. In that the existence of a gender based analysis (GBA) framework provides a template for an indigeneity grounded analysis framework as a principled prism for policymaking, there is room for optimism in mainstreaming indigeneity as basis for constructive and collaborative engagement..

### **Gender Based Analysis (GBA) as PolicyMaking 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 involving policies and legislation (where appropriate) of relevance 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 applied along all points of the policy making process rather than an add-on after the fact, it focuses on outcomes, in addition to concepts, arguments, and language employed to justify putting gender back into the picture. In short, by assessing the potentially differential impact of proposed policies on women and men, then responding with options and strategies, GBA constitutes a gender-sensitive tool for policy development.

Health Canada in 1999 formally incorporated the principles of GBA across the board. A GBA framework in health sought to understand and correct how policy and programs biases within the health care system impacted on the health of women (and men). With implementation of a dual-track GBA (one centered on women, the other on gender differences) to improve health impacts for women and men, Health Canada embarked on a principled approach for developing policies, programs, and legislation; conducting research and data collection; and day to day planning and operations in the hopes of identifying those conditions, inequities, and experiences that affect women's health status and their access to, and interaction with, the health system (Health Canada 2000). For example, consider the case of gendered clinical trials. Prior to approval of a new drug in Canada, manufacturers must scientifically prove its safety through clinical trials. Yet, historically, clinical trials tended to incorporate only men, with results uncritically applied to women. Women were excluded in part to avoid risks, in part because of research complications related to reproductive biology. This omission (or methodological bias) not only put women at risk by virtue of generalizing male-only findings to women. It also revealed a gender bias in the approval of new drugs through the uncritical incorporation of male bodies as the tacitly assumed norm for measuring health research and treatment options. To offset any gendered ('systemic') bias against women's unique experiences and biologies, Health Canada (2000) now insists on the inclusion of both genders in clinical trials (unless the drug is intended for one gender only), in the process securing both a better science and safer treatment.

## **Towards an Indigenous Grounded Analysis (IGA) Policymaking Framework**

Pressure is mounting to dislodge the primacy of Eurocentric policy models as grounds 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). Several innovative routes have evolved for improving Indigenous peoples–state relations, including indigenization of policy and administration, devolution of power, and decentralization of service delivery structures. In particular is the incorporation of indigenous perspectives – including the core rubrics of representation, recognition, rights, and resources - within policymaking circles. 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 (Posluns 2007). Nevertheless, indigenous-grounded policies not only work toward alleviating alienation and marginality; they also enhance the participation of Indigenous peoples in the policy process, thus providing first hand knowledge of the complexities associated with policymaking (see also Karim 2009).

The implications are inescapable: In the same way GBA<sup>vi</sup> is acknowledged as a principled way of neutralizing the gendered basis of policy and policymaking, so too should central authorities discard the Eurocentric policymaking conventions by endorsing an indigenous grounded analysis (IGA) model for indigenizing policymaking along the principled lines that parallel a GBA model (Health Canada 2000).

The benefits of an IGA policymaking framework include:

- Acknowledges the value of democratizing the full participation of Indigenous peoples in decision making in matters of concern to them.
- Recognizes the legitimacy of and equal weight to indigenous peoples knowledge and values, experiences and aspirations.
- Promotes the following first principles as a prism for indigenizing policymaking, that is: *indigenous difference, indigenous rights, indigenous sovereignty; indigenous belonging, and indigenous spirituality (including traditional knowledge)*.<sup>vii</sup>
- Concedes that a ‘one-size-fits-all’ policymaking approach may exert an unintentionally negative impact on those whose differences must be taken seriously.
- Admits that in a deeply divided society with competing rights and contested entitlements, difference is as important as commonalities, resulting in equal (the same) treatment as a matter of course, but treatment as equals (differently) when required.
- Provides a channel for Indigenous peoples to identify their concerns and priorities in the design and implementation of policies, programs, and legislation.
- Establishes grounds for better understanding the challenges and complexities in redefining Indigenous peoples-state relations.
- Results in more effective interventions and initiatives by improving the capacity of government structures to coordinate, monitor, support, and make policy through constructive engagement (Working Group 2005; Maaka and Fleras 2005).

- Contributes to the attainment of greater equity and cooperation through meaningful consultation, constructive engagement, and collaborative involvement.
- Assesses the differential and systemic impacts of policy, programs, and legislation that when evenly and equally applied generates an exclusionary effect.
- Confirms the status of indigenous peoples as ‘nations within’ who are sovereign yet sharing sovereignty with a corresponding right to self determining autonomy over land, identity, and political voice.

An IGA policymaking framework is anchored on the bedrock principle of a duty to consult and accommodate. The UN Declaration on the Rights of Indigenous Peoples stipulates the necessity for free, prior and informed consent of indigenous stakeholders when introducing or implementing legislative, policy, and administrative measures that involve any development affecting traditional lands and resources or that impact on the health and wellbeing of indigenous communities (UN Workshop 2005). As well, both the Federal and provincial governments in Canada have a legal and constitutional duty to consult and accommodate Aboriginal and Treaty rights in a timely manner and in good faith in cases where Aboriginal rights and title have not yet been extinguished. The legal duty to consult arises from Section 35(1) of the 1982 Constitution Act whose protective clause seek to reconcile the existence of Aboriginal societies with the sovereignty of the Crown. To ensure that Crown decisions do not constitute a unilateral exercise in absolute authority but are informed by aboriginal priorities, realities, and experiences, a duty to consult and accommodate constitutes an enforceable legal principle for facilitating a reconciliation between Aboriginal people and the Crown. The courts have also ruled that both First Nations and Metis communities possess a reciprocal onus to participate in the consultation process to secure mutually satisfying solutions. Government funds have been allocated specifically for this purpose. In Saskatchewan, for example, a \$2 million Consultation Participation Fund exists to facilitate both First Nations and Metis participation in the consultations (Morellato 2008; Saskatchewan Ministry of Municipal Affairs 2007; Federation of Saskatchewan Indian Nations 2006).

The principle of a duty to consult and accommodate is taking practical effect. Consider the recent decision by the Walpole Island First Nations to pass its own Consultation and Accommodation Protocol in hopes of incorporating culture, environmental respect, and certainty into all government policymaking and industry development across its territory (Press Release October 27, 2009). The territory of WIFN encompasses Sarnia and related areas that sit downstream and downwind from Chemical Valley and its pollutants– widely regarded as one of the most industrialized and toxic risk zones in all of Canada. The Protocol lays out what WIFN expects from government policy decisions that impact on their homeland while clarifying the practical steps that companies must take if they intend to conduct business with them. The preamble makes this abundantly clear:

Purpose and Application: The Protocol sets out Walpole Island First Nation’s (WIFN’s) rules, under its laws and its understanding of respectful application of Canadian law, for the process and principles for consultation and accommodation between WIFN, the Crown and Proponents, about any Activity that is proposed to occur in WIFN’s Traditional Territory or that might cause an Impact to the Environment or Health therein or WIFN rights.

WIFN expects the Crown and Proponents to respect this Protocol in all such interactions with WIFN.

In defending the legitimacy of this duty to consult and accommodate, the Protocol touts its value for assisting the government and industry do the right thing in respecting WIFN rights and land, in addition to advancing positive relation-building by mainstreaming indigenous law and custom with those of non aboriginal neighbours.

### **Policymaking From Below: Advancing Indigenous Self Determining Autonomy Models**

Indigenous peoples are gradually breaking free of colonial structures and Eurocentric strictures (Xanthaki 2008; Cadena and Starn 2007). In Aotearoa New Zealand the articulation of Treaty principles secures a Maori-centered framework for national governance, while in Canada, the Courts have articulated a series of enforceable legal principles that protect and promote Aboriginal and treaty rights (Morrelato 2008). The politics of indigeneity/aboriginality in challenging and transforming a settler constitutional order have also proven critical in mainstreaming an indigenous policy making perspective (see also Marscheke et al 2008). Moreover, an IGA framework enhances policymaking by assisting policymakers to engage collaboratively and constructively through the prism of indigeneity-tinted spectacles.

But the politics of mainstreaming an IGA policymaking framework is likely to encounter resistance and resentment. The potential for social friction is particularly ripe within the context of conflicting constitutional orders involving competing models of determination: state vs self (Maaka and Fleras 2008). State-centered models define self determination in ways that reflect, reinforce, and advance state interests over those of Indigenous peoples. Not unexpectedly, too much of what passes for state determination endorses policies, laws, and agendas that are no longer inappropriate for the postcolonizing realities of the 21<sup>st</sup> century. By contrast, indigenous models of self-determining autonomy challenge this arrangement by proposing a radical policymaking alternative. Indigenous peoples demand the broadest interpretation of self-determination on the grounds that all other rights flow from it. Predictably, central authorities want to limit this discursive framework for precisely the same reason, namely, a fear that too expansive a recognition of self determining autonomy rights may prove corrosive (Charters 2005).

### **State Determination Governance Models: Top-Down Policymaking**

Models of state determination are not what they claim to be. Internal contradictions pervade the logic of state determination, including incongruities between modernity ('changing indigenous peoples to reduce inequality) and the culture of indigenous peoples (maintaining 'difference' to improve equality) (Kowal 2008). A statist policy agenda promotes the self-sufficiency of Indigenous peoples, but only within the confines of an existing institutional framework. Such a policy agenda cannot allow any self determining arrangement to challenge the principles of territorial integrity and the final authority of the state as the supreme sovereignty over the land. Central authorities prefer to micro-manage the policymaking discourse along those socio-economic dimensions that typically compress Indigenous peoples rights into state-defined programs (Humpage 2004; Cornell 2005). Sham consultations and cosmetic reform are established as well for reducing social and economic disparities - if only to paper

over those colonial paradoxes with potentially subversive overtones (Wooten 2004). Tossed into the ‘too hard’ basket are any meaningful efforts that grapple with the complex task of balancing the often incompatible goals of socioeconomic equality with recognition of Indigenous peoples status as the ‘nations within’ (Fleras and Elliott 1992). Not surprisingly, as Stephen Cornell (and others Altman 2009) concludes, state determination discourses - from ‘capacity building’ to ‘closing the gaps’ - tend to conflate the politicized concerns of Indigenous Peoples with integrative agenda of immigrant populations.

The policymaking logic of state determination is animated by the collusion of national and vested interests. For the state, a one-size-fits-all policymaking approach is thought to ensure bureaucratic control, managerial efficiency, or administrative convenience (Cornell 2005). However well intentioned or beneficial these initiatives, the state project of determination is deeply flawed conceptually and empirically by virtue of relying on state solutions (including social indicators that reflects dominant social norms) to solve deeply entrenched (often state created) problems (Altman 2009). Indigenous peoples concerns and aspirations are either ignored or suppressed; or, alternatively, they are refracted through the prism of a Eurocentric policymaking lens, thus negating how Indigenous peoples rights constitute a sui generis class of political rights in their own right. Their voices and philosophical perspectives are dismissed as well, despite distinctive ways of understanding and responding to reality (Maaka and Andersen 2006). And while this dismissal is costly (Will making indigenous peoples more equal make them less indigenous? (also Kowal 2008)), its opposite – inclusiveness - can also prove contradictory. Without an indigenous grounded policymaking framework, Indigenous peoples demands for self determining autonomy must be articulated within a policymaking framework that often reinforces those very colonialist discourses under attack (Turner 2006).

### **Indigenous Models of Self Determining Autonomy: Policymaking ‘From Below’**

Opposing state-centric models of ‘determination’ are indigenous models of self-determining autonomy. Indigenous peoples experiences continue to be defined and distorted by their forcible confinement within the liberal universalism of a neocolonialist framework. Proposed instead of a state determination model is a commitment to indigenous self determining autonomy approach to policymaking that entail (1) recognition of Indigenous peoples as possessing distinctive ways of looking at the world; (2) respect for indigenous difference and distinctiveness through its incorporation into policymaking; (3) an acknowledgement that they alone possess the right to decide for themselves what is best; and (4) endorsement of their status as sovereign in their own right, yet sharing in the sovereign of society at large (Fleras 2000). The challenge is unassailable. Indigenous peoples rights to constitutional status as original occupants and sovereign political communities conveys a corresponding right to shape the policymaking context of which they are part, as well as the right to control land and resources that sets them apart (Cornell 2005).

The mainstreaming of indigenous self determining models for policymaking purposes appears to be paying dividends (Niezen 2003). The policymaking dimensions of indigenous self-determining autonomy models go beyond a commitment to moving over and making space. The focus is on challenging those foundational principles that initially created the problem, first, by resisting the centralizing tendencies of top-down (‘one size fits all’) policymaking model, second, by advancing

the principle of mainstreaming indigeneity by indigenizing policymaking as grounds for a new constitutional governance. Such a transformative commitment stands in contrast to Eurocentric policy notions, understood as formal initiatives that are initiated and imposed from above in the 'best interests' of those defined as problem people or special interests (Poole 2008). To the contrary, policymaking must be rethought in a different register than that of problem or interest, but in terms of a peoples who are actively redefining the landscape of both politics and policymaking.

In short, the policymaking models associated with the principle of indigenous self determining autonomy transcend a simple de-colonization in which the incumbents change places while the rules of the game remain in tact. Little can be gained by simply changing the conventions referring to the rules, yet leaving untouched the rules that inform the conventions. Advocated instead of a 'business as usual' syndrome is a fundamental rule-realigning change that acknowledges the centrality and salience of mainstreaming indigeneity by indigenizing policymaking along the lines of a IGA framework. At the core of this transformation in mainstreaming indigeneity are the politics of power. In that the politics of power focus on indigenizing the policymaking principles of a yet to emerge post-colonial constitutional governance, no one should underestimate their potency in advancing an indigenous-centered approach for living together differently.

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<sup>i</sup> Definitions of indigeneity are intensely political and sharply contested (Shaw 2008; Roach and Egan 2008; Adebani 2009). Indigeneity can take on different meanings, largely because indigeneity as a concept may be difficult to pin down across a bewildering range of contexts and concept. For example, does indigeneity refer to those peoples who *first* occupied the land (first occupancy) or to those *last* peoples prior to European contact and colonization (prior occupancy) (Waldron 2002). 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 as a relational identity 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; Merlan 2007). 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).

<sup>ii</sup> This paper uses the term Indigenous peoples as a widely accepted and universal category. Having acquired international legitimacy with the United Nations passing of the International Declaration on the Rights of Indigenous Peoples, the terms indigenous and indigeneity now have a life of their own, notwithstanding dictionary definitions. 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. The Greek term, autochthonous (meaning springing from the earth) peoples may be preferable, but there is difficulty envisioning narratives that embrace the politics of autochthoneity as discourse and practice, despite Indigenous peoples continuity to land (Xanthaki 2008).

<sup>iii</sup> Colonialism possesses a physical and ideological dimension (Turner and Simpson 2007). It can refer to the expansion of one society into the territory of another. Also included 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 how the foundational structures and systemic biases that inform a contemporary constitutional order constitute the basis for new forms of colonialism. Post colonialism refers process by which the most egregious violations of colonialism are eliminated; including the exclusion of the colonized from positions of power, but it does not refer to the end of (neo)colonialism. More accurately, post colonialism involves challenges to the existing patterns of (neo) colonialism that continue to privilege Eurocentric notions of identity and belonging based on illegal possession of land and contested sovereignties. 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).

<sup>iv</sup> 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; Altman 2009). This commitment would appear to be inconsistent with fragmented, diverse, discontinuities, changing, and contested world of indigeneity.

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<sup>v</sup> 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).

<sup>vi</sup> Aboriginal groups have shown a lukewarm reaction to GBA as it stands. Aboriginal women have argued that by ignoring the legacy and impact of colonialism a GBA fails to address their needs or to reflect the realities of Canada’s Indigenous peoples. This omission also glosses over those policymaking 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).

<sup>vii</sup> Aboriginal scholar, Peter Kulchyski (2007) proposes the following progressive changes for transcending the current policy paralysis by indigenizing the policymaking 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 (Alfred 2005) while sensitizing core indigenous values (relationship, responsibility, reciprocity, and redistribution) to wider audiences and policy circles (Harris and Wasilewski 2004).