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Bryan Schwartz takes a close look at aboriginal self-government

EARLY in July, a number of provincial and aboriginal leaders, plus Joe Clark, seemed to agree on the outline of a constitutional package. It would recognize, as part of the Supreme Law of Canada, the "inherent right of aboriginal peoples to self-government within Canada."

Meaning what?

Federal and provincial governments will sit down with aboriginal groups and try to negotiate self government agreements suited to their needs. But the Clark Deal does not reflect any real meeting of minds, let alone final settlement. The parties will often approach local-level negotiations with different ideas of what "self-government" means; and when political talks stall, the courts may be asked to provide direction.

You might think that self-government for aboriginal people would apply only to reserves. Think again. We could have aboriginal schools and school boards in the cities. But do we want to? The Constitution already balkanizes school systems in many provinces. In some places, there may already be four separate school boards to accommodate the English-French split and Protestant-Catholic split. The fragmentation of the school system may waste scarce resources. It would leave fewer opportunities for children of different backgrounds to mix and learn to appreciate each other. Separate schools are likely to encourage distinctive residential patterns; do we want Canadian cities to be even more geographically divided along ethnic lines?

Decisions about the fundamental structuring of our cities should be made through democratic consultation, and should be open to revision and reconsideration. The Clark Deal creates the possibility that the courts will declare that separate aboriginal schools are a constitutional right, which cannot be denied by any local community with a substantial aboriginal population. There is no reason to expect the courts to resist aboriginal demands in the name of political equality or social integration. The Supreme Court of Canada has already shown itself to be an eager supporter of expanding the separate school rights of Roman Catholics in Ontario and minority language groups across Canada.

IN some respects, there should be more aboriginal self-government. We should enthusiastically welcome schemes such as Nunavut, which will create a territory predominantly populated by the Inuit, but in which all residents have equal rights. The exercise of more authority by reserve-based governments may improve the morale and self-confidence of the local community, and produce programs that are better adapted to its needs. But our federal system as a whole wisely, and in some detail, establishes a balance between the virtue of local self-government and the protection of the interest of wider communities. We should have at least some broad idea of the balance that will be

established, rather than leaving everything up to future negotiations - and potentially, future acrimony, litigation and court-imposed "solutions."

To what extent will aboriginal communities have the right to detach themselves from the regulatory framework that binds other Canadians? Will the Criminal Code still apply? Environmental regulations? What about provincial statutes, such as those dealing with curriculum standards or child protection? One reason for asking this question is a legitimate concern for the interests of non-aboriginals. But the question that is more overlooked, I think, is the protection of local individuals and minorities from their own aboriginal governments.

My point is not that aboriginal people are any more prone to the abuse of power than anyone else. The point is that a dissident individual is vulnerable in any small community. In *The Federalist*, James Madison made the case that size was a crucial factor to the survival of democracy in the United States. In a small community, it is easy for one local faction to take over. In some small communities – including many reserves – the local government controls not only the political system, but most of the local economy. The risk of opposing the powers-that-be is considerable.

I am glad that the province of Manitoba is looking over the shoulder of the City of Winnipeg, and that the federal government has some ability to challenge the provincial government. Conversely, local self government is a useful limit on the arrogance and distance of central governments. Are the residents of aboriginal communities going to benefit from the checking-and-balancing effect of federalism?

We should stop seeing the self-government issue as simply a power struggle between the leaders of two competing groups: aboriginal peoples and the rest of us. We have lost sight of one of the most important aims of constitution-making: protecting the individual and building a nation.

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