Can Canada Retrieve the Principles of its First Confederation?

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It is well known that Aboriginal peoples did not take part in the 1867 Confederation. Much less known by non-Aboriginal Canadians is another confederal event that took place a century before that most celebrated Confederation of Britain’s North American colonies. At Niagara, in 1764, the British Crown entered into a confederation-like agreement with Indigenous nations. The principles underlying that agreement provide a much more promising basis for just and mutually beneficial constitutional arrangements with Canada’s Aboriginal peoples than anything contained in the British North America Act, 1867.

My purpose in this chapter is fourfold: first, to explain why Confederation in 1867 was an inappropriate basis for constitutional agreements with Aboriginal peoples, second to show why the Treaty of Niagara in 1764 is more promising, third, to recount how the principles underlying that Treaty, for more than two centuries, were subverted, and finally, to consider how those principles might animate Canada’s constitutional relationships with First Nations, Inuit peoples and the Métis Nation now and in the future.

In her magisterial history of Canada’s “founding peoples” Olive Dickason records that when the Confederation of British North America colonies was agreed to in 1867, Indigenous peoples were not consulted: “the question of their partnership was not even raised.” She adds that no one thought of consulting or even informing the Inuit when the Privy Council issued a proclamation in 1880 transferring Britain’s Arctic territories to the Dominion.
But even if through some miracle of enlightenment the suggestion had been made to invite representatives of Indigenous peoples to the Confederation talks in the 1860s, it is highly doubtful that such an invitation would have been taken up. For more than two centuries nations native to North America had been regulating their relations with imperial powers and settler governments by means of treaty-like agreements. There was nothing like that on offer at Charlottetown or Quebec City in 1864. Later on, proponents of provincial rights would talk about Confederation as a compact or treaty among the founding provinces, but that rhetorical treaty has nothing in common with the treaties that First Nations had been making with the Crown before Confederation and would continue to make after Confederation. From the Indigenous perspective, treaty-making was the appropriate way of establishing formal relationships with the authorities of incoming settlers, not hanging around watching white men join their colonies together in a federal union.

If any Indian representatives had been given observer status in the Confederation conferences they would have been no more impressed than their descendents were a century later when offered the chance to listen in on the talks Canada’s first ministers were having on re-doing Confederation. At Charlottetown in September 1864 they would not have heard a word about Aboriginal peoples. A month later, in the first week of the conference at Quebec City, members of the Fathers of Confederation’s families took a carriage ride to visit the Wendat settlement at Lorette, up the St. Lawrence from Quebec City and meet its old chief, Ondialerethe (Simon Romain).² You can be sure that the women and children and chaperones on this tour did not visit the Wendat chief to talk about the constitution. This was a tourism outing.
It was not until the final week of the Quebec conference that the delegates passed a resolution on the powers to be given the federation’s new central parliament that included the following statement:

It shall be competent for the general legislature to pass laws respecting

1) Indians

In the final text of the *B.N.A. Act*, this becomes the twenty-fourth of the twenty-nine “matters” section 91 assigns exclusively to the Parliament of Canada, and is worded:

“Indians, and Lands reserved for the Indians.”

Section 91(24) is the only mention of native peoples in Canada’s founding Constitution. It treats Indians not as people, let alone partners in Confederation, but as a subject matter of federal legislation. The addition of “Lands reserved to Indians” reflects the practice of reserving small parcels of land for the exclusive use of Indians either through what British and colonial authorities regarded as land session treaties or administrative fiat. Section 91(24) makes it clear that the Indians living on these reserves and the reserve lands themselves were entirely subject to the legislative authority of the Parliament of Canada. It is doubtful that any Indigenous person on the territory claimed by Canada and Britain would have agreed with such a provision.

The Fathers of Confederation’s assumption of having control over Aboriginal peoples and their lands was a far cry from the relationship between the Crown’s representatives and First Nation leaders that was the basis of the covenant entered into at Niagara in 1764. Back then, Indigenous leaders met with representatives of the British Crown on terms of rough equality in political and military terms. Between 1764 and Confederation much had changed materially and ideologically.
After repulsing the American invasion of Canada with Aboriginal help, the British made peace with the United States, but in the 1814 Treaty of Ghent dropped its support for an independent Indian buffer state to block American expansion. Britain had used its support for an Indian buffer state to induce First Nations to fight on its side. The end of the war brought in a flood of Loyalist and British settlers drastically reversing the ratio of Indigenous people to settlers – a demographic revolution that was tragically accelerated by native vulnerability to European disease. In the 1830s, Britain relinquished Aboriginal policy to settler control. Indigenous peoples had no positive place in the self-governing polities the colonists were building in pre-Confederation Canada. They were a problem not a political partner. The English-speaking settler vision of the fate of Indigenous peoples was captured in the Province of Canada’s *Gradual Civilization Act*, introduced by the Attorney General of Canada East, John A. Macdonald in 1857. Indians would be confined to reserves safely away from “civilized society”, until one-by-one, their men passed morals examinations entitling them and their families to live off reserve, enter civilized society and no longer be Indians. Is it any wonder that John A. and company did not consult with Indians about their plan for a Canadian federation?

As Macdonald, Canada’s first prime minister, went to work on expanding Canada westward, he could not ignored the Métis nation. In 1869, after securing Britain’s agreement to Canada’s purchase of the Hudson Bay Company’s interests in Rupert’s Land, Macdonald was confronted by a Provisional Government in the Red River area of Assiniboia. This government was led by Louis Riel, the leading spokesman of the Métis nation, descendants of families formed by French and Scottish fathers and Saulteux, Cree and Assiniboine mothers, who through decades of pressing their rights in the fur-trade and
participating in the Buffalo hunt on the western plains, had developed a strong sense of national identity. Though very much the largest and most powerful component of the Red River settlement, the Métis reached out to the English-speaking community so that it had parity representation on the Council of the Provisional Government. Macdonald had the good sense to recognize that the Provisional Government was effectively filling a governmental vacuum. He postponed the purchase of Rupert’s Land, withdrew the mandate of his cabinet colleague, William McDougall, whom he had sent to be Lieutenant Governor of the new territory, and sent Donald Smith, the Hudson Bay Company’s Chief Factor, to Red River to pave the way for a peaceful union of the territory with Canada.

In the winter of 1870, a forty person Convention with equal representation from the Métis and English-settler communities drew up a List of Rights that would be the settlement’s conditions for joining Canada as its fifth province. The List included the people’s right to elect their own legislature, that their government be bilingual, that concerns about land title be tackled, that treaties be negotiated with the several tribes of Indians in the territory and that the new province have a fair representation in the Canadian Parliament. A negotiating team (that did not include Riel) went to Ottawa in March, 1870 and was able to get many of the demands of the Red River community written into the Manitoba Act, creating the Province of Manitoba. Though the province, in its first iteration was postage-stamp in size, confined to the Lake Winnipeg river-basin, 1.4 million acres was set aside for the children of the Métis families settled in river lots along the Red and Assiniboin rivers. Delay in giving effect to this provision of Manitoba Act, a delay that found, much later, by the Supreme Court of Canada to have breached the
honour of the Crown, cheated the Métis from having a block of land in Manitoba that could have been their nation’s homeland. Even though the creation of Manitoba had a tragic outcome for the Métis nation and its leader, Riel, who was driven into exile, in process it came close to providing an Indigenous people with a democratic path to joining Confederation.


What I refer to as the first Confederation, at Niagara in 1764, was not of course an agreement on the terms of joining Canada. In function, it was the making of a peace treaty defining the terms on which Indigenous nations would be willing to share territory with people subject to the authority of the British government.

In May 1763, war had broken out between Britain and a confederacy of native North American nations, led by the Odawa chief Pontiac. The uprising occurred when rumours were confirmed that France and Spain had ceded all of Canada and Louisiana east of the Mississippi to Great Britain. Indigenous leaders were outraged by the apparent disregard on the part of Britain of the fact that the land in the territory referred to in their peace treaty belonged to the Amerindian nations. Added to this was deep distrust of the British and their colonists. Nations that had enjoyed a reasonably harmonious and beneficial alliance with the French were concerned that Britain would push its policy of mass settlement into Indian territory west of the Alleghenies.

The Pontiac uprising gathered strength as the oratory of the Delaware prophet Neolin summoned Indigenous peoples to make a final stand against the seemingly unending encroachments of European nations. In six weeks Indian nations, including the Chippewa, Delaware, Kickapoo, Mingos, Miamis, Neutrals, Odawaa, Potawatomis,
Senecas and Wyandot had taken all the forts in the north-west that the British had taken over from the French and had Niagara, Detroit and Fort Pitt under siege. Raiding parties attacked settler communities along the frontiers, killing 600 Pennsylvannians. An American historian compares the shock and terror of these attacks to Pearl Harbour.  

At this point Britain had to make a policy decision. Its North American Commander-in-Chief, Jeffrey Amherst, pushed for responding to the Pontiac uprising militarily. That would have required reinforcing its army in America. At the end of an exhausting seven years world war with France and Spain, pursuing a war with the Indians would have been a tough sell in the British parliament. The alternative was the policy of peace and negotiation favoured by Sir William Johnson, the King’s special envoy to the northern Indian nations. The King and his advisers chose Johnson’s policy. In the fall of 1763 Amherst returned to England and Johnson’s policy was incorporated in the final six paragraphs of a proclamation issued by King George III, on October 7, 1763.

Most of the Royal Proclamation provided governments for the colonies Britain had taken over from France and Spain - East and West Florida, Granada and Quebec. In its concluding six paragraphs, addressed to “the several Nations or Tribes of Indians with whom We are connected”, the British sovereign did not purport to impose a system of government on the Indian nations. He recognized them as independent political societies whose friendship his government wished to secure. King George III apologized for the “great Frauds and Abuses (that) have been committed in purchasing Lands of the Indians.” Here he was referring to the practice of his settler subjects purchasing land from Indians who had no authority to sell it. The King promised “to prevent such irregularities for the future” by ordering that “no Private person presume to make such purchases.”
Settlement would be permitted only on Lands purchased by the Crown from Indians “at some public meeting or Assembly” of the Indian people. He also ordered the removal of any of his subjects who had settled on lands that had not been ceded to or purchased by the Crown.

The recognition of the Indian nations’ political independence and ownership of their land pointed in the right direction for an agreement. However, in places the Proclamation used language that was and is unacceptable to Indians. At one point it speaks of the Lands and Territories outside both Quebec or the territory granted to the Hudson’s Bay Company as being reserved for the Indians “under our Sovereignty, Protection and Dominion.” The Indigenous nations might accept a British claim to sovereignty aimed at excluding other European powers from having dealings with them, but not a claim aimed at exercising sovereignty over them. Why should they? They had governed themselves for centuries and had certainly not been conquered by Great Britain. Moreover, the implication that somehow Britain had acquired ownership of their land but was now being decent enough to reserve it for them was arrogant and utterly unacceptable to the Indian nations. And the references to the British acquiring land for settlement though sale or cession made land agreements sound like real estate transactions – a far cry from how Indigenous peoples envisaged sharing country with the newcomers.

The Royal Proclamation of 1763 could not serve as a peace treaty with First Nations. Besides its unacceptable language, it was issued unilaterally by the British monarch thousands of miles away from the territory of the Indigenous nations. With that in mind, Sir William Johnson persuaded leaders of the Algonquin and Nipissing nations
to send messengers with copies of the Royal Proclamation and various wampums to nations around and west of the Great Lakes inviting them to meet with him at Niagara in the summer to consider the terms of peace Britain was offering. For many Indigenous communities Johnson’s invitation was problematic. Generally, they distrusted the British and were upset by the abandonment of gift-giving and departures from established fur-trading protocols. Nonetheless many nations decided to send envoys. In July 1764 canoes began arriving at Niagara. They came from all directions bearing sachems, warriors and chiefs of at least twenty-four nations. One historian describes the meeting as the most widely representative gathering of American Indians nations ever assembled.

The atmosphere at Niagara in July 1764 was tense. Many of the Indian leaders who camped on the west side of the Niagara River were wary of the British. Some had met Sir William Johnson at Fort Detroit three years earlier when he tried to assure them that they had nothing to fear from Britain’s defeat of France – that they could coexist with Britain in le pays d’en haut (the great stretch of North America around the Great Lakes over to the Mississippi) as well as they had with the French. But under General Amherst’s command, and against William Johnson’s urgings, British officials curtailed gift-giving and cut off the supply of ammunition to trading posts. Settlers continued to stream in to unceded land along the Ohio River and its watershed. For his part, Johnson was furious that nations he thought were coming to accept friendship with the Crown had taken up arms against Britain and its colonists. In his account of Aboriginal-Crown relations, Bruce Munro emphasizes that the Covenant Chain forged at Niagara in the summer of 1764 took place in an environment of “war, intrigue, hard-edged and often illicit trading practices, and an array of related conflicts.”
The opening days of the meeting were taken up with diplomatic exchanges and negotiations between Johnson representing the Crown and individual nations. These involved exchanges of prisoners and exchanges of wampum belts. Johnson came loaded with gifts that facilitated a process of reconciliation. But he was very rough on the Senecas, the westernmost and most pro-French of the Iroquois nations, bullying them into giving up land on both sides of the Niagara River. On July 29, Johnson left Fort Niagara on the east side of the Niagara where Haudenosaunee leaders already aligned with Great Britain were encamped to meet several thousand encamped in “Indian territory” on the west side of the river near what is now the town of Niagara-on-the-Lake. There he delivered a long oration and concluded the treaty with the Indian nations with the presentation of a Covenant Chain Belt and in exchange received a Two-Row Wampum.14

The Covenant Chain, showed figures representing twenty-four nations linking arms with the Crown. The two-row wampum drew on many years of First Nations diplomacy with Dutch and British representatives. A leading native American scholar, Robert A. Williams, explains that on the Two-Row wampum, “the two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs, and other ways. The other, a ship, will be for the white people and their laws, their customs, and their ways. We shall each travel the river, side by side, but in our own boat. Neither of us will try to steer the other vessel.”15

That Sir William Johnson’s chose to make peace with native peoples through their diplomatic protocols shows his understanding of their law and practice. But the down
side of this choice of instruments is that the government and people he spoke for did not share his understanding. For the political leaders and officials to whom he was accountable the written word of a legal text was sacrosanct. This has meant that while the Treaty of Niagara did bring about a cessation of hostilities between Indigenous nations and Great Britain, it did not produce an agreement on the principles upon which Great Britain and the Indigenous nations could peacefully co-exist in the same territory.

Two principles were essential conditions of peaceful co-existence for the Indigenous leaders who gathered at Niagara in 1764. The first was their political independence. They were not British subjects. Johnson insisted on this point. He remonstrated with Amherst’s officers who ignored it in their dealings with native people. Writing to a British officer he said, “You may assured that none of the Six Nations or Western Indians ever declared themselves subjects, or will ever consider themselves in that light, while they have any men or open country to retreat to…The very idea of subjection would fill them with horror.” The Indian nations’ willingness to share the British monarch with the British people, as has frequently been pointed out, marked a family relationship not a political relationship of subordination. The native peoples of North America may have sensed that the European powers might have greater numbers and military strength, but that did not for them translate into an obligation to accept European rule. The Pontiac uprising indicated that, whatever the odds, they would fight to the death for their liberty. The whole point of the ship and the canoe taking parallel paths on the two-row wampum was, and is, to insist on the political equality of the peoples they represent.
The second principle was sharing the land. That is the point of showing the ship and canoe proceeding along a shared river. The Indian nations were willing to admit newcomers on to their lands and waters in ways that are mutually beneficial. Working out how to do that would require ongoing agreements, not once and for all land deals in which the newcomers take most of the territory for themselves leaving the original owners with small reserves. Indigenous peoples then and now did not accept that the newcomers’ government had somehow acquired a sovereign power to have the final say of what could be done on native-owned land. Though Sir William Johnson recognized Aboriginal ownership of land and endorsed the policy of keeping settlers off Indian lands until proper treaties were made with the Crown, as a loyal servant of the Crown he most likely accepted the underlying British legal doctrine, evident in the 1763 Royal Proclamation, that Great Britain somehow had acquired an underlying sovereign right over the land owned by the Nations and Tribes which she had never conquered but with whom she was connected.

So our first Confederation at Niagara in 1764, like our second in 1867, had some ambiguity – a lack of full agreement on first principles. In both cases the “s” word, sovereignty, is the root of different understandings. In 1867, Macdonald and his Anglo colleagues did not share with their French Canadian colleagues a common understanding that sovereignty is divided in a federal Canada between the provinces and the central government. At Niagara, a century earlier, Johnson and the government he represented harboured a belief in an underlying Crown sovereignty not over the Indigenous people but over their land and resources, a belief that was not shared by Indigenous peoples. While the underlying disagreement latent in the 1867 Confederation was resolved fairly
quickly through political action of the provinces and decisions of the courts, the gulf between British and settler governments and their Indigenous allies and neighbours quickly widened as the former came to exercise their superior power. It will take over two centuries for conditions to change sufficiently to make it possible for Canada’s relationship with Indigenous peoples to be rebuilt on the principles depicted in the instruments of the Treaty of Niagara.

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The two centuries I refer to are roughly from the early nineteenth century to the late twentieth century. During that long period, British and Canadian settlers pursued a policy of domination aimed at the disappearance of Indigenous peoples. That was the game plan written into John A. Macdonald’s 1857 *Gradual Civilization Act*. After Confederation that plan was pursued with vigour by Canada, her provinces and her territories. The *Indian Act* imposed a totalitarian regime on First Nations, dispossessed and shattered by treaties and policy into tiny reserve communities ruled by agents of the Canadian government. The Métis nation, cheated out of its homeland by government delay in implementing the terms on which it had agreed to join Canada, was militarily crushed. Police rule was imposed on the Inuit people when Ottawa got around to exercising the sovereignty over their land that Britain purported to transfer to Canada.

As with all of the projects of European imperialism, the policy of assimilation was framed as having a positive moral purpose, grounded in the Europeans’ sense of their own superiority – to save the native peoples from themselves by making those who were capable, as much as possible like the Europeans, in belief, culture and technology.
This long period of colonial domination cannot just be blotted out of our shared history. Indigenous and non-Indigenous Canadians cannot move forward together in a relationship based on consent and mutual respect, unless there is some understanding among non-Indigenous people of what was fundamentally wrong with that relationship during the colonial period. There is no hope for “reconciliation”, if the prevailing attitude among Canadians is “Too bad we didn’t get the job done. We wouldn’t have an Aboriginal problem if those peoples had just disappeared by blending in with us.” The recently concluded Truth and Reconciliation Commission is an important step in getting to a shared understanding of the practical and moral failings of the period of colonial domination.

The period of settler colonialism has not only been long, but it has also been transformative. For Aboriginal peoples there is no going back to the circumstances of 1764. Then they were free peoples, and the dominant peoples in most of the territory that we now call Canada. Now they are nations or peoples within a larges federal nation-state, constituting a small minority of the total population. The kind of decolonisation that occurred in the Third World – the exodus of the colonizers – is not an option for what George Manuel called the Fourth World, the colonized native peoples within the First World.\(^1\) The settlers, as Chief Justice Lamer, famously said, are “here to stay.” The transformation has entailed much more than a change in the material circumstances of Aboriginal peoples. Through education, much of it brutally and insensitively imposed, Aboriginal peoples in Canada have learned how to advance their interests in the political space of the Canadian majority. Political lobbying, court actions, use of mass media, civil
disobedience, and participation in the institutions of the dominant society have replaced warfare as the means of asserting their rights.

Change on the settler side has also been much more than material. The ideological change that is most relevant for the relationship with Aboriginal peoples is a decline in racism. This change came relatively recently and is by no means complete. A lack of respect for Aboriginal peoples and the assumption that their only viable future was to give up their historic identities and treaty rights, and become just ordinary garden variety Canadians was alive and well among Canada’s governing elites as recently as 1969 when Trudeau and Chrétien put forward their White Paper in 1969.\textsuperscript{18} Much has changed since then. Aboriginal peoples – First Nations, Inuit and Métis – have succeeded in having their rights, including treaty rights, recognized in Canada’s Constitution. The country’s highest court has rendered fairly liberal interpretations of those rights. Progress has been made towards self-government, particularly for three of the four main Inuit communities. A formal apology for the dreadful harm done to Aboriginal peoples through the residential school program has been made in the federal Parliament. The apology led to a Truth and Reconciliation Commission that has recommended an extensive program of further reforms, including meeting Canada’s international obligations set out in the United Nations Declaration of the Rights of Indigenous Peoples. The most recently elected federal government is committed to implementing the TRC recommendations.

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The question now is: can the principles on which the Indian nations made treaty with the Crown in 1764 be retrieved as the foundation for re-building a relationship today that could amount to Canada’s third Confederation? This will require federal, provincial
and territorial governments, and the electorates to whom they are accountable, to emulate Sir William Johnson and respect treaty-making as the appropriate constitutional instrument for reforming relations with Indigenous peoples. And it will require First Nations to recover their capacity for confederal political action that transcends local loyalties.

The first principle agreed to by the Crown and First Nations at Nragara in 1764 was the political independence of Indigenous peoples. Since the frustrating first ministers constitutional conferences of the mid-1980s, we have come a long way in recognizing Aboriginal peoples’ inherent right to self-government. Federal, provincial and territorial governments agreed to including that right in the Charlottetown Accord, albeit with the caveat that the right must be exercised within Canada. Although the Charlottetown Accord was defeated in the October, 1992 referendum, the Aboriginal sections of the Accord were not a cause of that defeat. A further step towards decolonization came in 2012 when Canada agreed to commit to the United Nations Declaration of the Rights of Indigenous peoples. In doing so, its governments accepted that Indigenous peoples in Canada have “the right to self-determination” in the Declaration’s Article 3, and more specifically “the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions…” in Article 5. The Declaration’s only mention of sovereignty is in its final clause, Article 46, which stipulates that nothing in the Declaration is to impair “the territorial integrity and political unity of sovereign and independent States.” This kind of sovereignty is what member states of the United Nations insist upon in their dealings with one another. It is not a
claim to govern Indigenous peoples or nations within their territories, otherwise it would negate Articles 3 and 5.

The Supreme Court of Canada in some of its most progressive decisions on Aboriginal rights continues to adhere to the common law doctrine that the “radical” title and sovereignty of the Crown underlie the recognition of Aboriginal rights. At the very end of Delgamuukw, Chief Justice Lamer wrote that “the basic purpose” of recognizing Aboriginal rights in section 35 of the Constitution Act, 1982, is “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.” More recently in Tsilhqot’in, Chief Justice McLachlin, writing for the Court, softened Lamer’s dictum by saying that the reconciliation to be achieved through section 35 is “between the group and the broader society.” But, the Court still retains the position that on land where native title is recognized under Canadian law, the Government of Canada (perhaps also provincial governments) could justifiably impose its will with respect to developments on that land, for a “compelling and substantial objective.” The threshold for imposing non-Indigenous government policy on land recognized to be under Aboriginal ownership has been raised since Delgamuukw, but the belief in the justice of asserting Crown sovereignty over an Aboriginal nation or people and its land is still there.

Canada can and must outgrow the imperial premises embedded in common law recognition of native title. For the Government of Canada to insist on having an overriding veto power on lands that are recognized as Aboriginal is to say that Aboriginal peoples cannot be trusted to do the right thing with their land. Such a lack of trust is incompatible with retrieving the kind of relationship Sir William Johnson and native leaders were trying to establish at Niagara in 1764. If Aboriginal leaders accept the caveat
in Article 46 of the UN Declaration securing Canada’s territorial integrity, and in addition the authority of Canada’s courts to settle claims about the boundaries of their ancestral lands, that should be enough.

The practical obstacles to retrieving Indigenous peoples’ right to govern their societies and their lands are likely to be greater than legal or ideological issues. Canada’s colonialist policy fractured many of the historic Indigenous nations into small, reserve communities that cannot take on the responsibility of delivering the governmental services that Aboriginal people need and expect today. Putting governmentally viable Indigenous societies together again can only be done by Aboriginal peoples themselves. Many are doing that through the formation of tribal, treaty and regional councils and the rebuilding of historic confederacies in various parts of the country.

The other practical issue is adequately resourcing Aboriginal polities. First Nation leaders were wise not to accept the Harper government’s proposal to hand over responsibility for education to them without a commitment to provide adequate funding. Aboriginal self-government will not be advanced by deliberate underfunding. Part of the funding needed can come from revenues derived from the economic use of their lands. For treaty peoples, the lands must encompass all the so-called surrendered lands, not just the postage-stamp reserves.

Here we see how the principle of political autonomy is intertwined with that other principle incorporated in the wampums at Niagara – sharing the country’s bounty. A productive homeland is essential for Aboriginal peoples for both material and spiritual reasons. The Supreme Court decision in *Tsilhqot’in* provides a foundation for First Nations that have not entered into treaties to secure effective economic access to their
ancestral lands. The same possibility is open to First Nations that are parties to historic treaties through a process of treaty renovation aimed at applying treaties in a manner portrayed by the tw-row wampum - sharing country in a respectful and mutually beneficial way. The four major Inuit communities in the country have largely done that – although they continue to encounter difficulty in getting Canada to keep its promises. A homeland for the Métis Nation will most likely be a linkage of lands on which Métis settlements exist in various provinces and the NWT. The sharing of the bounty of these homelands will often be effected through private sector partnerships. Canadian capitalists and business-page columnists will have to accept that worthwhile economic development need not always meet the standard of profit maximization.

So, I believe that the ingredients are in place for building a third Confederation that includes Canada’s Aboriginal peoples based on principles that all Canadians can share, principles that were present, in embryo, at Niagara in 1964. Of course, this third Confederation must be realized through the institutions and practices of the day – one of which is federalism. It was federalism that made Confederation in 1867 acceptable to leaders of French Canada and the majority of French Canadians. It did this by establishing a province in which French Canadians would be a majority with sufficient power to protect and enhance the key components of their distinct culture. I am not suggesting an Aboriginal province. Aboriginal Canada is far too diverse in its allegiances and practices for that. But the basic federal principle of combining self-rule with shared rule does mark the path along which Aboriginal peoples relations with Canada are evolving. Self-rule for First Nations, the Métis nation and the Inuit must be accompanied by participation in the institutions of federal, provincial and territorial government. That
has been happening on a personal basis, with members of Aboriginal communities participating in growing numbers in Parliament and legislative assemblies, the public service and the courts. Whether this is enough to ensure that Aboriginal interests and perspectives are adequately expressed in governing the country - the shared river in the wampum belts - remains to be seen. The idea of a Canadian Aboriginal Parliament along the lines of the Sami parliaments in Scandinavian countries was recommended by the Royal Commission on Aboriginal Peoples. An Aboriginal Parliament would be a third house of Parliament whose main function would be to provide advice to the House of Commons and Senate on legislation and policy issues relating to Aboriginal peoples. Aboriginal peoples have never shown much interest in such an institution. Given the frustration they continue to experience in communicating with the Government of Canada, it may time that they gave this proposal a closer look.

As for process, I am very doubtful about the possibility or desirability of a big, magic moment, in which a comprehensive agreement is reached with all of Canada’s Aboriginal peoples that could amount to a third Confederation. As I understand the process at Niagara in 1764, it was mainly a matter of each nation making peace and exchanging wampums with the Crown, not a once-and-forever agreement but as a relationship to be periodically reviewed and renewed.

The federal, provincial and territorial governments (that have taken over from George III) might issue a proclamation similar to King George’s setting out their commitments in reforming relations with Aboriginal peoples. Many, perhaps all, of their commitments cover matters contained in the Truth and Reconciliation’s recommendations and the UN Declaration. It would help for these commitments,
especially those relating to land and self-government to be set out in some detail with some timelines and an accountability process attached.

Canada@150 will be an occasion for First Nations, the Métis Nation and the Inuit peoples to test the willingness of Canadian governments to honour their commitments. So far, the new Trudeau government has dealt only with the relatively easy stuff. If it can show an appetite for dealing with the hard stuff – land and self-government – that was on the table at the first confederation in 1764, a third confederation might get under way in this year of celebrating the 1867 confederation.

2 Christopher Moore, Three Weeks in Quebec City, Toronto: Allen Lane, 176-8.
3 Constitution Act, 1867, s.91(24).
4 See Robert S. Allen, His Majesty’s Indian Allies: British Indian Policy in Defence of Canada, 1774-1815, Toronto: Dundurn.
5 Royal Commission on Aboriginal Peoples, Ottawa: Canada Communications Group, 1996, Vol. I, 145
10 The Royal Proclamation of 1763 is the first document in Canada 125: Constitutions 1763-1982, Ottawa; Canada Communication 1992.
12 Donald Braider, The Niagra,
14 For a description of these instruments, see Nathan Tidridge, ibid., 60-66.
15 Quoted in John Borrows, “Wampum at Niagara,” 162.
20 The UN Declaration is available online, and is Appendix 1, in James (Sake’j) Youngblood Henderson, Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition, Saskatoon: Purich, 2008.
23 Ibid., at paragraph 67.