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RESEARCH ARTICLE/ÉTUDE ORIGINALE

Decolonizing Democratic Theory: A Democratic Case for Unelected Indigenous Governments

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Abstract

Many Indigenous nations in the settler state of Canada have two governments: elective band councils and a customary leadership not subject to regular elections. When these groups struggle for authority, outsiders often side with the band councils on the assumption that elections are necessary for a government to be democratic. But this assumption reflects an unwarranted electoral bias. In fact, non-elective customary governments can be more democratic than elected band councils. As we show, customary governments sometimes draw wider participation from Indigenous communities, and they can create responsiveness through non-electoral mechanisms that promote voice and exit. This gives Canada a democratic reason to promote Indigenous democratic innovation through policy and legal reforms that facilitate state recognition of customary governments.

Résumé

De nombreuses nations autochtones de l'État colonisateur du Canada ont deux gouvernements : des conseils de bande élus et un leadership coutumier qui n'est pas soumis à des élections régulières. Lorsque ces groupes se disputent le pouvoir, des observateurs externes se rangent souvent du côté des conseils de bande, partant du principe que les élections sont nécessaires pour qu'un gouvernement soit démocratique. Mais cette hypothèse reflète un parti pris électoral injustifié. En fait, les gouvernements coutumiers non élus peuvent être plus démocratiques que les conseils de bande élus. Comme nous le montrons, les gouvernements coutumiers suscitent parfois une plus large participation des communautés autochtones et peuvent favoriser une réactivité politique grâce à des mécanismes non électoraux qui favorisent la prise de parole et la sortie. Cela donne au Canada une raison démocratique de promouvoir l'innovation démocratique autochtone par le biais de réformes politiques et juridiques qui facilitent la reconnaissance par l'État des gouvernements coutumiers.

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In 2020, on the eve of the global pandemic, Canada was "shut down" by a mass protest movement that blockaded trains, obstructed ports and occupied intersections in major cities. #ShutdownCanada was a national solidarity movement in support with a group of Indigenous land defenders, who were acting under the authority of the traditional Wet'suwet'en government—the Hereditary Chiefs[1]—to block the construction of Coastal GasLink's natural gas pipeline. The conflict between the Chiefs and Coastal GasLink is longstanding (McCreary, 2024), but the immediate context for the solidarity protests was an escalation in state coercion. In January, the Royal Canadian Mounted Police deployed dozens of officers to enforce an injunction against the land defenders. In court proceedings leading to the injunction, the Hereditary Chiefs contended that they were acting as the community's representatives to uphold common law Aboriginal Rights and Wet'suwet'en Law. The judge rejected this claim, instead characterizing their Chief's actions as "self help" (*Coastal GasLink Pipeline Ltd. v. Huson* 2019).

A central focus in media coverage of the episode was the apparent conflict within the Wet'suwet'en community (APTN News, 2020). In addition to the Hereditary Chiefs, the Wet'suwet'en are represented by elected Band Councils, headed by chiefs, who had entered into Impact Benefit Agreements with Coastal Gaslink.[2] This situation led to a widespread view that one of the issues at stake was a conflict between nondemocratic and democratic representatives. The *National Post* editorial board characterized the situation as a conflict between a small, activist minority and the legitimate will of the community's elected representatives (*National Post* 2021). Others went further, describing the Hereditary Chiefs as "unelected despots" invoking the "divine right of kings" to rule unaccountably over their people (Solomon, 2020).[3] Meanwhile, supporters of the Hereditary Chiefs tended to steer away from discussions of democracy, preferring to make their case in the id of Aboriginal Rights, self determination and environmental protection.

The debates surrounding the Wet'suwet'en conflict reveal a common defect in popular discourses of democracy. Implicitly, many commentators assumed that democracy requires elections and that unelected leaders are necessarily undemocratic. This attitude, which we term "electoral bias," is deeply rooted in Canadian institutions. It helped motivate Canadian policies that sought to replace traditional Indigenous governments with electoral governments between the 1860s and the 1960s.[4] Today, electoral bias is manifested in Canada's policy and legal frameworks for Indigenous government, which make it exceptionally difficult for Indigenous communities to adopt non-electoral leadership structures and tend to favour elected over non-elected representatives (such as the Wet'suwet'en Hereditary Chiefs) in contexts where the two are in conflict.[5] These laws and policies deny Indigenous peoples an important element of sovereignty and democratic self-determination—the capacity to choose their own constitutional order (Stilz, 2019).

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This article seeks to motivate reforms to Canadian public policy by rebutting the assumption that elections are necessary for democracy. We argue that Indigenous customary governance can be democratic even when it is not electoral. So, while we acknowledge that democrats often have good reasons for valuing elections and specifically the principle of one-person, one-vote (Beitz, 1989; Christiano, 2008; Waldron, 1999), we contend that, in the context of Indigenous communities in Canada, non-elective systems of representation can often achieve the same democratic goals as electoral systems—and sometimes do so better. Democrats therefore have strong reasons to support reforms, not only in the name of democratic self-determination but also on the basis of the democratic merits of non-electoral Indigenous regimes.

Our argument rests on a familiar conception of democracy as self-rule on terms of political equality. The equation of democracy with popular self-rule underpins most democratic theory and is implied etymologically in the conjunction of *demos* (the people) and *kratos* (power, or empowerment).[6] There is also broad agreement that political equality is a crucial aspect of democratic politics, though there is substantial disagreement about what exactly this might mean (Beitz, 1989). Some argue that citizens should have equal power over outcomes (Pateman, 1970) or that their preferences should be accorded equal weight by representatives (Dahl, 1956). For present purposes, we follow Daniel Hutton Ferris (2024) and Jane Mansbridge (2014: 246, n. 1), who argue that "representative systems should be judged by the criteria of whether they provide equal opportunities for the expression of diverse perspectives on the common good and equal power when interests conflict." This is a demanding regulative ideal that is far from being realized in large polities usually described as democratic, and its full realization is arguably in tension with any practice of leadership or representation, which distributes opportunities for political influence unevenly. Yet, the greater equalization of power and opportunities for influence within processes of collective self-rule is a crucial part of what people tend to mean when they call for greater democracy.

Elections sometimes can both embody the ideal of egalitarian self-rule and help us practically approximate it better than non-electoral alternatives. They create uniquely inclusive moments of participation in decision-making, and in so doing *express* the democratic value of egalitarian participation in rule (Booth Chapman, 2022). Elections can also ease the tension between leadership and political equality by encouraging officials to be *responsive* to citizens. Following Albert Hirschman (1970), we see this as occurring through two principle mechanisms: electoral vulnerability might incline representatives to listen to citizens "voice" and to take measures to reduce the likelihood of their "exit" or withdrawal of support.

In the context of Indigenous communities in Canada, customary governance may promote and embody egalitarian self-rule better than electoral alternatives. Because it was not imposed by a foreign power, customary governance can often better focalize and express the shared agency required for self-rule (Luoma, 2022). This gives democrats a reason to support non-electoral governance, even if the resulting system is somewhat less responsive to ordinary citizens than elections would be. But crucially, customary governance is not necessarily less responsive, because it has distinctive mechanisms for incentivizing and securing responsiveness through both exit and voice. To demonstrate this, we offer a series of case studies that contrast electoral

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institutions with specific Indigenous non-electoral institutions, especially those of the Anishinabek, the Wet'suwet'en and the Haudenosaunee. Each comparison is favourable to the Indigenous institution and demonstrates both the democratic *virtues* of non-electoral Indigenous governments and the democratic *deficits* of elected governments in the colonial context.

From this theoretical argument, we draw a policy conclusion: The Canadian state should modify its laws and policies to better enable Indigenous communities to institutionalize customary, non-electoral forms of government. Specifically, Canada should make it easier for existing customary institutions such as the Wet'suwet'en Hereditary Chiefs (which operate in parallel to state-sanctioned electoral institution) to be formally recognized, and it should empower Indigenous governments to modify their electoral structures to non-electoral customary forms. We describe the necessary reforms below.

These arguments are directed toward the Canadian state, not to any Indigenous community. We recognize that some Indigenous communities are deeply divided by disputes between customary and electoral leadership, while others are satisfied with their electoral system. Moreover, in cases where change is desired, the appropriate nature and pace of change will depend on contextual factors beyond the scope of our theoretical argument. We aim only to show that Canada should stop impeding Indigenous communities who do desire change. In this regard, our objective is modest and reformist. We do not advance a comprehensive vision for Indigenous sovereignty or self-determination. Instead, we focus on one particular aspect of Canadian state practice which is particularly ill-justified—even hypocritical—and in need of reform.

While our focus is on Indigenous politics in Canada, our arguments are relevant in many other contexts where election-centrism might be questionable. Most obviously, other places have histories of tension between Indigenous institutions and settler-colonial elections that sometimes parallel the Canadian experience (Murphy, 2008). Election-centrism has also informed democracy promotion initiatives in places such as Iraq (Kopstein, 2006). Finally, the conflation of democracy with elections provides an organizing framework for many media narratives and popular understandings of international politics that can be unhelpfully simplistic.

1. Indigenous Democracy and Political Theory

Our argument engages and advances three bodies of political theory: on Indigenous political thought, democratic theory and comparative political theory. Scholarship on Indigenous political thought, although still limited, has grown in recent years, and scholars are increasingly taking Indigenous political and legal traditions seriously "on their own terms" (Turner, 2006; see Borrows, 2010; Burkhart, 2019a; Mills, 2016; Napoleon, 2022). There are significant obstacles to productive engagement between Indigenous thought and mainstream political theory (Allard-Tremblay, 2021; Allard-Tremblay and Coburn, 2023; Burkhart, 2019b; Rollo, 2018; Turner, 2006, 2020). Despite this, a number of scholars have staged direct engagements between Indigenous political thought and democratic theory, focusing inter alia on issues of territoriality (Coburn and Moore, 2021; Luoma, 2022),

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citizenship (Borrows, 2002; M. S. Williams, 2004), deliberation (Rollo, 2017; Tully, 2020), authority (Eisenberg, 2022) and autonomy (Allard-Tremblay, 2022). We advance this scholarship through a specific exploration of democratic merits of non-electoral Indigenous practices of representation.

In this way, our article fills what remains a significant lacuna in the literature on democratic theory and representation, which, despite a growing interest in alternatives to elections, has largely failed to engage *Indigenous* alternatives. The conventional view in democratic theory remains that giving people equally weighted votes is necessary for fair and respectful decisions in circumstances of disagreement.[7] Yet, theorists increasingly highlight the potentially undemocratic features of electoral politics and debate whether randomly selecting legislators might be more democratic (Guerrero, 2024; Hutton Ferris, 2023). Theorists of representation have also begun to explore the democratic potentials of the *representative claims* and the actions of various non-elected leaders (Montanaro, 2017; Saward, 2010). These and other debates can be enriched by considering the practices of customary governance discussed below and our argument that these can be understood as potentially highly democratic *representative systems* (Hutton Ferris, 2024; Rey, 2023).

Finally, this article raises methodological issues that are salient to debates in decolonial and comparative political theory. The argument's structure is such that we, as non-Indigenous political theorists, must evaluate the democratic merits of Indigenous political practices. This worries us because adopting an evaluative stance positions us as guardians and gatekeepers of a normative standard, "democracy," which is derived largely from European intellectual traditions.[8] Even if the results come out favourably for customary Indigenous governance, it is reasonable to wonder whether holding "their" practices to "our" standards is a salutary exercise. Does it not risk distorting Indigenous practices? Is it not arrogant to presume the validity of Eurocentric categories? Would it not be better to adopt a less parochial, more reflexive approach—one that seeks to destabilize Western notions of democracy through an encounter with Indigenous thought? Challenges such as these have motivated recent movements to decolonize and deparochialize political theory, especially as reflected in the subfield of comparative political theory (Dallmayr, 2004; Euben, 2000; Getachew and Mantena, 2021; Godrej, 2011; Jenco, 2007; Sherwin, 2022; M. S. Williams, 2020; M. S. Williams and Warren, 2014). We do not take them lightly.

We do, however, aver that the literature's focus on destabilizing "Western" conceptions can lead it to understate the intellectual and decolonial value of evaluative approaches. An evaluative approach such as ours speaks directly to powerful institutions by shrinking the gap between unfamiliar Indigenous practices and familiar democratic ideals. Many Indigenous intellectuals have recognized this and have correspondingly defended their customary practices as *consensus* or *intensive* or *participatory* democracy (Kellogg, 2015; Napoleon, 2022; Notes, 1978; Temin, 2021; Palmater, 2020; Paul, 2022; Senate, 2010). These interventions illustrate how evaluative approaches can be valuable in Indigenous struggles. We would add that evaluative approaches can also benefit the long-term project of de-parochializing democratic theory (M. S. Williams, 2020), even if they seem to reinforce Eurocentrism in the short run. For one thing, if an evaluative approach

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succeeds in motivating policy reforms to create more vibrant Indigenous democracies, this can directly benefit comparatively minded scholars by supporting new interlocutors and additional cases. Moreover, a long-term practice of theoretical comparative engagement need not accept evaluation as its only or final approach. It can instead be a prelude or complement to further dialogues, which might (for instance) decentre democracy in favour of Indigenous concepts such as Haudenosaunee *Sken:nen* (peace) or Anishinaabe *Mino-Bimaadiziwin* (living well).

2. Indigenous Government in Canada

The landscape of Indigenous governance in Canada is complex. Prior to colonization, Indigenous peoples in Canada organized themselves in a range of clans, nations, confederacies and coalitions, adopting diverse leadership structures and modes of government. Some of these communities were exceptionally egalitarian, even to the point of lacking permanent leadership roles. Others were hierarchical, with layers of status separating the highest leaders from their subordinates. To our knowledge, none relied on the periodic elections of leaders or representatives. These pre-colonial institutions and the cultures they nourished continue to inform Indigenous peoples' identities, worldviews, laws and political traditions, even as they have been assaulted and undermined by generations of settler colonialism.

Today, the Canadian constitution recognizes three categories of Aboriginal peoples: Indians, Inuit and Métis (Canada, 1982). The term "Indian" generally denotes individuals who are registered as Indians under the Indian Act and thus have Indian Status, although the term can also apply to "non-status Indians"—persons who are descended from individuals with Indian status who were stripped of their status by various provisions of the Indian Act. Under the Indian Act, there are more than 600 "Indian Bands." Indigenous peoples have long objected to the term "Indian," and in modern usage, the term "Indian Band" has been replaced by "First Nation," and "Indian" by "First Nation person." But this usage can be misleading if it is taken to imply that the Indian Band/First Nation is politically continuous with a pre-colonial Indigenous polity. In fact, most First Nations are administrative units that were created by the Indian Department's[9] policies of divide and conquer during the nineteenth and early twentieth centuries, and their boundaries may or may not correspond to those of any pre-existing Indigenous polity.

This essay focuses primarily on the experiences of First Nations peoples, and some of our arguments will not apply to the Métis or Inuit. More specifically, we focus on the Anishinaabe, Wet'suwet'en and Haudenosaunee peoples. These peoples have very different economic, philosophical and governance traditions and experiences of colonization. By discussing all three, we seek to avoid pan-Indigenous generalization while nevertheless showing that our arguments are reasonably robust (Kirshner and Spinner-Halev, 2024).

Imperial and later settler colonial governments have persistently sought to weaken and subordinate traditional political orders to strengthen their own claims to territorial sovereignty. Since the late nineteenth century, this has involved incorporating independent Indigenous nations as part of the settler state through the Indian Act (of 1876), which divided Indigenous polities into Indian Bands that

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were located on reserves and placed under the authority of the Indian Department and the colonial executive. A further barrage of assimilationist policies in the late nineteenth century then sought to completely destroy Indigenous cultures and political orders and refashion Indigenous people into "ordinary" British subjects, including by introducing mandatory residential schooling and banning customary governance practices such as the potlatch.

Elective leadership emerged as a part of this overall process of sovereignty-assertion. Since 1869, Canada has claimed the authority to impose elections on Indigenous communities and has done so on groups, including the Haudenosaunee, who resisted the imposition of the Indian Act, in an attempt to break the power of traditional leaders (Titley, 1992: 110–28).[10] A 1899 amendment to the Indian Act made elections compulsory for all communities east of Ontario (Walls, 2010).[11] Elections were then introduced across much of the West after the Second World War in an attempt to shore up the legitimacy of Band Councils, devolve more administration to them and, in this way, cut costs for the Canadian state (Hawthorn and Canada: Indian Affairs Branch, 1966).[12]

The customary leadership structures that survived these changes now face new kinds of challenges, which are connected to electoral bias. Since the 1990s the settler state has been subject to judicial mandates to consult with Indigenous communities. Electoral bias has coloured the representatives they have seen as legitimate and sought to engage with, which has strengthened the status and practical importance of elected Band Councils.

An observer might suppose that Canada's policies of "self-government"—which have been rhetorically central to the federal agenda since the 1970s (Abele and Prince, 2006; Nichols, 2019; Weaver, 1981)—would have expanded the scope for customary governance, but this is mostly not the case. Instead, self-government has been pursued *through* Indian Bands and Band Councils, reinforcing the marginalization of pre-colonial polities and governance structures.[13] In most cases, policies that the federal government describes as "self-government" involve extending the authority of Indian Act Bands (First Nations). The most impactful instruments of self-government are Self Government Agreements. These agreements create *sui generis* institutions based on multilateral negotiations with Indigenous, federal and provincial/territorial governments. As a negotiated mechanism, the agreements theoretically allow for tremendous innovation. In practice, however, their scope is dictated by federal and provincial/territorial negotiating mandates, which permit greater local autonomy but require significant institutional continuity. Existing agreements dissolve one or more Indian Bands[14] and replace them with new institutions that inherit all Band assets and exercise jurisdiction described by the agreement rather than the Indian Act.

The close connection between self-government policies and Indian Bands has generated significant criticism from Indigenous advocates, particularly those associated with the resurgence movement. Resurgence scholars see Canada inappropriately committed to propping up colonially imposed institutions (G. R. Alfred, 2005; Coulthard, 2014; Diabo, 2017; Simpson, 2011). Advocates of resurgence instead favour the revivification of Indigenous governance traditions and Indigenous law (Coulthard, 2014; Simpson, 2017; Borrows, 2002; Borrows and Tully, 2018; Stark et al., 2023). Many resurgence initiatives, including the Unist'ot'en Camp

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at the heart of the Wet'suwet'en/Coastal Gaslink conflict, are primarily focused on rebuilding and revivifying Indigenous legal, political, cultural and economic traditions to create the foundation for subsequent engagement with the state and settler society (Coulthard, 2014; Elliott, 2018; McCreary, 2024). In this sense, resurgence is continuous with the unbroken history of Indigenous peoples fighting to preserve their distinctive ways of life (Simpson, 2017).

One consequence of the history surveyed above is that, although vast majority of First Nations communities in Canada use periodic elections to select their leaders, there is considerable variation in how elections are institutionalized (Table 1). According to Indigenous Services Canada, in 2023, 136 First Nations followed election procedures outlined in the Indian Act. These procedures are particularly constraining, as they mandate biennial elections under close federal supervision. Indigenous criticisms of these arrangements (Senate, 2010) led to the First Nations Election Act, 2014 (J. Canada, 2024), which established an alternative regime with four-year terms and an independent oversight process. In total, 80 First Nations have opted into this system. Another 366 First Nations are classified as following *custom codes*, of which there are two varieties: 175 First Nations once adhered to Indian Act elections and have used the Conversion to Community Election System Policy (I. S. Canada, 2015), introduced in 1988, to draft their own election code, subject to approval by the federal government; the other 191 First Nations (almost all in western Canada) have never formally adhered to Indian Act election rules.[15] No centralized data on the latter group exist, and more research is needed. Generally speaking, these communities appear to operate according to electoral procedures that have either evolved organically from quasi-electoral methods introduced by Indian Agents or were established by the Band in the twentieth century without recourse to Indian Act procedures. A small minority of "always custom" First Nations do not rely on periodic leadership elections.[16] Finally, 43 First Nations have negotiated 22 "Self Government Agreements" that have created a variety of governance structures (Alcantara and Whitfield, 2010). No Self Government negotiation has yet produced a non-electoral regime,[17] although some establish non-electoral advisory bodies,[18] and others structure elections according to traditional clan divisions.[19] The Self Government that has gone the furthest in this direction is the Ka:'yu:'k't'h'/Che:k'tles7et'h' government, which has established a legislative council in which four seats out of nine seats are directly appointed by the Ha'wiih Advisory Council, which itself operates under Maa'nulth law (Plummer, 2025).

Table 1. Indigenous Leadership Selection in 2023[20]

Leadership selection structure	Number of First Nations in 2023
Indian Act elections	136
First Nations Election Act	80
"Custom" (always "custom")	191
"Custom" (conversion to community election system)	175
Self Government Agreement	43 (22 agreements)

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The relationship between traditional and electoral practices varies widely across First Nations communities, as one might expect given the range of historical trajectories. Some communities, such as the Mississauga at Credit River, shifted their customary approach to an electoral one as early as the 1830s, well before Canada required it (Smith, 2013; Walters, 1998). For other communities, including the Wet'suwet'en, the two institutions exist in parallel and have long histories of cooperation and conflict. Other communities have attempted to fuse the institutions by electing traditional leaders or by giving the Band Council a mandate to lead the transition to customary self-government, as Kahanawá:ke did in 1982 (G. R. Alfred, 1995: 136). In many cases, state-mandated electoral institutions have been adapted to reflect Indigenous law, institutions and cultures. For example, the Anishinabek community of Mishkeegogamang has creatively re-fashioned its elections to suit Anishinaabe principles (Sieciechowicz, 2012). The leadup to elections involves iterative consultations between different families to establish the key issues facing the community and the "front-runners" to take office. On voting day, the outcome has been predetermined by this deliberative process; the drama lies in tacitly coordinating the votes to ensure that the victory margins are slim, in accordance with strongly egalitarian norms that insist the leader is not "above" the people.

3. Collective Self-Government and Shared Agency

Democracy is an exercise in collective self-rule and, as such, requires governance institutions that both *realize* and *express* our shared agency. Elections can sometimes help realize shared agency by making governance more inclusive (see, for example, Schattschneider, 1960), and they can sometimes express shared agency by sending to citizens a signal that they are expected and able to participate in rule together (Booth Chapman, 2022). But some Indigenous people do not see electoral institutions as an appropriate vehicle for their shared agency and participation in rule—and this is reasonable, considering the colonial legacies they embody. When many Indigenous citizens reasonably refuse to participate in elections, customary governments may serve as more appropriate vehicles for collective self-rule.

Philosophers have sometimes been wary of strong holistic conceptions of shared (or collective, or group) agency, which may seem to imply the existence of macrosubjects with intentions and cognitions that are irreducible to those of individuals. Yet, we do sometimes think of ourselves as acting together, and very weak or individualistic accounts of group agency that see it merely as a matter of mutual co-ordination cannot distinguish acting *together* (for example, walking together) from acting *alongside* (for example, walking in parallel without bumping into each other). Over the last few decades, Michael Bratman has developed a "planning conception" of shared agency that steers a middle course between overly strong and overly weak accounts (Bratman, 2013). To oversimplify somewhat, Bratman's account suggests that shared agency occurs when individuals jointly intend to act together and adjust their plans accordingly in response to each other (see Bratman, 2013, chap. 4). Emilee Chapman shows that this conception can help us talk about democratic self-rule without making implausible claims about macrosocial subjects with intentions and mental states (Booth Chapman, 2022: 199–205). Democratic self-rule occurs when each member of a group intends that the

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group rules themselves collectively and when they adjust their plans reciprocally on the basis of the shared intention. Self-rule therefore depends on the existence of appropriate "participatory intentions" (Kutz, 2000) across most—ideally all—of the community: a widespread desire to take part in practices of self-rule.

Many Indigenous citizens reasonably refuse to form the relevant kind of participatory intentions in relation to elective Band Councils. Consider, for instance, the Haudenosaunee community at Six Nations, which is the most populous First Nation in Canada, or the Algonquins of Barriere Lake. At Six Nations, only a small fraction of the population votes in Band Council elections (Senate, 2010: 18), and most boycott them in ongoing protest against the coercive imposition of electoral government by Canada in 1924 (Titley, 1992: 110–34). At Barriere Lake, the Canadian government called the first-ever election in the community in 2014, which was intended to replace the customary council, and only five people participated in the process, which was widely seen as illegitimate by the community (Pasternak, 2017: 190–213).[21] In cases such as these, popular customary governments may better realize and express a community's shared agency.

Even outside of the most dramatic examples of violent imposition, many Indigenous people object to Band Council elections because they rightly link them to unjust colonial policies. Most Band Councils were imposed on First Nations between the 1890s and 1960s as part of an assimilationist project and were designed to undermine, rather than facilitate, Indigenous self-rule in at least four ways. First, elections were intended to aid in displacing leaders who opposed government policies. When Band Council elections were first introduced into Canadian law, legislators were motivated by a desire to bypass traditional leaders who opposed efforts to parcel out reserves as private property (Milloy, 1992: 150–51). Second, Canadian officials hoped that participation Band Council elections would "educate" Indigenous peoples to prepare them for assimilation into settler institutions (Nichols, 2019: 249). Third, officials hoped that election would erode social support for customary governments and cultural practices by creating attractive career opportunities for ambitious community members (see, for example, Sproat, 1879). Fourth, male-franchise elections (until 1951) disempowered of Indigenous women from traditional leadership roles, for example, as Haudenosaunee Clan Mothers or on Anishinaabe Women's councils.

Indigenous critics also see evidence of colonialism in the poor design and institutional weakness of Band Councils. Perhaps the most common criticism of Indian Act elections, both historically and in the present, is that biannual elections in small communities produce factionalism, divide communities and prevent leaders from gaining adequate experience representing their people (Senate, 2010; Walls, 2010). Add to this the structural subordination of elected leaders to the Indian Department (which historically could and often did remove leaders it opposed) (Satzewich and Mahood, 1994) and their extremely limited formal powers (Abele, 2007; Milloy, 2008), and it is easy to see why the institution fails to gain profound allegiance.

Given the association of electoral institutions with colonial violence, assimilation and patriarchy, it is easy to see why customary Indigenous governments might be better able to realize and express Indigenous peoples shared agency and shared participation in self-rule. Traditional structures often have deep cultural legitimacy;

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their representative claims rest on their "deeper roots" in the community and the ties of tradition (Saward, 2009: 10). Support for traditional Indigenous governments also *expresses* a widespread desire to reject the genocidal program of assimilation and instead participate in the collective survival of Indigenous nations.[22] These factors make customary governments attractive vehicles for democratic collective agency, even before we consider their specific democratic *mechanisms*.[23]

A skeptic may argue that, as a matter of fact, elections are now normally endorsed by Indigenous communities. To our knowledge, this question has never been systematically investigated by pollsters, although we do not doubt it is true in many cases. One piece of evidence in support of this claim are the high levels of voter turnout in some Band Council elections. But people can have many reasons for voting that do not reflect an endorsement of the system itself; background conditions of domination render participation an unclear signal of consent by constraining the range of viable alternatives (Luoma, 2022: 36). By creating pathways to establishing non-electoral arrangements, our proposal will allow more accurate assessment of the extent of Indigenous popular support for electoral systems.

Another line of skepticism toward our argument might focus on showing that the refusal to embrace elections is unreasonable because the injustices associated with historical imposition of elections have now passed. After all, many just practices (such as state redistribution to the poor) owe their existence to historical violence (state-building). What matters is that Band Council elections today are plausibly just.

Many Indigenous people would reject the claim that the injustice of election imposition is confined to the past, pointing, for example, to their continuing role in dividing communities and legitimating land dispossession. But even if we imagine these issues are somehow addressed and the injustices really are mostly historical, the objection remains unpersuasive for reasons that Annie Stilz articulates. She compares the situation of colonized nations with that of a woman married to a formerly abusive husband. Even if he is now causing her no harm or injustice, it would be reasonable for her to refuse to participate in the marriage (Stilz, 2015). The thought experiment is, we think, apt and reveals that Indigenous people do not reasonably owe just elections their allegiance given the history of violence and injustice we have documented.

A final objection to our argument might hold that elections in Indigenous communities are worth keeping despite these problems because of their role creating democratic *responsiveness*. Elections are an important mechanism through which democracies ensure the accountability of leaders to the people. In the absence of elections, the worry goes, leaders will not have sufficient incentives to remain responsive to the will of the community and perhaps especially its weaker members.

This argument implies a trade-off between two factors: participatory intention and responsiveness. We accept that, in some cases, the loss in responsiveness will outweigh the participatory gain. In other cases, however, the reverse will be true. Moreover, some cases may not involve *any* drop in responsiveness, because customary Indigenous governments have their own mechanisms for inducing this quality.

4. Responsiveness through Exit

In this section and the next, we describe some mechanisms used by customary governments to promote responsiveness. We focus our account on aspects of the

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Wet'suwet'en *bahlat* (feasts or potlaches), the Anishinaabe *doodem* system and the Haudenosaunee Council. Each is continuous with pre-colonial traditions, has been targeted by colonial violence and operates to some degree today. The purpose of our reconstructions is not to provide a comprehensive or authoritative overview of these institutions, but to sketch an underlying logic of responsiveness through voice or exit as a basis for comparison with elections. This approach has the merit of highlighting and making legible the significance of these Indigenous practices to democratic theory; it has the drawback of presenting an incomplete and one-dimensional picture of each institution. Readers should consult our sources for more detailed accounts. When available, we have relied on accounts authored by members of the Indigenous community in question; in other cases, we have preferred sources by authors with long histories of public collaboration with the communities.

Any system of representation involves the distribution of opportunities for influence unequally between leaders and ordinary citizens. The challenge for democrats is to find ways of structuring systems of representation that nonetheless approximate the ideal of political equality by stopping unacceptably large, durable, or harmful kinds of gaps opening between the two groups (Hutton Ferris, 2024; Mansbridge, 2019). This requires finding ways to make leaders responsive to people.

Elections can mitigate the inequality inherent in representation by creating responsiveness to citizens practices of "exit" from political groupings (Hirschman, 1970; Warren, 2011; and for "exit" by Indigenous citizens, see Rollo, 2017). Mark Warren identifies two kinds of exit relevant to democratic theory: *enabled exit*, which secures non-domination and which exists when individuals have the right to exit a relationship or grouping, and *institutionalized exit*, which serves responsiveness and exists when individual exit decisions are institutionally linked to leaders in a way that evokes responsiveness (Warren, 2011). Elections are opportunities for institutionalized exit because they give citizens structural opportunities to sanction leaders by withdrawing their electoral support for them. Leaders, in response, are encouraged to perform *anticipatory representation*, that is, to try to act in ways they guess their constituents will approve of to avoid electoral sanction (Mansbridge, 2003).

Some Indigenous customary practices require leaders to secure the active support from members in ways that are analogous to, but perhaps more robust than, elections. For example, a Wet'suwet'en person seeking a chiefly name must lead their House in hosting a feast (also called *bahlat* or potlatch) one year after the death of the previous name-holder. By necessity and custom, feasts are expensive events that require considerable material support from others; chiefs cannot "afford a name" without the support of "their mother's and father's respective clans, of the spouses of their father's clan ... and of their own spouse's clan" (Mills, 1994: 117–18). House-members therefore have the option of "exiting" the coalition of support for the chief by lending material support to an alternative candidate. Aspirants are correspondingly incentivized to engage in anticipatory representation, building a broad base of support. This enabled and institutionalized exit, as we argue below, is also connected to voice because this capacity to grant or withdraw support is linked to dense practices of co-operation associated with resource gathering and feasting that create opportunities for various kinds of discursive influence over would-be chiefs.

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If the *bahlat* system in some ways resembles an electoral campaign, other Indigenous practices go beyond this—so much so, in fact, that we believe they represent a third sort of exit relevant to democratic theory: *empowered exit*. This occurs when the right to exit is protected (as in enabled exit) and institutions connect individual exit decisions with representatives in a way that evokes responsiveness (as in institutionalized exit) but exit is also strongly facilitated by social and political institutions that increase its feasibility. When individuals are empowered to exit in this way, it creates greater pressure for responsiveness for leaders, relative to situations when people are merely permitted to exit. It is also likely to better promote non-domination and constrain leaders' coercive ability.[24]

Historical Anishinaabe societies (and many of their neighbouring societies) had strong mechanisms of enabled exit. These mechanisms ensured what David Graber and David Wengrow (2022: 132) describe as the "freedom to abandon one's community, knowing one will be welcomed in faraway lands." One such mechanism was the Anishinaabe *doodem* (clan) system. Each Anishinaabe had a *doodem*, associated with a particular animal, which they inherited from their father (Treuer, 2010: 18).[25] Anishinaabe who shared a *doodem* were regarded as close kin and owed strong duties of mutual aid and hospitality (Miller, 2010: 39). These *doodem* networks cut across community and even linguistic lines, ensuring that Anishinabek individuals could expect welcome and support far from their immediate kinship networks. These networks are further extended through spousal relations since marriage between members of the same *doodem* is forbidden, and hospitality is also owed to children or spouses of *doodem*-kin (Bohaker, 2021: 78–85). These networks were always accessible to Anishinaabe, not just enabling but *empowering* exit.

This freedom of mobility contributed to democratic leadership in Anishinaabe societies. *Ogimaag* (civil chiefs, usually hereditary) could not rely on coercive authority, instead relying on persuasion for influence (Miller, 2010: 36; Simpson, 2011: 206; Treuer, 2010: 22). Non-coercion was a social norm that manifested throughout Anishinaabe culture, including in parenting practices (Miller, 2010: 36; Simpson, 2011: 232–36). But it was also enforced by the opportunity of exit. The definition of *ogimaag*, according to Elder Basil Johnston, is a "he (or she) who counts a number of followers" (Johnston and Johnson, 1995: 23). Behaving inappropriately, for example by acting contrary to the interests of the community, would result in a loss of influence and followers, without which one would cease to be an *ogimaag* (hereditary entitlement notwithstanding). In practice, *ogimaag* depended heavily on the three village councils, civil councils (usually composed of male family heads), warriors councils and women's councils, to make decisions and were careful to avoid speaking on behalf of any group who had not given their specific consent on the issue at hand (Miller, 2010: 110). Moreover, civil authority was not the only kind of authority recognized, and some issues belonged in the domain of religious authorities (*Midewiwin*), military authorities, or women (Treuer, 2010: 14). Specific *doodem* also had particular expertise, often connected to the characteristics of their animals. The result, as Leanne Betasamosake Simpson emphasizes, was a system of leadership that was "diffuse, shared, and emergent arising out of need" (Simpson, 2011: 233). These fluid structures accommodated seasonal variations in the size of Anishinaabe groups, who gathered in the summer and dispersed in the winter. It also contributed to malleable forms of diplomacy, in

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which larger confederacies could form without infringing the autonomy of local communities, who could withdraw their support at any time (Kugel, 1998: 5–6; Miller, 2010: 5; White, 2010).

Over time, the Anishinabek's freedom as mobility[26] has been severely weakened by settler colonialism, which has concentrated them on reserves, disrupted *doodem* networks and imbricated Anishinaabe people within a capitalist economy that creates significant financial and material barriers to relocation (Bohaker, 2021: 170–98). This has, in turn, weakened the ability of Anishinaabe dissenters to exit local communities and correspondingly reduced the need for anticipatory representation by political leaders. Modern Anishinaabe Indian Bands generally define membership according to rules regarding Indian status and residency, rather then *doodem* affiliation.

Nevertheless, the tradition of kin-based community mobility is a promising site for democratic innovation and renewal. *Doodem* identities remain important for many Anishinabek, and there are contemporary efforts to revitalize traditional Anishinaabe understandings of belonging (Bohaker, 2021: 200; Lee, 2015; Mills, 2020). To date, these efforts have been primarily motivated by the need to address problems of membership generated by the Indian Status regime.[27] It seems to us, however, that an additional benefit of restoring *doodem*-based membership could be to empower political exit and thereby encourage democratic responsiveness in Anishinaabe communities. The recently signed Anishinaabe Nation Agreement, which creates a federation of First Nations (former Indian Bands) who control their own membership codes, could be a fertile site for experimentation in this direction (Canada, 2022).

While it is beyond our scope to describe the path these experiments should take, a few speculative remarks can illustrate the feasibility of the proposal. Recall that, historically, empowered exit was supported by strong reciprocal duties of hospitality, which allowed individuals to leave their community with assurances that their basic needs would be met and that they would be politically welcomed. A modern revival of this tradition might place particular emphasis on securing the material foundations of mobility for all Anishinabek. For example, geographically dispersed *doodem*-based organizations could directly subsize the costs of moving for members. More expansively, *doodem* networks could control and allocate certain resources, such as housing, childcare and even employment opportunities, lowering the logistical and financial obstacles to mobility. These reforms would be most effective if they were accompanied by a broader set of changes that improved Anishinaabe peoples' economic circumstances and also, crucially, increased their access to their traditional territories beyond reserves.[28] These material functions would complement the traditional function of welcoming *doodem*-kin into the community and ensuring their social belonging. Such a network would empower political exit from local Anishinaabe communities by reducing the material costs of mobility, potentially enhancing responsiveness.

Indigenous exit-based responsiveness mechanisms such as the Anishinaabe system of kin-based empowered mobility may be just as powerful at inducing responsiveness from leaders as democratic elections.[29] The influence of these mechanisms on leaders has not been studied empirically, and so we can only make informed guesses about the relative influence of elections versus kin-based institutions of empowered mobility. There is no a priori reason to expect either

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practice of exit to be better at generating democratic responsiveness. Empirically, elections have some widespread and uncontentious limitations in this respect, such as when citizens in the safe seats created in many electoral systems cannot realistically affect outcomes. There is also a substantial amount of debate amongst political scientists about just how good elections are at inducing exit-based responsiveness (see, for example, Achen and Bartels, 2016). One growing body of evidence appears to suggest that elected governments change course when the wealthy want them to but ignore the opinions of everyone else (Gilens, 2012; Lupu and Warner, 2022). While the jury is still out on the interpretation of these findings (Elkjær and Iversen, 2020), the debate shows that we cannot simply assume that elections are any good at generating democratic responsiveness to citizens exit. The mobility-based mechanisms customary governments may be just as powerful, if not more so.

5. Responsiveness through Voice

Democratic systems of representation need to involve responsiveness to citizen *voice*. As Hirschman observes, exit is not always practically feasible or desirable in either politics or economics. Consider, for instance, the case of a commuter who must use a particular railway line, a blue-collar worker in a two-party system who knows that only one party ever favours pro-labour policies or a citizen who cannot (except at great risk or cost) migrate away from a polity whose government is about to make a decision that is fundamentally unjust and threatens their basic interests. In such cases it becomes crucial for people to use their voice, for instance, by writing in protest to the railway company or to a legislator.

Elections may facilitate responsiveness to voice. The threat of losing office to unsatisfied constituents may help encourage representatives to listen to citizens voices and perform a kind of *deliberative responsiveness* to them (Hutton Ferris, 2025), including in public meetings, private communications and constituency services. A representative system with electorally vulnerable governments at the centre may also encourage more diffuse kinds of responsiveness to voice, as empowered representatives in formal institutions serve as conduits for discourses emerging and circulating in civil society (Habermas, 1996).

One alternative voice-based responsiveness mechanism is the Wet'suwet'en practice of communal co-operation, competition and resource gathering associated with community feasts. According to Michael Luoma (2022: 34), "[a]ll Wet'suwet'en members are able to participate meaningfully in public deliberation and are integral to the continued power of chiefs and the success of clan-based political decisions." He attributes this inclusiveness partly to Wet'suwet'en political culture, which has "robust norms of horizontal contestation, accountability and open public deliberation" and partly to the small size of the Wet'suwet'en community, which facilitates regular practices of face-to-face interaction that mean that "Wet'suwet'en citizens may be able to participate more effectively in meaningful public deliberation and political contestation than citizens of large and anonymous societies practicing representative democracy with fixed election cycles" (34). Small size alone, however, is not sufficient to secure inclusion; it is buttressed by the dense patterns of interaction, mutual support and reciprocity associated with the *bahlat*/potlatch

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system. Frequent potlatching requires community members to constantly loan each other money and provide other forms of material support, and this both requires and sustains discourse that keeps chiefs and would-be chiefs informed about and attentive to the opinions, desires and understandings of community members. While it is mostly chiefs who speak in the feasts themselves (Mills, 1994: 113), the *bahlat* sits at the centre of and activates dense and more inclusive practices of consultation and debate. In this way, Wet'suwet'en governance encourages the kind of iterative back and forth talk necessary for democratic representation.[30]

Another kind of responsiveness to voice occurs through the customary governance of the Haudenosaunee Confederacy. The Haudenosaunee Confederacy was established by a heroic Peacemaker, who joined five warring nations (the Mohawk, Oneida, Onondaga, Cayuga and Seneca) together under the constitution of the *Kayaneroko:wa* (the Great Law of Peace).[31] The regime established by the *Kayaneroko:wa* is both deliberative and inclusive. It is structured by a series of nested and parallel councils, at the apex of which is the Confederacy Council, which is composed of 50 *Rotiyanehson* (usually translated "Chiefs," singular: *Royaner*) representing the various clans of the five nations, each of whom is selected and can be removed by a *Yakoyaner* (Clan Mother).

The smallest and least formal units in the Haudenosaunee system of council democracy are the men's (or "warriors") and women's council for each clan (Hill, 2017: 61–62). These can be convened whenever the group identifies a need, including to discuss the appointment of a *Yakoyaner* or *Royaner*, and their decisions or recommendations are sometimes raised by the clan's *Royaner* for discussion in the Confederacy Council. Within the Confederacy Council itself, deliberation is cumulative process that moves from smaller to larger groupings. It begins with small groups of two to four *Rotiyanehson* within a nation, usually those who share a clan (for example, the Bear Clan of the Mohawk Nation). These small groups must reach consensus on the issue before engaging with *Rotiyanehson* from other clans within their nation, who will then deliberate until national consensus is reached (K. P. Williams, 2018: 281–82). At this point, the deliberation proceeds to the inter-nation level of the Confederacy. Responsibility for introducing topics at the Confederacy level falls to the two Elder Brother nations, the Mohawks and Seneca. First, these Elder Brothers with deliberate with one another. Once they reach consensus, deliberations expand "across the fire" to include the Younger Brother Nations, which originally were the Oneida and Cayuga and now include the Tuscarora as well. The Younger Brothers will consider the matter in their own clan and nation groupings before giving their assent or passing the matter back across the fire for additional discussion. When the Younger Brothers and Elder Brothers are aligned, the matter passes to the Onondaga, who serve as Fire Keepers and are responsible for convening the assembly and ensuring that proper procedure is followed. The Onondaga either give their assent or send suggestions back for further discussion. All Confederacy Council deliberations are observed by *Yakoyaner*, who will ensure that their *Royaner* rightly represents his clan on pain of removal. Individual *Royaner* frequently consult with their *Yakoyaner*, and informal conversations between *Rotiyanehson* outside the longhouse plays an important role in achieving consensus. As with the systems of council democracy advocated by Hannah Arendt and some nineteenth century socialists, this system functions to draw the voice of every individual clan member up into the highest echelons of

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decision-making in a distinctively deliberative way (Arendt, 1963; and on council democracy, see Muldoon, 2018, 2020).

Consensus decision-making is an important manifestation of the Great Law's emphasis of *Sken:nen* (Peace) and is promoted through a strong emphasis on respectful deliberation. Each council begins with a *Kanonhweratonhsera* (literally, words that come before all else), a thanksgiving address that expresses gratitude for each aspect of creation. Each section of the address concludes with the affirmation "and so our minds are one," to which all participants respond with their assent (K. P. Williams, 2018: 281), initiating a procedure focused on unity. Deliberations themselves are guided by a strong sense of decorum. Participants are expected to be clear-minded, not influenced by their passions, and to speak from the impersonal perspective of a representative or delegate of a wider community. Speakers generally begin by complementing the previous speaker and apologizing in advance for anything they say that might be understood as "sharp" or injurious. When speaker finishes, there is a long pause during which they can reflect and ensure they have not omitted anything important; when the next speaker replies, they begin by restating what was originally said to ensure mutual understanding and allow misunderstandings to be corrected. When consensus is elusive, strategies for resolving disagreements include concentrating on principles rather than details (which can be delegated), breaking matters into parts and saving the most difficult for later or agreeing to defer to local community decisions instead of deciding collectively where necessary (K. P. Williams, 2018: 281–94).

Customary governments such as those described above might secure deliberative democratic inclusion better than possible electoral counterparts. Even though democratic theorists are likely to concede that elections in large complex societies help encourage diffuse responsiveness across systems of representation to the voices of ordinary people, they are rarely very optimistic about the quality of this responsiveness. They are more likely to emphasize instead the way elections encourage representatives to adopt a strategic orientation to constituents (Disch, 2011) and to lament the way this distorts processes of communicative influence from civil society to the state (Habermas, 1996). There is currently a lot of debate about whether responsiveness processes are so broken that elections for top legislative office should be replaced by processes of random selection (Guerrero, 2024; Landemore, 2020). This alternative is sometimes defended with the help of an *argument from partisan rigidity* (see Hutton Ferris, 2023) that claims, like some Haudenosaunee authors (such as K. P. Williams, 2018: 23–24), that elections breed destructive forms of division and that non-elected leaders can engage in unusually fair-minded and co-operative truth-seeking. While responsiveness to voice in electoral systems often looks questionable, unreliable, partial, or diffuse, some Indigenous customary practices present attractive alternative models.[32]

6. The Need for Reform

Our defense of the democratic merits of customary governments rests on three arguments. Most obviously, customary governance may be a better vehicle for self-determination in places where people reasonably fail to affirm Band Councils elections as institutions adequately reflective of their group's shared agency (see also

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Luoma, 2022). Indigenous citizens may prefer to engage with non-leaders even if they are less responsive than elected counterparts. But, second, Indigenous responsiveness mechanisms based on mobility might be just as valuable for securing responsiveness as elections. Specifically, some Indigenous societies institutionalize exit opportunities that are not only formally available to citizens (enabled exit) and induce responsiveness from leaders (institutionalized exit) but are strongly facilitated by kinship structures that crosscut local political units and make mobility a real and often attractive option for citizens (a situation we have called *empowered exit*). Finally, many communities are also governed as genuinely deliberative democracies that secure high-quality deliberative responsiveness to the voice of ordinary people.

Despite this, it is presently impractical for Indigenous communities to have non-electoral governance practices recognized by the Canadian state. The precise nature of the administrative and legal obstacles varies depending on circumstances,[33] but any First Nation pursuing this path would face possible judicial review for compliance with both Canadian administrative law and constitutional law.[34] Previous Supreme Court jurisprudence has found a Charter right for off-reserve band members to vote (*Corbiere v. Canada* 1999); it is difficult to anticipate how this principle—and more generally the prevailing judicial understanding of political equality rights—would be reconciled with a non-electoral regime that violated one-person, one-vote. Thus, any First Nations seeking to adopt a non-electoral regime would be relying on novel constitutional arguments.[35] Even if it were to succeed, the expense and uncertainty creates a significant barrier to innovation.

To address these obstacles, Canada should loosen its constraints on Indigenous government experimentation. Specifically, we recommend five policy changes. None require Canada to alter its preference for democratic leadership within Indigenous communities; they only require that Canada adopt a less parochial conception of democracy. They are that (1) the conversion to community election system policy should be replaced by a conversion to Indigenous democratic system policy; (2) self-government negotiators should encourage communities to devise innovative democratic solutions and include language in self-government agreements to facilitate this; (3) Parliament should encourage courts to take a broad view of how Indigenous political systems can protect Indigenous individuals' democratic rights; (4) Canada should create a clear process for communities with parallel customary and electoral leadership structures to enter an internal process of institutional reconciliation, without a predetermined (that is, electoral) outcome; and (5) Canada should establish a freestanding Indigenous law tribunal with jurisdiction over issues of political representation within Indigenous communities.

The final proposal is perhaps the most important. As with any government, Indigenous customary governments can break down or become captured by powerful individuals or factions within the community. The tribunal would be to provide Indigenous citizens with a recourse in such cases without needing to rely on Canadian law. Such a tribunal would be a boon to the ongoing and important but still limited efforts to create additional space for Indigenous law within Canada's legal system (Borrows, 2010; Grammond, 2022).

These reforms would be pro-democratic in the sense that they would give Indigenous communities greater control over (some aspects of) their own

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constitutional regime. They would also have the salutary effect of stimulating democratic experimentation and innovation. These innovations, in turn, will help to advance global understandings of democracy, illuminating new paths and exposing new questions. However, these paths remain closed so long as the colonial state remains wedded to policies that discourage non-electoral models. A first step, therefore, is to break the bounds of electoral bias and open the field for Indigenous democratic innovation.

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Notes

1 Despite this nomenclature, chiefly titles do not automatically descend lineally and can be taken up by individuals not biologically related to the previous chief.

2 For a critical discussion of these agreements, see Pasternak (2017).

3 Political theorists have reflected on these events and their implications for our understanding of political authority (Eisenberg, 2022) and of self-determination (Luoma, 2022).

4 As an anonymous reviewer rightly noted, in addition to imposing a particular vision of democracy, these policies served to fortify the settler state's territorial claims by disrupting Indigenous political orders.

5 Other prominent examples of such conflict are seen at Six Nations and among the Algonquins of Barriere Lake (Elliott, 2015; Pasternak, 2017).

6 The same basic idea is sometimes expressed in the slightly different language of self-government (Lafont, 2020, chap. 1), self-legislation (Goodin, 2008, chap. 10), collective empowerment (Booth Chapman, 2022, chap. 6) and so on. For the etymology of "democracy," see Josiah Ober (2008), and for the idea that an ideal of self-rule underpins almost all democratic theory, see Samuel Bagg (2024).

7 This principle was previously so widely accepted that democratic theorists did not see much need to defend it argumentatively (Beitz, 1989: xv; Christiano, 1996: 88; but see 2008: 108–11). One exception is Jeremy Waldron (1999, chap. 5).

8 Although the idea of democracy as a European inheritance is itself questionable (see, for example, Grinde and Johansen, 1991; Heaman, 2015: 5–26; Keane, 2016; Graeber and Wengrow, 2022).

9 This department has been re-named and re-organized many times and has most recently been divided into two departments: Indigenous Services Canada (ISC) and Crown–Indigenous Relations and Northern Affairs (CIRNA).

10 But in other cases the Indian Department minimized resistance in other ways: collaborating with friendly leaders, coopting traditional processes to serve its purposes, introducing ad hoc quasi-electoral procedures such as straw polls, hand-picking a "chief" or simply declining to recognize any community leadership other than the Indian Agent (Madill and Daugherty, 1980).

11 This policy was unevenly enforced, and northern Ontario communities were exempted.

12 These reforms often did not invoke the formal power under the Indian Act to impose elections, but instead were framed as gradual adjustments to community customs.

13 One reason for this, no doubt, is that historical Indigenous Nations claim much larger traditional territories than the smaller reserves assigned to each Indian Band.

14 Or, in a few cases, Inuit communities.

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15 The *community election systems* are all variants of electoral regimes, but differ in terms of voter eligibility, appeal process, voting methods, nomination procedures and district sizes. They are better thought of as *customized* rather than *customary* codes.

16 One report estimates that perhaps 10–15 groups operate in this way (Senate, 2010: 6). It would require further research to determine whether these are true heirs of traditional customary practices or continuations of an earlier Indian Department practice of, for instance, making hereditary lifetime appointments. The latter possibility is suggested, for example, by members of Kwantlen Nation who are seeking to remove their "custom" life chief. One member, Brandon Gabriel, characterizes Kwantlen's "custom" as "more reflective of the British Model of hereditary rule as opposed to a Stó:lō, a Coast Salish, or Kwantlen model." (Hernandez, 2024; see Jago, 2019)

17 More ambitious self-government proposals, such as those of the Dene Nation in the 1980s, were strongly resisted by the federal government (Coulthard, 2014: 69–74)

18 The Nisga'a Lisims Government, for example, includes an unelected Council of Elders. https://www.nisgaanation.ca/council-elders.

19 As in the case of the Carcross/Tagish First Nation. https://www.ctfn.ca/organization/about-us/.

20 Data provided by email from Indigenous Services Canada, on file with authors.

21 The Indian Act procedure did not even proceed to voting; after two boycotted nomination meetings, the council was acclaimed on the strength of five mailed-in nominations of candidates.

22 In this sense participation in traditional governance can be understood as a practice of "everyday resurgence" (T. Alfred and Corntassel, 2005; Corntassel, 2012).

23 Our argument here builds on Michael Luoma's (2022) discussion of self-determination by the Wet'suwet'en, which similarly focuses on collective self-rule. Where Luoma is interested in the topics of self-determination and territorial rights, however, our focus is specifically on democracy.

24 An anonymous reviewer noted a potentially troubling resonance between this argument and John Locke's idea that those who remain on a territory tacitly consent to rule by whomever controls it. Although Locke himself was a colonist, consent is not necessarily a settler-colonial concept and is also important within Indigenous traditions of thought. Aaron Mills (2017) discusses consent and the social contract tradition from an Anishinaabe perspective, for instance.

25 *Doodem* identities can be acquired in other ways, including adoption and, in some modern communities, matrilineal inheritance (Bohaker, 2021: 73).

26 This phrase is inspired by the John Borrows' (2016) discussion of freedom through mobility.

27 Historically, women who married men without Indian Status were stripped of Status and the right to live on reserve. Many of these women, and their descendants, have now had Indian Status restored, but restoring their membership within specific communities/Bands has been fraught (Lawrence, 2004; Lee and Horn-Miller, 2022).

28 A reviewer rightly observed that many Indigenous people today have strong connections to their specific reserve territory. For exit-based mechanisms to be effective, these ties would need to be loosened – for instance, by encouraging these individuals to identify with larger homelands and Indigenous nations beyond the reserve boundaries.

29 One mechanism for this is by filtering who remains within a community. As disserters exit, those who remain will be more loyal. A reviewer rightly observes that this might disincentivize responsiveness, if a leader prefers to lead a small, loyalist rump. This is a plausible concern, but it seems to us that Anishinaabe constitutionalism welcomes these sorts of fragmentations (and subsequent recombinations) as part of a healthy political ecosystem that respects the freedom of the individuals involved.

30 Mansbridge (2019) uses the term "recursive representation" to describe this kind of process.

31 The Tuscarora joined the Confederacy in 1722, hence the moniker "Six Nations."

32 Some may object that, because it emphasizes consensus, the Haudenosaunee system fails to respect individual differences of opinion, and thus the equality of persons (Waldron, 1999). This charge raises complex questions about consensus decision-making that cannot be settled here. Defenders of consensus often point to its pragmatic orientation, arguing that, although consensus induces pressure to find practical compromise, it does not imply nor require the elimination of disagreement and dissent in a broader sense (Lauer, 2012).

33 Communities that hold elections under the Indian Act or First Nations Election Act do not have recognized authority to modify their own electoral regime without Federal approval, while those with

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custom codes or Self Government Agreements do, subject to compliance with the terms of their own codes and applicable Canadian law.

34 Technically, the actions of Band Councils are reviewable under Canada's Administration Act only insofar as they are exercising delegated federal powers. This would seem to open the possibility of arguing that a shift to customary governments was not reviewable, because it relies on the First Nation's *inherent* power of self-government, which is arguably protected under section 35. To date, however, these sorts of arguments have not persuaded the Federal Court (Anker and Shipley n.d.).

35 One possibility is that a community could argue that Section 25 of the Constitution "shields" Indigenous self-government from Charter scrutiny (see *Dickson v. Vuntut Gwitchin First Nation* 2024). Another possibility is that the language in recent Self Government Agreements, such as the Anishinabek Nation Governance Agreement, could be relied on to explicitly assure the priority of Indigenous law over federal law in terms of leadership selection (see CIRNA Canada 2022, sec. 3.14, 1.18, 3.24).

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