

ECMI

WORKING PAPER



EUROPEAN CENTRE
FOR
MINORITY ISSUES

NON-TERRITORIAL INDIGENOUS SELF-GOVERNANCE IN CANADA AND THE UNITED STATES

Raphaëlle Mathieu-Bédard

ECMI WORKING PAPER #97

April 2017



The European Centre for Minority Issues (ECMI) is a non-partisan institution founded in 1996 by the Governments of the Kingdom of Denmark, the Federal Republic of Germany, and the German State of Schleswig-Holstein. ECMI was established in Flensburg, at the heart of the Danish-German border region, in order to draw from the encouraging example of peaceful coexistence between minorities and majorities achieved here. ECMI's aim is to promote interdisciplinary research on issues related to minorities and majorities in a European perspective and to contribute to the improvement of interethnic relations in those parts of Western and Eastern Europe where ethno-political tension and conflict prevail.

ECMI Working Papers are written either by the staff of ECMI or by outside authors commissioned by the Centre. As ECMI does not propagate opinions of its own, the views expressed in any of its publications are the sole responsibility of the author concerned.

ECMI Working Paper # 97
European Centre for Minority Issues (ECMI)
Director: Prof. Dr. Tove H. Malloy
© ECMI 2017



NON-TERRITORIAL INDIGENOUS SELF- GOVERNANCE IN CANADA AND THE UNITED STATES

Indigenous peoples and minorities throughout the world have endeavoured for centuries to rid themselves from colonialism and oppression, while governments struggle to recognize indigenous and minority rights and minorities' rightful standing in society. Varied approaches have been adopted, with varying degrees of success – but much can be learned from past and current victories and mistakes. Both in Canada and in the United States, the federal governments have historically held exclusive and virtually unlimited authority over their indigenous populations. Yet, based on divergent interpretations of the 'doctrine of discovery', the two countries have long developed differing policies regarding the self-government of their indigenous¹ nations, inevitably influencing their respective indigenous self-determination movements and the emergence of indigenous, non-territorial institutions². These will be reviewed below.

Raphaëlle Mathieu-Bédard
April 2017
ECMI Working Paper # 97

I. INTRODUCTION

Researching non-territorial (or off-reserve/reservation) indigenous self-government in Canada and the United States entails several difficulties, however, the most obvious being its anecdotal nature. Indeed, most of the self-governance literature focuses on territorial autonomy, or rights recognized for indigenous peoples living within a particular territory. Most existing policies and treaties are territorially

defined. Yet, “territorial state sovereignty [...] is a background understanding that can render sites of democratic negotiation inhospitable to Indigenous claims”.³ In this working paper, the definition of “territoriality” assumed is political, rather than cultural or social. Indeed, territorial self-governance is understood as being politically and geographically defined, and non-territorial self-governance, as found outside of the boundaries



traditionally used by governments to categorize indigenous peoples, perhaps most usefully when formulating policies, e.g. reserves or reservations. However, this definition of territoriality is explicitly Western, and while it is usually used in the mainstream literature addressing indigenous self-governance, it is important to note that it often profoundly conflicts with indigenous understandings of territoriality, which are more social and cultural, based on more inter-subjective understandings of belonging and of communal living. This conflict inevitably is a legacy of colonialism, and contributes to the complexity and difficulty of self-governance in the aftermath of colonialism.⁴

A survey of the literature quickly highlights that most instances of off-reserve (in Canada) and off-reservation (in the United States) self-governance by indigenous populations or Natives, whether urban or rural⁵, are few and scattered. Moreover, they are closely tied to territory, and in fact, most instances of indigenous self-government are occurring on ‘reserved’ or traditional land. As such, non-territorial self-government is more of a rarity, and usually the result of isolated initiatives, of separate negotiations often entrenched in federal policies, especially in the United States. Furthermore, reflecting the diversity of indigenous peoples, self-governance may take many different forms including decision-making and law-making capabilities as well as varying degrees of autonomy and service delivery, linked or not to a land base.⁶ All of this leads to current self-governing efforts, non-territorial and otherwise, to be characterized by localism. This, however, can be seen as the manifestation that indigenous peoples, rather than focusing on the rights that governments are willing to afford them, are

focused on their own empowerment, and how they go about realizing, institutionalizing and implementing their rights beyond rhetoric. It is no longer a question of if or when, but of how.⁷

This overview will first explore different forms of off-reserve self-government in Canada, and then turn to instances of non-territorial self-government in the United States. These will be prefaced by a summary of the development of the self-determination movements in both countries in order to contextualize the rise of indigenous self-governance as well as to better understand the differences observed between the federal policies and indigenous demands in both countries.

It should be noted, however, that non-territorial indigenous self-determination in Canada and the United States is young. As such, many of the instances of self-government depicted below are the products of governmental policy and/or are highly dependent on government funding, for example – the degree of non-territorial indigenous self-determination remains profoundly relative. This is partly due to concept indeterminacy: this being a preliminary research, ‘self-government’ is only very loosely defined. A very large net was cast in an effort to provide as complete a picture as possible of the current state of indigenous non-territorial self-government development in Canada and the U.S. and the current scholarly literature on the subject, inevitably highlighting areas of research still left mostly unexplored. Implicit and explicit inferences have been made for organizational purposes, and may have been the result of inevitable non-exhaustive research, selection bias, and availability of scholarship, among others.



II. NON-TERRITORIAL, OFF-RESERVE SELF-GOVERNMENT IN CANADA

2.1 The inherent indigenous right of self-government in Canada – a historical overview

2.1.1 Indigenous self-government in Canada.

As explained by Dalton in the Canadian case,

Aboriginal self-determination in Canada refers to the right of Aboriginal peoples to choose how they live their shared lives and structure their communities based on their own norms, laws, and cultures. It involves the freedom of Aboriginal peoples to determinate their own futures within the pluralistic context of Canadian federalism”⁸.

Ensuring control over service delivery as well as autonomous governmental institutions thus becomes a crucial step in a self-empowering, self-determining agenda⁹. For indigenous peoples, “the right to self-government is the means of reweaving the socio-economic, cultural and political fabric of their communities, tattered after decades of colonial disruption”¹⁰.

2.1.2 The Government of Canada’s fiduciary duty, and the policy vacuum surrounding off-reserve indigenous peoples. Officially, the Government of Canada’s fiduciary

relationship to indigenous peoples was long limited to individuals recognized as registered Aboriginals through the *Indian Act* of 1876 (those with ‘official status’) and to indigenous individuals living on reserves – this was, historically, for public health reasons¹¹. This fiduciary relationship left out ‘non-registered Indians’, the Métis and the Inuit, who were then invisible in the eyes of the system, and were considered in the same manner as any other Canadian citizens¹². This, however, has changed legally, and is set to change in practice as the Supreme Court recognized in April 2016 that ‘Indian’ according to the act referred to all ‘Aboriginal’ peoples, including the Métis¹³. This landmark ruling represents the recognition by the government of Canada of its responsibility towards all indigenous peoples in Canada, including the Métis and so-called “non-status Indians”, recognizing that all indigenous peoples are entitled to the same rights which were previously only afforded to First Nations and indigenous peoples living on reserves¹⁴⁻¹⁵.

Nevertheless, there has never been a concerted or coherent policy framework in Canada addressing the government’s approach to the indigenous urbanization phenomenon, or to the fate of indigenous peoples simply living off traditional lands (or their current proxy, reserves)¹⁶. Provincial and municipal governments have also abstained from developing indigenous-specific policies, which generally means that indigenous peoples must turn to non-indigenous service delivery organizations where their cultural



beliefs and traditions usually go unacknowledged, organizations that are often found to be mostly impervious to indigenous-specific needs and at times characterized by institutional racism¹⁷. Over the past few decades, however, the urban indigenous population has grown significantly and now represents more than half of the indigenous population of Canada. And while there is no national scheme for off-reserve indigenous self-government, restrictions on the fiduciary duty of the state have gradually, and unevenly, been partly eroded. For example, many federal programs aimed at urban indigenous peoples¹⁸ are now delivered in a ‘status-blind fashion’¹⁹. The growth of the urban indigenous population, coupled with indigenous activism and political organization, has led to significant changes in jurisprudence, to the constitution and to policies.

2.1.3 The rise of indigenous self-government demands in Canada. Since the end of the 1960s and the beginning of the 1970s, in fact, indigenous advocacy has fought for increased self-determination within the boundaries of Canada and in a new partnership with non-indigenous peoples, and has made demands in a framework that illustrates the legacy of treaty-making, group rights as well as current constitutional arrangements²⁰⁻²¹. Around that time, several national organizations emerged as champions of indigenous rights. The *National Indian Council*, for example, split into the *National Indian Brotherhood* and the

Canadian Métis Society in 1968²². Additionally, the *Congress of Aboriginal Peoples*, formerly known as the *Native Council of Canada*, was founded in 1971 and had the mandate to protect the interests of indigenous peoples living off-reserve, and to defend their fundamental and human rights²³.

The patriation of the constitution, and its new 1982 provisions that represented a more ‘modern’ vision of indigenous peoples’ place in Canada, created a window of opportunity for an awakening in indigenous peoples that were demanding more and more representation, allowing them to be in a position where they could define for themselves new systems of self-governance²⁴. Indeed, especially since the end of the 1970s and the beginning of the 1980s, their demands have emphasized self-government more specifically, couched in principles of cultural preservation and the desire to redefine the indigenous political relationship with Canada in a decisively more ‘indigenous’ manner²⁵⁻²⁶. In fact, “Canada’s Aboriginal peoples demand that their right of self-government be recognized by the other orders of government in Canada and that this right be implemented according to the terms of each respective Aboriginal nation”²⁷.

Governmental responses to indigenous self-determination demands in Canada started to emerge in the late 1960s. In 1969, the Government of Canada published the *Statement on Indian Policy*, or White Paper, which entailed the abandonment by the federal government of its fiduciary policy and



the devolution of responsibility to the provincial governments. This meant that indigenous peoples would lose privileges, and become recognized as Canadian citizens like any other. As a response, the indigenous chiefs of Alberta published *Citizens Plus*, now known as the *Red Paper*, which laid out the political philosophy that would guide the next few decades of advocacy for indigenous governance development²⁸. The *Red Paper* was based on principles of reciprocity and respect, where indigenous peoples would give lands in return for services, rights and guarantees. This was followed by several other responses, which all ultimately entailed the protection of indigenous lands and resources, efforts at human resources and cultural development as well as plans to redress centuries of impoverishment and disempowerment through appropriate health care provision and infrastructure development²⁹.

By the end of the 1970s, a multitude of reports were arguing for an inherent right to indigenous self-government, a topic that would dominate the discussion from that point on³⁰. Another turning point was the *Report of the Special Committee on Aboriginal Self-Government* of 1983, also known as the *Penner Report*, which argued for a self-government scheme in keeping with previous iterations, an ‘enhanced municipal-style government within a federal legislative framework’. However, the report’s recommended self-government scheme was significantly different in three ways: first, it

framed indigenous self-government as a ‘distinct order’ of government within Canada; second, it suggested that indigenous self-government should be a right entrenched in the constitution; third, it identified different areas in which indigenous peoples should enjoy authority, i.e. “education, child welfare, health care, membership, social and cultural development, land and resource use, revenue-raising, economic and commercial development, justice and law enforcement and inter-government relations”³¹. The government’s response came in 1984 and agreed with the report, with the exception of the constitutional entrenchment – however, the government would, a decade later, interpret the constitution as to include such entrenchment³².

Indeed, after decades spent mostly ignoring the claims of Canadian indigenous peoples and promoting, if even that, a warped vision of indigenous self-government, the federal government of Canada slowly took heed – this, however, as will be further discussed below, was unfortunately done to some degree at the expense of grassroots, indigenous voices. Nevertheless, the concept of nation-to-nation negotiations was slowly established³³. Then, in 1995, the Minister of Indian Affairs and Northern Development and the Federal Interlocutor for Métis and non-status Indians issued the ‘Inherent Right Policy’, which explicitly recognized the right to self-government of ‘Métis and Indian Groups off a land base’ as a right existing within Section 35 of the *Constitution Act*,



1982 (this had initially been agreed upon in the Charlottetown Accord of 1992)³⁴. Around the same time, at the beginning of the 1990s, the *Royal Commission on Aboriginal Peoples* (RCAP) was charged by the federal government of Canada with producing a report on outstanding issues in indigenous-Canadian relations. The 1996 RCAP *Final Report* concluded that the inherent³⁵ right of Canadian indigenous peoples to self-government was recognized in both international and domestic law and that its recognition was to be the necessary basis for a new, just relationship between indigenous peoples and other Canadians. However, the report was representative of the issues considered salient at the time, and, unfortunately for our purposes here, included almost no mention of urban indigenous preoccupations³⁶. Only one chapter was dedicated to the issue, and focused on specific models of governance and service delivery considered viable for urban indigenous people. This, however small, was ground-breaking, and was followed by a new model of federal funding for indigenous social programs which led to the creation of numerous small, indigenous peoples-controlled service organizations throughout the country, such as organizations focusing on capacity-building and on direct service provisions, e.g. health care providers, educational programs and economic and employment development organizations³⁷. However, the Commission's Report also defined the right to self-government as that of

indigenous *nations*, thus narrowing the scope of who could stake a claim to this right³⁸.

Nevertheless, all throughout the 1990s, the federal government of Canada slowly started to respond to the increasing urbanization of indigenous peoples (see section 1.4), while scholarship on the issue was slowly developing. Notably, at the beginning of the 1990s, the *First Peoples Urban Circle*, formed by the *Native Council of Canada* and located in Ottawa, conducted a number of surveys throughout Canada in order to determine how indigenous self-government could be initiated and implemented in urban locales. Similarly, the *Urban Aboriginal Working Group* has developed three possible approaches to improving governance, the first being the establishment of self-governing service provision organizations in urban areas, the second promoting an indigenous authority that would enter into agreements with a public government and the third suggesting a reform of municipal governments and local authorities to proportionally increase the representation of the indigenous population³⁹.

2.1.4 Different models of self-government. All of these developments have led to a multiplicity of forms of indigenous self-government being developed and imagined across Canada (the subsequent pages will present an overview of some of them in practice), which Abele and Prince have classified in four mutually exclusive models⁴⁰:



- 1) the first model, ‘First Nations as mini-municipalities’, envisions First Nations as being self-governing in a way analogous to existing cities, and whose power would be delegated by another level of government⁴¹. Under this model, indigenous peoples would still operate under federal control.
- 2) the second model, that of ‘public government’, would entail a change of the current Canadian constitution, which the first model does not, in order to create a new form of public government. The only examples of this are found in Canada’s Nunavut (where the Inuit represent about 85% of the population) and the Northwest Territories. The circumstances that led to these arrangements are unlikely to occur elsewhere in the country, however. It should be noted that the creation of a new, indigenous province (without contiguous territory) has also been suggested⁴².
- 3) the third model is ‘tripartite federalism’, which would entail the full participation of indigenous governments in federalism at all levels. A third-order indigenous government would also build on the historical legacy of indigenous peoples as well as their current constitutional status (i.e. band councils)⁴³. This is the model currently endorsed by the Canadian federal government⁴⁴.
- 4) finally, the ‘nation-to-nation’ model is an approach based on bilateral relations between indigenous nations and either the federal government or a provincial government in lieu of the Crown (most often indigenous nations will entertain both)⁴⁵.

Interestingly, however, few scholars have studied in depth existing indigenous constitutions, which embody different conceptions of democracy and governance, and specify the internal practices and structures of indigenous polities that often combine indigenous and settler constitutionalism⁴⁶. While interesting, as they often show different combinations of Western and traditional constitutions, these are not particularly relevant here, however, since they tend to be part and parcel of land claim settlements linked to reserved/traditional territory, or what is to become ‘settlement land’⁴⁷⁻⁴⁸. The *Nisga'a Final Agreement* of 2001 constitutes a notable exception. A land settlement and self-government agreement, it extends participation in the Nisga'a Lisims Government to Nisga'a citizens who live outside of the Nass Area (off the reserved territory)⁴⁹. This principle was echoed in jurisprudence in *R. v. Corbière*, which stipulated that it was discriminatory to deny off-reserve band members the opportunity to fully participate in band governance⁵⁰. And yet, as Blackburn argues, while the Nisga'a Agreement is hailed as a success *by some*:



Nisga'a are still faced with having to conform to non-aboriginal institutions and values and subject their rights to legibility according to non-aboriginal legal systems. Canadian sovereignty is also not challenged, and in these respects the treaty does not completely overturn the colonial relationship between Canada and the Nisga'a. The treaty establishes a form of self-government for the Nisga'a within the framework of Canadian federalism; it distributes state sovereignty but does not recognize the Nisga'a as sovereigns in themselves⁵¹.

In fact, the Nisga'a obtained a very small portion of what they initially had requested, and, rather than being autonomous from provincial regulations of fishery and forestry in British Columbia, they are very much subjected to federal and provincial supervision⁵². This, for Denis, stands as proof that in practice, the Government of Canada does not recognize the inherent right of indigenous peoples to self-government⁵³.

In any case, in spite of the rare actions of the federal government and the inability (or unwillingness) of local actors to deliver appropriate services to indigenous individuals, especially in urban areas, important networks of self-governed indigenous organizations have been erected –

Winnipeg in Manitoba being a pioneer –, and include health, youth and cultural centers, schools, addiction centres, homeless and women shelters, and so on⁵⁴. These networks, however, are often not able to keep up with the demand of services from the influx of indigenous individuals in cities, especially in some specific services such as addiction recovery.

2.1.5 Influential jurisprudence regarding indigenous non-territorial (off-reserve) self-government. It has been argued that the way the federal and provincial governments have conceptualized and operationalized indigenous self-government as guaranteed in Section 35 of the *Constitution Act, 1982* is directly linked to the lack of pathways for urban indigenous self-government – operationalizing self-government for indigenous peoples who do not have a First Nations' affiliation or who live outside of their traditional territory is complex⁵⁵. Nevertheless, and despite the great reluctance of the court to address the issue of the rights included in Section 35 of the constitution, jurisprudence has affirmed the legitimacy of urban indigenous groups, notably, as political or 'associational' communities⁵⁶. An example of such recognition is the Misquadis ruling, which recognized urban indigenous communities as analogous to First Nations⁵⁷. Additionally, the federal and Supreme Courts of Canada have indicated through rulings that the position of addressing urban indigenous questions in terms of socio-economic 'issues'



rather than ‘rights’ is no longer tenable⁵⁸. The 2007 Esqueda ruling, for example, stated that reserve residence was no longer required for band councillors, meaning that the franchise was now extended to band members living in cities, and thereby recognizing that urban indigenous peoples form a political community in need of funding and representation (see also the Corbière and Misquadis cases, notably)⁵⁹.

These rulings were echoed by the *United Nations Declaration on the Rights of Indigenous Peoples* of 2007, which also recognizes, perhaps overly simplistically, the right of urban indigenous communities to self-determination⁶⁰.

2.1.6 Obstacles to indigenous non-territorial self-government. And yet, despite these jurisprudential rulings, public attempts at reconciliation, and the 1995 federal recognition of the indigenous right to self-government, the limited results exposed in this overview regarding off-reserve self-government might seem disheartening. Landmark cases such as that of *R. v. Marshall* (1999)⁶¹, which seemed to reverse centuries of impoverishment and disempowerment by recognizing the right of indigenous peoples to provide a reasonable living to their family by accessing resources, do not tend to lead to the result hoped for by indigenous peoples⁶². For example, in on-reserve practice, “[t]he federal policy of self-government over the past three decades has been to increase the power of the chief and council by devolving areas of

authority. The Marshall agreements are structured in terms consistent with this now established policy of self-government”⁶³.

Indeed, for the most part, existing legislation on ‘Indian land’ in Canada has cemented a land tenure regime applicable on reserves where band governments head the local indigenous administration, and whose control is staunchly limited to the territory of the reserves⁶⁴. Moreover, indigenous communities that do not yet own the land of which they claim to have been dispossessed tend to consider a land claim agreement as a necessary condition for self-government. This is partly because indigenous rights recognized in courts are often appealed by the federal and provincial governments, and indigenous peoples who abide by them are often prosecuted. In fact, for the federal government, “Aboriginal rights must be exercised in ways that are consistent with modern economic and political life; they are not to be exercised traditionally or aboriginally. State policy is meant to make Aboriginal persons equal Canadians”⁶⁵. Of course, this approach to indigenous self-government serves the interests of the federal government, which has been all too ready to transfer responsibilities onto indigenous chiefs and councils, which in turn have been all too ready to accept the power, and money, associated to these responsibilities:

most progress has involved power-by-power devolution to the chief and council of the



reserve in question. Transferred powers include health care and public health initiatives, primary and secondary education, welfare and social services, local policing, wildlife management, economic development, and local municipal services. In each case, the right to decide on these policy questions and the money needed to carry out decisions are devolved to the local chief and council⁶⁶.

This has meant that most instances of indigenous self-government, often quite inconsistent with traditional ways of life, and all too often limited to reserves and recognized traditional territories, have had, in many cases, an adverse effect. Moreover, despite improvements in the sphere of education and in life expectancy, income and employment, as well as morale, remain dangerously low for indigenous peoples on- and off-reserve⁶⁷.

Overall, for a long time, the federal government of Canada has continued to promote a federally sanctioned model of self-government that falls short of indigenous claims and corrupts the self-government agreements reached under this agenda⁶⁸. Increased indigenous urbanization and unrelenting indigenous self-governing demands are making a difference, however.

2.2 Indigenous non-territorial self-government in the sphere of education in Canada

The issue of self-governance in the sphere of education is of particular salience because indigenous individuals tend to have a lower degree of education and a higher dropout rate than the rest of the population, and because what is at stake in education is cultural survival and as such, identity survival for indigenous peoples.

As indigenous peoples in Canada have become more and more active and vocal in demanding self-governance since the 1970s, so have they become more and more active in demanding control in the operation of cultural and social institutions, including schools. Indeed, “education, as a major socialization agent which affects children’s values, attitudes, and beliefs, becomes an important key to the survival of Indians as a distinct people”⁶⁹. There is a need to acquire the skills necessary for indigenous peoples to not only survive, but strive in a non-indigenous world, to protect their community while participating in the larger society. And, more specifically, according to McCaskill, the ultimate goal of the cultural curriculum of survival schools is the fostering of pride in their indigenous identity among children⁷⁰. As such, what is needed is culturally appropriate structures, curricula and pedagogies within an indigenous-controlled education system, although some argue instead for an ‘added-on’ curriculum on the existing ‘Canadian’ ones⁷¹.



2.2.1 Native Survival Schools. In 1972, the *National Indian Brotherhood*, the pre-eminent indigenous organization in the country at that time, issued the position paper ‘Indian Control of Indian Education’, which became a precursor for the current policy of devolvement and transfer of responsibility to the reserve-level⁷². This paper conceived indigenous education as the sole responsibility of indigenous adults. The popularity of such ideals led to the *Indian Control of Indian Education Movement*, which has most notably achieved band control of schools on reserves. And while they are still few and far between, there now exist several indigenous-controlled schools off-reserve, notably in urban areas, such as the Native Survival Schools and ‘Native Way’ schools, whose aim is to provide culturally appropriate education attuned to the urban native youth’s needs specifically⁷³. Such cultural survival schools, which emerged in the late 1970s, can be seen as part and parcel of a revitalization movement as a response to what was felt as being a deficient education received by indigenous children – the emphasis is now put on indigenous languages, values and history⁷⁴.

There are several issues that survival schools must address when formulating their curriculum, the first of which being how to combine conventional school subjects and an indigenous cultural curriculum (typically about half and half), and second, how indigenous beliefs, traditions, cultural values and social patterns can be translated in indigenous contemporary realities⁷⁵. This

second issue is made much harder to implement by the absence of appropriate cultural curriculum materials⁷⁶. Urban indigenous survival schools also have the added difficulty of operating within a larger school system. While this is an advantage when it comes to funding, since they have access to funds from urban school boards rather than being dependent on grants, it also means that the province must approve the curriculum, and hired professors must be provincially certified (on average, half are indigenous)⁷⁷. This is why urban survival schools must endeavour to maintain a healthy distance from the larger education system in order to retain some flexibility in the implementation of their programmes⁷⁸. On the other hand, rural schools tend to be severely understaffed.

Ultimately, two of the main concerns for indigenous survival schools are their degree of autonomy and the structural relationship they entertain with the larger education system, which must be characterized by legitimacy⁷⁹. This last issue can be tricky, since urban school boards are sometimes unwilling to share the authority over indigenous education with indigenous peoples⁸⁰.

One such school is the *Joe Duquette High School*, previously known as the *Saskatoon Native Survival School*, which was established in 1980 through a tripartite agreement between the *Saskatoon Native Survival School’s Parents’ Council*, the *Saskatoon Catholic Board of Education*, and



the *Saskatoon Department of Education*. Based on ‘healing education’, which uses a ‘sacred circle’ as the spiritual foundation for the social and cultural dimensions, the school’s curriculum, which has evolved over the years to increasingly incorporate First Nations perspectives, provides a non-Eurocentric framework for ‘emancipatory education’⁸¹. Indeed, the school operates based on the need to reconstruct the educational institutions and practices in order to purge indigenous education of its neo-colonial character, observed notably in inherited educational goals and curricula that ignore the realities of indigenous youth⁸². For example, Regnier notes that “an academic program that ignores alcohol- or drug-related learning problems fails to understand that confronting abuse can be the beginning of one’s education. Abuse cannot simply be tolerated as an inevitable condition separate from whatever form of academic education occurs”⁸³.

2.2.2 Aboriginal School Boards While, again, anecdotal, as they are the results of isolated negotiations or mobilizations, there exist a few Aboriginal school boards, or at least, school boards whose mandate is to overview the education of mostly indigenous communities, such as the *Cree School Board* and the *Kativik School Board*, both the product of the *James Bay and Northern Québec Agreement* agreed upon in 1975. The *Kativik School Board*, for example, is controlled by the Inuit and manages

indigenous education in all fourteen communities found in Nunavik, Northern Québec. While governed by Québec provincial law, it has the sole responsibility of providing education to everyone residing on its territory (non-reserve based), from kindergarten to secondary school and adult school in Inuktituk, English and French. The school board also adopts a policy of ‘balanced bilingualism’ where Inuktituk is prioritized. Moreover, the board is responsible for developing appropriate materials and programs, and has its own teacher-training program conducted in Inuktituk⁸⁴. As for the *Cree School Board*, it provides education for the James Bay Cree youth at the kindergarten, primary and secondary school levels. It has full responsibility and jurisdiction in Cree communities, and develops and prepares materials in the Cree language and for teaching Cree culture. As it is the case for the education managed by the *Kativik School Board*, the *Cree School Board* provides education and materials in Cree, English and French⁸⁵. However, very little to no scholarly work dedicated to studying these boards and their impact on Cree and Inuit education has been found.

2.3 Indigenous non-territorial self-government in the health sphere in Canada

Addressing the issue of indigenous self-governance in the health sphere is, again, of particular importance because indigenous peoples tend to rate significantly lower than



the rest of the Canadian population in any marker of health and well-being⁸⁶.

2.3.1. Indigenous healing. Research has shown that sites of health and healing hold special meaning for the health of indigenous peoples, as well as spiritual, physical and symbolic connections to the land and nature⁸⁷. Furthermore, the provision of services by indigenous peoples for indigenous peoples is seen as a powerful statement of belonging and self-determination⁸⁸. For services to become ‘culturally appropriate’ in terms of indigenous health, which is crucial for their effectiveness and relevance, they must incorporate, for example, native languages, Elders or traditional healing practices. And, as the *Royal Commission on Aboriginal Peoples’ Report* explained, in order to maintain their identity, indigenous individuals must be able to remain grounded in their traditional values even when living and working in an urban milieu⁸⁹. Yet, traditional healing practices can be combined with Western, biomedical approaches to develop avenues that are uniquely indigenous. Whether or not Western medicine is incorporated with traditional healing, or to what degree, will depend on each community⁹⁰.

2.3.2. Existing indigenous health care policies. In the case of health care in Canada, the federal government has in the past assumed the primary responsibility for health care provision to First Nations registered under the federal Indian Act and living on-

reserve, as well as to the Inuit living on their traditional territories in Québec and Labrador⁹¹, while it is the provincial and territorial governments that are responsible for the rest of the health care provision, and most importantly here, for the provision of medical services for indigenous individuals living off-reserve⁹². In fact, there exist only two national policies regarding indigenous health: the 1979 *Indian Health Policy*, whose application is ambiguous as it does not stipulate whether or not it is limited to on-reserve indigenous peoples, and the 1989 *Health Transfer Policy*, which applies to on-reserve First Nations and the Inuit of Labrador only, and meant increased local responsibility for the planning and delivery of health care⁹³. Additionally, the *Public Health Agency of Canada* offers several programs that cater to off-reserve indigenous peoples – these are not, however, indigenous-specific⁹⁴. There are also seven national indigenous organizations whose mandate is to advocate in favour of indigenous peoples in health policy matters. Similarly, national indigenous health professional associations have also emerged to promote the development of an indigenous health care workforce as well as to advocate for the use and integration of traditional indigenous value in medical practices⁹⁵.

Meanwhile, most provinces have developed regional health boards or authorities whose roles are to encourage citizen participation, set priorities, regionally coordinate provision and integrate service delivery. Yet, none of them, with the



exception of Ontario, require indigenous representation or have any engagements with indigenous communities that are explicitly based on policies. In fact, it is rare for provinces to divert resources to indigenous-specific programs⁹⁶. Moreover, while regionalization has made health care provisions even more complex by multiplying relationships and agreements with indigenous communities (relationships that vary greatly across the country), regional indigenous organizations nevertheless increasingly have the opportunity to participate in the management and delivery of health care services, while Tribal Councils participate, to varying degrees, in health policy development throughout the country⁹⁷. In fact,

[t]he purpose of decentralizing health care systems to regional health authorities is in part to increase public participation in decision-making

[...]. Theoretically, regionalization should enable greater participation for everyone. Bands and Tribal Councils have been one of the few means of engagement available to First Nations, especially in remote and rural areas. The question remains whether and how First Nations and other Aboriginal peoples are engaged in this process⁹⁸.

So far, findings show that these decentralized health care structures do not entail mechanisms that would ensure indigenous representation, although British Columbia and Nova Scotia have provisions that stipulate that Board of Directors must be representative of the population⁹⁹. There are also some territorial and provincial legislations that, while limited to determining jurisdiction, help clarify the responsibilities of these governments with regards to indigenous health care¹⁰⁰. Yukon is the only federal jurisdiction that recognizes the need to respect traditional healing practices and to enter into partnerships with indigenous peoples¹⁰¹.

2.3.3 Indigenous health care self-determination in the literature. The discussion of indigenous self-government in the health sphere is made even more complex by the different discourses found in the literature that aim to justify the need for greater indigenous involvement in health care. Lavoie identifies three when analyzing Inuit self-government in the health care sphere.

- The first focuses on community participation and self-definition of health to palliate to the issue of indigenous dependency as a result of colonization¹⁰².
- The second justifies the need for greater indigenous involvement in the difficulties of effective cross-cultural communication, and emphasizes that training is the means to autonomy,



which, beyond hiring indigenous staff, must tackle the issues of medical ideology and practice¹⁰³. This paradigm, while being the most popular in the literature, is however deemed too optimistic by Lavoie.

- Finally, the third paradigm defines existing, biomedical, northern health services as an extension of the colonial system, therefore inherently problematic for indigenous control of health care provision, but is found lacking in specificity¹⁰⁴.

Moreover, discourses fed by these paradigms are often coopted; while some indigenous leaders may use self-government in health-related issues as a way of rejecting Western medical services or as a pathway to power, government representatives as well as practitioners may conversely use the health issue as a way of shifting responsibility for health and health care delivery (to a certain extent) unto individuals and communities, divesting the government of that ‘burden’¹⁰⁵.

2.3.4 The James Bay and Northern Québec Agreement. Nevertheless, there has been some progress in non-territorial indigenous health care self-determination in the past few decades, including the emergence of intergovernmental health authorities. Some examples of intergovernmental health cooperation were the result of the James Bay and Northern Québec Agreement (JBNQA) and were devised in order to serve the health

care needs of the Nunavik Inuit and the James Bay Cree¹⁰⁶. While the result of the land-claim agreement of JBNQA in 1975, this service provision occurs off-reserve, or at least is not limited to reserves.

In fact, the JBNQA notably led to the creation of structures managed by indigenous peoples but understood as extensions of provincial institutions, such as the *Cree Board of Health and Social Services of James Bay* as well as the *Katikivik Health and Social Services Council*, and to the construction of two hospitals, including the *Innuulitsivik Health Centre* in Puvirnituk, which Lavoie’s analysis focuses on. The election of an Inuit as the director of the Center in 1984, as well as community participation in the Board of Directors, led to increased employment opportunities for the Inuit in health care and provided a mechanism for shaping northern health care in a culturally-appropriate manner¹⁰⁷. More concretely, it has led to the creation of a midwifery-based maternity ward in 1986 which, as Lemchuk-Favel and Jock explain, is an example of integration of Inuit culture with Western biomedical health care and “has been recognized by the World Health Organization, the Institute of Circumpolar Health and the Society of Obstetricians and Gynecologists in Canada as an excellent model of northern health care”¹⁰⁸.

These developments took place as a part of a larger discourse within the discussion on indigenous health care, and what Lavoie calls the ‘community health model’ has become an avenue for the Inuit to pursue greater control



over health care, most notably through para-professionalism, de-professionalization – which has allowed a greater number of Inuit to access higher position of decision-making – and finally has allowed the ‘re-localization’ of Inuit knowledge through the biomedical model¹⁰⁹⁻¹¹⁰. Yet, Puvirnituk’s conception of the role of health care does not fully fit into the ‘community health model’ (which has important limits), since it includes the assimilation of some biomedical knowledge, and profoundly politicizes the issue of health care. In fact, Lavoie argues that the ‘community health model’ has contributed, yes, to the decolonization of Inuit health care, but also to its re-colonization. This is, among other reasons, because this model is grounded on several erroneous assumptions, such that the North in general, and traditional Inuit society in particular, is communal (which has been altered by colonization and modern life), and that Inuit and Northerners are the only truly effective or culturally appropriate providers of health care¹¹¹. Nevertheless, the ‘community health model’ has opened the doors to increased Inuit representation in health care, whether in upper-level management, paramedical roles, finance, support staff and janitorial staff, has led to important decision-making authority in health care being re-localized from Québec City to Kuujjuaq, and has legitimized the discussion of issues of culture, autonomy and self-responsibility in northern health care¹¹². Lavoie concludes that while ‘re-colonization’ may be occurring in Northern Québec

indigenous health care, it might be temporary; she sees the northern biomedical system as being purposefully assimilated into ‘an Inuit lifeworld’¹¹³.

2.3.5 The Transformative Change Accord and off-reserve indigenous health care in British Columbia. Another example of Canadian indigenous health care self-determination is that of the *Transformative Change Accord* in British Columbia, signed in 2005 by the province of British Columbia, the *British Columbia First Nations Leadership Council* and the federal Government of Canada. This landmark accord was meant to signify the beginning of a new relationship in the realm of health care with First Nations, and possibly other indigenous peoples, in British Columbia, and aimed to address three broad objectives:

- 1) first, to bridge the gap between First Nations and the rest of the population of British Columbia in the spheres of education, health, housing and economic opportunities over the next ten years;
- 2) second, to reconcile indigenous rights and title with those of the Crown;
- 3) third, to establish a new relationship based on mutual respect and recognition¹¹⁴⁻¹¹⁵.

It has led to several milestones, such as the adoption of a *First Nations Health Plan* in 2006, the creation of a *First Nations Health Council* in 2007 and that of a *First Nations Health Authority* (FNHA) in 2010¹¹⁶.



However, the Accord touches much more on on-reserve health care provision than off-reserve care. For example, the federal government has progressively and seemingly unstoppably transferred functions to the FNHA, including the funding and delivery of health services *exclusively* available to First Nations living on-reserve, and only a limited number of other health benefits such as dental care and prescription drug coverage, to all First Nations living on- and off-reserve¹¹⁷.

It should be noted that Urban Aboriginal Health Centres are found at the heart of associational indigenous communities in British Columbia and could become mechanisms of urban citizenship for indigenous individuals that are not affiliated with a nation or that live off traditional land. However, these Centres generally do not see this as part of their role¹¹⁸.

2.3.6 The Aboriginal Health Policy and indigenous off-reserve health care in Ontario. Furthermore, Ontario is the only province in Canada to have adopted a comprehensive policy framework that addresses all indigenous health care and ensures guarantees of representation for all indigenous peoples living in Ontario¹¹⁹. It first adopted the *Aboriginal Healing and Wellness Strategy* in 1990, which led to the creation of 10 *Aboriginal Health Access Centres*, 6 healing lodges, 7 family shelters, 2 family violence shelters healing programs, 2 outpatient hostels and crisis intervention teams in 47 communities, and was followed by an

overarching *Aboriginal Health Policy* in 1994¹²⁰. This was further supplemented in 2007 by the *Local Health Integration Networks*, which are tasked with ‘regional health priority setting and resource allocation’ and are each expected to be advised by an *Aboriginal Health Council*¹²¹. The *Aboriginal Health Policy* is meant to “[respond] to Aboriginal priorities, [adjust] existing programs to respond more effectively to needs, [support] the reallocations of resources to Aboriginal initiatives, and [improve] interaction and collaboration between ministry branches to support holistic approaches to health”¹²².

2.3.7 Métis-specific health care. Finally, the Northwest Territories is the only jurisdiction in Canada with a specific health care policy for the Métis. However, this policy is limited to extending access to the *Non-Insured Health Benefit* programme to registered Indians¹²³. There are nevertheless a few other Métis-specific organizations and programs, many recently developed, that are representing Métis health care interests, such as the *Métis Nation of Ontario (MNO) Health Services Branch*, or the *Métis Addictions Council of Saskatchewan Inc*¹²⁴.

2.3.8 Jurisdictional issues and other hurdles in indigenous off-reserve health care. While these isolated developments may be encouraging, the lack of national policy in terms of indigenous health care off-reserve is deeply felt, notably in the fact that the



boundaries set by self-government agreements often do not coincide with health authorities' jurisdiction, further complicating the provision of health care for indigenous peoples. Additionally, the fragmentation of health care jurisdiction between several levels of government can easily become an obstacle to efficient health care access delivery¹²⁵. Furthermore, "the grey area between provincial jurisdiction and federal policy can be enormous for First Nations, affecting a wide range of services from mental health programming and home-based palliative care to community long-term care institutions"¹²⁶.

Cross-jurisdictional programs, forums and coordination mechanisms have recently emerged in a few provinces across the country in order to bring federal, provincial and indigenous representatives together to tackle issues such as that of indigenous health care and bridge jurisdictional gaps¹²⁷. In fact, it is troubling that the jurisdictional patchwork is often considered as precluding the possibility of national policies regarding indigenous health care, yet such policies are also expected to influence the provincial jurisdiction over health care¹²⁸. This is further complicated by the fact that indigenous peoples reject *en bloc* approaches geared to First Nations, Métis and Inuit in a pan-indigenous optic. This is easily explained by the fact that such approaches tend to gloss over differences and ignore context-specific issues. What is even more troubling, in fact, is that as a result of colonialism and the ensuing patterns of dependency, federal and provincial policies

and support often appear necessary for indigenous peoples to have a real shot at self-determination.

As for health care for indigenous peoples in urban areas in Canada more generally, only British Columbia and Ontario have developed policies to fund health care centres to cater the specific needs of urban indigenous peoples¹²⁹. These centres provide primary care with a multi-disciplinary team in a wide variety of fields, ranging from traditional healing to diabetes education and mental health¹³⁰. A reason explaining the limited provincial funding for indigenous health initiatives in urban and rural areas is the lack of focus from which to build a health network (conversely, another issue can be that of remoteness, making staff turnover and the difficulty of recruitment prevalent¹³¹)¹³². Such centres can provide a focal point for the community, and thus contribute to community development and empowerment. Indeed, indigenous-controlled organizations have emerged to fill in where the service provision from provincial and territorial governments is found lacking, and to fill advocacy needs. For example, over 100 *Aboriginal Friendship Centers* (AFCs) emerged in the 1950s in order to assist indigenous individuals in adjusting to urban life, and to bridge the provision of social and medical services between indigenous communities and the rest of the country. Additionally, urban indigenous NGOs, such as *Urban Aboriginal Health Centres*, can provide a leadership role much needed in providing cohesion and advocacy to



promote an agenda addressing indigenous health concerns¹³³.

2.4 Other types of indigenous representation in urban areas in Canada

While the issue of urban indigenous self-government has slowly emerged at the forefront of the debate, and while we have so far reviewed some instances of urban indigenous self-determination in the spheres of education and health care, urban indigenous peoples as a whole still lack official policy status, as the federal government does not officially recognize them as possessing collective indigenous rights, thus inevitably limiting the concern that the federal government gives them. They are, in fact, in a policy vacuum¹³⁴. For a long time, it was assumed that indigenous individuals moving to cities were divesting themselves of their aboriginality by accepting compliance with 'Canadian' norms, which led to an attitude of assimilation towards these urban indigenous émigrés. By refusing to recognize the reality of urban indigenous peoples, the federal government made their transition to urban settings more complex than it should have been. As a result, indigenous peoples are over-represented in the urban poor, and more likely to live in poor neighbourhoods, notably¹³⁵. Moreover, indigenous peoples often resorted to non-indigenous service delivery organizations that ignore their cultural beliefs and traditions. And as the interviews conducted by DeVerteuil and Wilson in seven treatment facilities in Winnipeg show, non-

indigenous organizations can be quite indifferent to indigenous realities, and reluctant to accommodate indigenous individuals or to create 'indigenous spaces'¹³⁶.

This is not to say that the federal government remained completely inactive. In fact, following the publication of the 1996 *Royal Commission on Aboriginal Peoples*' Report, the federal Government of Canada announced in 1998 the *Urban Aboriginal Strategy* (UAS), which was a four-year, 150 million dollar program aimed at encouraging the formation of effective, community-level, organizations to address the needs of indigenous peoples in urban centers (funding has so far continually been renewed). As Abele and Graham explain, "the UAS is an explicit attempt to develop indigenous institutions in cities, and to develop partnerships that will better align federal, other government and non-governmental programs to respond to community priorities, to coordinate federal resources across departments, and to test policy and programming ideas to provide strategic direction"¹³⁷.

Yet, as overviewed here, indigenous peoples have progressively managed to utilize their historical governing and social ideologies to adjust and organize in cities, and to 'devise new political and social models' of their own¹³⁸. This took time, and to a certain extent, indigenous peoples remained clients, rather than being involved in decision-making and administration. However, this is progressively less and less the case¹³⁹. The



development of these new networks is good news for indigenous self-government, as the establishment of networks and institutions embodying a collective identity contributes to community building, visibility and (political) empowerment¹⁴⁰; multiple, diverse organizations have emerged to support cultural awareness and indigenous community needs in urban centres¹⁴¹.

One of the most pervasive approaches to urban self-government is that of a self-selecting (rather than defined by a land base) ‘community of interest’ or ‘associational community’, coined by Barcham and the RCAP’s report, which entails “a set of self-governing indigenous institutions in sectors such as housing, health, education, justice and can also include the development of umbrella organisations that represent the interests of these institutions collectively as well as the urban indigenous population that they serve”¹⁴². Despite this feat, however, the federal government largely continues to depict urban Aboriginals through an assimilatory lens, as having abdicated their indigenous status, allowing it to refuse responsibility for them. While there are programs and services aimed at answering urban indigenous needs that are sponsored by the federal government, they are often framed in terms of socio-economic marginality rather than rights¹⁴³.

There have been several discussions of different forms of urban indigenous self-government in the literature, but all have mostly remained theoretical. Yet, associational indigenous communities found

in urban centres represent an interesting opportunity for self-government that would neither compete with nor undermine on-reserve self-government. However, they lack a policy- or legislation-defined system of governance¹⁴⁴.

It should be noted that an important obstacle to urban indigenous self-government is the amalgam of legal statuses that urban indigenous peoples, as ‘communities of interest’, share. Some programs are indeed available to registered indigenous individuals, and not to others, for example. Similarly, only band members can participate, in some cases, in their band’s government remotely¹⁴⁵. Another important obstacle is the high level of mobility of indigenous peoples, which is probably largely due to the difficult living conditions indigenous peoples face in urban settings (although it is also likely due to the need to maintain cultural and emotional ties with their communities of origin)¹⁴⁶.

2.4.1 Aboriginal Friendship Centres.

Aboriginal Friendship Centres, briefly mentioned above, represent Canada’s most significant off-reserve indigenous service infrastructure¹⁴⁷. In fact, they were for a long time the only providers of ‘culturally-enhanced programs and services’ to urban indigenous residents. They emerged in the 1950s and 1960s as a response to the growing needs of the indigenous urban population, and were initially largely autonomous, relying on volunteers and funding through fundraising activities and small grants from churches and



service groups. As the demand grew, so did the number and nature of the programming of these centres – they organized into *Provincial and Territorial Associations* (PTAs), and eventually into a national body, the *National Association of Friendship Centres*. Gaining a positive reputation with the government through the quality of the service that they provide and the role they play in urban indigenous communities, the federal government started funding the *Aboriginal Friendship Centres* through the *Migrating Native Peoples Program* in 1972 and, in 1988, established the permanent *Aboriginal Friendship Centre Program*¹⁴⁸). Then, starting in 1996, the funding relationship changed between the Government of Canada and AFCs, as the administrative responsibility was transferred to the *Department of Canadian Heritage* to the *National Association of Friendship Centers*, now responsible for the distribution to the local Centres and PTAs. This new relationship, and funding devolution, “created the conditions for the long-term development of modern indigenous governance and offered urban indigenous peoples the opportunity to acquire knowledge and develop skills and experience as administrators of service delivery institutions”¹⁴⁹. It is also interesting to note that while non-indigenous individuals were involved in the early days of the Friendship Centres, they over time became increasingly controlled by indigenous peoples¹⁵⁰. And many programs started by AFCs eventually

became independent, urban, indigenous organizations.

Today, AFCs, whose Boards of Directors are made up of both indigenous and non-indigenous members, serve to support urban indigenous individuals through self-determined activities that work towards creating equal access to and participation in Canadian society, and respect as well as strengthen the increasing emphasis that is put on indigenous cultural distinctiveness¹⁵¹. AFCs were also funded, and operate based on indigenous values, which translates in practice in transparency, accountability, respect and client-based services, as well as the adoption of a traditional approach, such as consensus-based decision-making, ‘culture-based management’ and the inclusion of the youth and of Elders¹⁵².

2.4.2 Culturally-appropriate housing in urban settings. Another important aspect of indigenous self-government in urban areas is that of culturally appropriate housing, as it has a social, cultural and economic impact on urban indigenous communities¹⁵³. Crucially, urban indigenous housing corporations’ Boards of Directors and staff are mostly indigenous. Canadian social housing and indigenous policy converged for a few decades, through the pursuit of equity through social rights, and the rise of self-government claims championed by the *Urban Native Housing Programme*. This was an era where the federal government, interested in programme planning, committed to long-term



funding. However, post-1993, social housing and indigenous policies have diverged as the federal government's approach has shifted towards less concrete social goals, more strategic capital funding, and became characterized by a reluctance to commit to get involved in major housing programmes¹⁵⁴. The *Homelessness Initiative* was nevertheless launched in 1999, and led to the creation of multiple indigenous organizations throughout the country to provide housing support for homeless indigenous people¹⁵⁵.

2.4.3 Indigenous economic independence. One final, but not exclusively urban, aspect of self-determination should be touched upon: that of economic independence. Indeed, so long as indigenous peoples remain dependent on government funding, their initiatives will remain linked, at least to some extent, to governmental agendas¹⁵⁶. There has, in fact, been some improvement in the level of marginalization of urban indigenous peoples in the past three decades. However, as Evelyn Peters' research demonstrated, the economic inequality between indigenous peoples and non-indigenous groups did not decrease significantly between 1981 and 2001, for example, which is cause for some serious concern when the high poverty rates of urban indigenous individuals are factored in¹⁵⁷. It is thus crucial to develop avenues of economic development and emancipation for indigenous peoples living off-reserve¹⁵⁸. The RCAP's Report identified two strategies to help urban indigenous economic development: first,

increasing the level of participation of indigenous individuals in mainstream economies through employment and training initiatives, and second, increasing opportunities in a distinct, indigenous, economy¹⁵⁹. Additionally, Peters suggests that

[t]he role for planners and municipal governments may be to encourage Aboriginal participation in civic and community services employment, to utilise municipal tools (property development functions and other financial levers) to support economic development projects involving Aboriginal people, and to support the development of Aboriginal organisations by involving them in municipal planning and decision-making¹⁶⁰.

But, as it stands, urban indigenous people are "disproportionately poor, excluded from labour markets and dependent on government transfer payments"¹⁶¹. Nevertheless, it should not be forgotten that the number and variety of indigenous-controlled urban organizations is, as a general rule, consistently growing, and is progressively expanding beyond service provision towards advocacy, community development and political representation¹⁶²⁻¹⁶³. Furthermore, municipalities have an important role to play in educating non-indigenous peoples about the realities of the



life of urban indigenous peoples, about the relationship between indigenous traditions and urban life. Municipalities must include indigenous individuals in urban planning activities, increase their representation in municipal and governmental bodies, incorporate indigenous culture in the urban landscape, and so on¹⁶⁴.

2.5 Concluding thoughts on off-reserve self-government in Canada, new avenues and criticisms

Since the rise of the Canadian indigenous self-determination movement in the 1960s and 1970s, scholarship on different ways and models of self-government for off-reserve, mostly urban, indigenous peoples has developed, as discussed above, and a few other concrete solutions and warnings have been offered.

2.5.1 Beyond territoriality. Control over the land represents an essential feature of what it means to be autonomous for indigenous peoples¹⁶⁵. But Otis issues a word of caution, and argues that an excessive focus on territoriality might become prejudicial to the further development of indigenous self-representation and governing¹⁶⁶. And while most forms of self-government that exist so far in Canada are couched in territorial treaties or based on land claims and are grounded on the use of the land and of its resources, the need to move beyond territoriality has become somewhat of a consensus in the literature over

the past few decades. Indeed, emphasis should be placed on what Otis calls '*le principe de personnalité du droit*', according to which a right is applicable to an individual not based on his or her territorial affiliation but rather on his or her personal belonging to a community or national group¹⁶⁷. In fact, once this debate is over, as Murphy advances, most institutionalized forms of indigenous self-government will not resemble 'fully constituted territorially concentrated governments'¹⁶⁸. Nevertheless, territoriality cannot be completely evacuated, since, for example, multiple communities can coexist in a same space regulated by a sovereign state, as is the case of indigenous peoples in urban areas¹⁶⁹. Yet,

le principe de personnalité pourrait, en revanche, permettre aux groupes nationaux dispersés ou entremêlés d'être constitués en une unité politique dotée de la personnalité juridique et de se gouverner sans exclusivisme spatial dans les matières essentielles à leur développement national, tout en continuant à cohabiter sur un même territoire¹⁷⁰.

As such, for Otis, hybrid institutional solutions that combine territoriality with the '*principe de personnalité*' have become necessary in contemporary indigenous governance discussions, allowing the self-



government discussion to move beyond the reserves. Yet, as Belanger and Newhouse remark, the debate surrounding indigenous self-government and its implementation has, despite strong indigenous scholarship on the subject and a clear political philosophy, increasingly, and dangerously, become limited to individuals versed in legalistic jargon and constitutional politics¹⁷¹. Unfortunately, this shift steers the discussion away from those who would benefit it the most, and makes it the arena of the elite, whether indigenous, governmental or academic.

2.5.2 National cultural autonomy. Another alternative explored by Nieguth is the implementation of national cultural autonomy (NCA), as exemplified in Canada by the Nisga'a self-government agreement in British Columbia mentioned previously, which does not strictly follow a traditional logic of state territoriality. NCA is an interesting alternative for groups that cannot exercise effective control over a territorial jurisdiction, such as urban indigenous groups. Indeed, NCA can act as a supplement to territorial form of political order that allows for self-government schemes based on personal membership¹⁷².

Nieguth does recognize several limitations to national cultural autonomy, notably that it was first developed – by Otto Bauer and Karl Renner – in a time where nations were considered much more homogenous than they are today, and in a

context of anti-liberalism and anti-democracy¹⁷³. In Canada more specifically, NCA could be quite problematic for all parties involved: indigenous peoples could fear that a non-territorial self-government agreement might undermine their land claims, could argue that NCA does not capture the peculiarity of their position and history and that it ignores the cultural and spiritual link that exists between indigenous peoples and their lands, while English-speaking Canadians would likely oppose the entrenchment of 'special interests', and many Québécois would likely see NCA as irrelevant to their endeavour towards making Québec a nation-state, whether within or outside of Canada¹⁷⁴. This is why Nieguth argues that NCA could become a modest *portion* of a larger scheme of governance in Canada, but a meaningful portion nonetheless, notably because it removes the tension between indigenous self-government and the exclusive control over territory that is central to the definition of the modern state and its sovereignty, and allows indigenous groups which may not feasibly be able to gain legitimate control over a territory, to exercise self-government¹⁷⁵.

Overcoming the colonial legacy of wholesale indigenous assimilation represents a significant hurdle to indigenous self-governance. But it remains important to maintain a balanced approach that avoids the pitfalls of advocacy research:



When considering agency and the level of effort exerted by Aboriginal political actors to counter Canadian hegemony the line between ascribing too much influence to Aboriginal political leaders and perpetuating the discourse of resistance to the monolithic colonial state can become blurred. [...]. It is our hope that this essay has situated Aboriginal people as subjects of and participants in intellectual discourse about relationships between political activism and cross-cultural interaction with the Canadian state, a novel approach since Aboriginal people and non Aboriginal scholars rarely see these communities as sites of intellectual discourse¹⁷⁶.

Overall, despite setbacks, Belanger and Newhouse have identified several areas of significant improvement in indigenous self-government in Canada in the past few decades:

- first, the concept has grown from local, municipal-style government to a constitutionally entrenched inherent right;
- second, from Indian status on-reserve indigenous peoples, the discussion now also touches the Métis, Inuit and urban indigenous peoples;

- third, the basis of the right to self-government has moved from the *Indian Act* (which realistically dismantled traditional Native governments and rights to self-government, a prohibition partially eroded by the 1951 revisions to the *Indian Act*) to an inherent right;
- fourth, no longer simple municipalities, indigenous governments are seen as encompassing a mix of municipal, provincial, federal and uniquely indigenous authorities;
- and finally, the debate is no longer situated along the line of whether or why, but of how¹⁷⁷.

The examples of indigenous self-government depicted here, while anecdotal, are positive in and of themselves. It could be argued that there has been too much federal intervention in the process so far which, as will be observed below, is even truer for 'Natives' in the United States. Yet, as Walker points out, in the absence of federal support, leadership and policy that might contribute to the accomplishment of common citizenship goals and provide the necessary resources to achieve true social welfare for indigenous peoples, the indigenous governance observed seems to further isolate indigenous peoples rather than work towards greater solidarity between indigenous and non-indigenous peoples in Canada¹⁷⁸. But should indigenous peoples want greater solidarity with non-indigenous groups? Or is isolated autonomy



what should be sought after? Can, and should, indigenous self-government be developed in a partnership with the Canadian state? If the American case is any indication, as will be seen below, federal intervention, while sometimes useful, can often lean towards neo-colonialism, and/or assimilation.

In any case, while still in many ways rare, non-territorial, most often urban, indigenous self-government is emerging, and when it is enjoyed it is “[...] through urban Aboriginal institutions, controlled by Aboriginal people and providing culturally appropriate and sensitive services”¹⁷⁹.

III. NON-TERRITORIAL, OFF-RESERVATION INDIAN / NATIVE¹⁸⁰ SELF-GOVERNMENT IN THE UNITED STATES OF AMERICA

3.1 *The right of Native off-reservation self-government in the United States - a historical overview*

3.1.1 The federal recognition of (limited) sovereignty and inherent Native right to self-government. Contrarily to the Canadian case, the Native American inherent right to self-government was recognized very early in the constitutional United States. Indeed, the United States Supreme Court adopted the view that American Indian nations possessed innate powers of self-government and sovereignty (as foreign nations), but

entrenched them under the superior power of the federal government in the *Royal Proclamation* of 1763. Meanwhile, as discussed above, the Canadian federal government did not recognize an inherent right to self-government until 1995¹⁸¹⁻¹⁸². Moreover, from then on, the federal government in the United States has, at least officially, held full fiduciary obligations towards American Indians and has enforced governmental trust obligations pertaining to native assets as well as treaty obligations to Natives. Meanwhile, an ambiguous fiduciary duty was bestowed much later upon the Canadian federal government to deal with native lands in a way that was beneficial to the native population, and the Canadian government's relationship with indigenous nations was influenced by a weaker recognition of the government's obligations regarding Native treaties, considered contracts unilaterally alterable by the government¹⁸³. This has led to American policies historically affording more room to Indian self-government, at least at first glance, and to the federal government engaging directly with Native American nations on a government-to-government basis¹⁸⁴, while the Canadian government was, until a few decades ago, in many ways free to deprive indigenous peoples of the right to a Native government¹⁸⁵.

3.1.2 Important federal restrictions of Native sovereignty and right to self-government. Despite the United States Supreme Court's recognition of the Indian right to self-



government, however, this right has been allowed to flourish, or conversely, has been severely limited, by federal policies, which have made sure that it is impossible for Indian communities to live in isolation and free from the infiltration of the politically and legally normative American setting¹⁸⁶. The relationship between American Natives and the federal government has fluctuated throughout history, moving from autonomy to quasi-conquest and domination in more assimilatory times, and moving back since the 1960s and 1970s to a period of *limited* self-government and claims of sovereignty¹⁸⁷. As such, the federal government retains a large portion of control over the American Indian population and its self-governance.

One example of such restrictive policies is the creation of reservations through the *Indian Removal Act* of 1830 where Indians lost trade, military and diplomatic powers, and the following 1887 *General Allotment Act* which disrupted the communal nature of the reservations by dividing up the land between Native and non-Natives, and which accounts for the transfer of over 100 million acres of tribal land being handed over to non-Indians¹⁸⁸. The federal policies toward Natives at the time, and through the beginning of the 20th century, were aimed at placing Indians on reservations where programs were implemented to educate and assimilate them, as well as make them economically self-sufficient, in order for them to become incorporated into mainstream society¹⁸⁹. The *Indian Reorganization Act* of 1934, the Indian

‘New Deal’, was meant to remove policies that suppressed Native cultures, to make amends for the allotment program and to “foster native development through preservation of native cultural values and communal institutions and to conserve the native tribe’s natural resources”¹⁹⁰, including the right for tribes to organize and adopt their own constitutions, as well as American-style governments (foreign to most Native communities). However, this all remained under federal supervision and approval; Congress still had the power to withdraw or limit Indian sovereignty at any time. Furthermore, these new Indian Reorganization Act governments had little power and political clout, and enjoyed little or divided support from their communities¹⁹¹. In fact, the short-lived (1934 to mid-1940s) *Indian American Federation*, a controversial but influential nationalist Indian organization that gathered greater support against existing federal practices towards Native Americans than was believed to exist at the time, considered the ‘New Deal’ as increasing rather than decreasing federal control and paternalism¹⁹². Overall, tribal autonomy mostly has, and continues to, hinge on federal recognition¹⁹³.

3.1.3 The rise of the Native self-determination movement and the U.S. federal government’s response. This is obviously unacceptable for Native American tribes that then see their autonomous powers, such as self-government, as emanating from federal recognition rather than from their inherent sovereignty¹⁹⁴. As



such, many tribal communities have continued to search for avenues of autonomy and self-governance, while the government pressed during the 1950s and 1960s for an assimilation policy known as the ‘Termination Policy’, which called for the dismantlement of tribal governments and the cessation of federal relationships with the tribal communities¹⁹⁵. In an effort to avoid the ‘Termination Policy’,

[t]he past 40 years have seen the reassertion of Indian claims to stronger self-government, cultural autonomy, and efforts toward gaining economic self-sufficiency. American Indian communities are working on a variety of avenues designed to reclaim greater tribal decision-making power and greater reliance on tribal culture, philosophies, and institutions while making adjustments to meet the increasing global demands of the 21st century. Tribal communities and leaders have sought to regain increased influence over education, tribal government, the administration of justice, economic development, and the retention of culture and language¹⁹⁶.

In fact, since the 1960s, ‘Natives’, both in Canada and the United States, have had increased opportunities for self-directed

change, with greater self-government powers as well as greater control over land and resources, enhanced economic sufficiency and increasing government reorganization¹⁹⁷. Despite important federal supervision over Native affairs, the 1960s and 1970s were in the United States, as they were in Canada, a period of awakening for American Indians and Alaska Natives¹⁹⁸. In a context of heightened concern for civil rights, the ideals of Indian self-determination and governance flourished¹⁹⁹.

American Indians are not party to the consensus surrounding the American constitution – on the contrary, they legally, culturally and politically seek to retain their autonomy and see themselves as the holders of sacred rights to land, self-government and their culture²⁰⁰. Following an important rise in the 1960s, Indian activism, led by the *American Indian Movement*, alongside other pride organizations such as the *National Congress of American Indians* (established in 1944), the *Society of American Indians* (established in 1911), or the *National Indian Council* (established in 1961), contributed to a rising feeling of empowerment, and increasing demands on policy-makers to enact legislation to preserve Indian self-government, culture, languages and identities. This movement notably led to the 1975 adoption of the *Indian Self-Determination and Educational Assistance Act* (ISDEAA) which reaffirmed congressional commitment to “the establishment of a meaningful Indian self-determination policy which will permit an



orderly transition from federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services”²⁰¹.

A similar wave of Indian activism also occurred in urban centres. The Red Power Movement, which was initiated by a group of college students, characterized this wave of urban activism and self-determination from 1969 to 1978. This movement was particular because it was urban, and resulted in over 75 property takeovers, including the occupation of Alcatraz Island in 1969 to contest the non-fulfilment of treaty or trust rights to Native communities. Its demands ranged from return of land to Indian studies programs, greater respect for treaties as well as support for cultural centers²⁰². Moreover, urban Indian centres and groups at the time were organizing Native community centres, thus contributing to the slowly increasing Native American independence from non-Native institutions²⁰³.

And, from the mid-1960s onwards, “[t]ribal governments became increasingly powerful within reservation communities and often became the major distributors of economic benefits. Tribal governments began to look like other local governments in the United States and, armed with federal aid, assumed greater visibility and presence in Indian communities”²⁰⁴. This remained limited to reservations. However, tribal governments, while not the focus of the research here, remain meaningful as they

de facto are emerging as yet a fourth form of limited federal sovereignty within the U.S. federal government, not based directly on the Constitution but based on treaties, federal law, and legislation that preserve limited sovereignty within Indian governments. In general, American Indian governments preserve all inherent government powers except those explicitly withdrawn by Congress. In a practical sense, American Indian governments perform many of the functions of U.S. local governments but also have powers that resemble states and have a government-to-government relation with the federal government that retains legacy of international power, which is a legacy from the competitive colonial era during the formation of the early U.S. government²⁰⁵.

In the same spirit of devolution of power to the local, community level, new federal policies, most visible through the *Indian Self-Determination and Educational Assistance Act* (ISDEAA) of 1975 and the *Indian Health Care Improvement Act* (IHCIA) of 1976, were now starting to favour delivering services to the tribes’ own agencies rather than governmental agencies, encouraging them to



manage their own affairs²⁰⁶. To such effect, the ISDEAA was intended to provide a transfer mechanism from federal planning and administration to Indian self-determination²⁰⁷. Amendments to the Act made in 1988 even stated that tribes were free, for example, to take the programs performed in the realm of health care by the *Indian Health Services* (IHS) and to structure and allocate them as they saw fit – a 2000 amendment made this self-governance program permanent at the IHS²⁰⁸. This was done through two new transfer mechanisms, compacts and Annual Funding Agreements (AFAs)²⁰⁹. The ISDEAA also established the *Urban Indian Health Centres*, the main source of health care provision for urban Native Americans²¹⁰. Furthermore, one of the latest developments was the amendment and extension of the ISDEAA into the 1994 *Tribal Self-Governance Act* (TSGA) which provided a mechanism of petition to the Department of the Interior for the transfer of control and authority from the federal government to Native tribes of programs deemed of significant geographical, cultural and historical importance to the tribes, including non-*Bureau of Indian Affairs* programs²¹¹. This Act marked a step forward in Congressional recognition of the assertiveness of Indian tribes, and of the significance of public land management by Indians:

Delegations under the TSGA may extend the extra-territorial dimensions of tribal sovereignty,

and strengthen the ability of tribes to control and participate in managing programs and functions that impact tribal sovereignty *but are located outside Indian country*. These programs are not normally within the scope of a tribe's retained sovereign authority, but may exist through delegation of federal authority over federal lands to tribes²¹².

Importantly, the ensuing negotiations between agencies and tribes are done on a government-to-government basis²¹³. Nevertheless, the *Tribal Self-Governance Act* is narrow, in the sense that it imposes a strict set of requirements over tribes in order for them to be eligible to petition for authority and transfer²¹⁴. One example of an agency with which tribes have negotiated is the *National Park Service* (NPS), which has led to four different types of cooperation: land exchanges and transfers, co-management, agreements and tribal parks²¹⁵. Indeed, there have been instances of tribes, the first one being the Navajo in 1958, that created their own tribal park as a response to NPS management and continued ownership on their reservation²¹⁶. In 1996, six tribes created the *Alliance to Protect Native Rights in National Parks*²¹⁷. However, in the case of the NPS, for example, the negotiations have led to tribes enacting little more than the role of a contractor (rather than a role of co-management).



These developments paved the way to the few instances of off-reservation self-governance observed today, having fostered greater consciousness and assertion amongst Native Americans. Disheartening, however, is the fact that the United States Supreme Court has been, in the past 30 years, less amenable to the legal and political demands for self-governance by Native Americans than it was during the 1965-1980 period²¹⁸. This, coincidentally, seems to be the opposite of what is observed in Canada.

3.1.4 The particular case of Alaska. The situation is slightly different in the case of Alaska, which was acquired from Russia in 1867. The federal government did not enter into agreements or treaties with the Alaska Natives until they were first organized into for-profit, quasi-sovereign corporations owned by the Natives with the 1971 *Alaska Native Claim Settlement Act*. Tribal governments were introduced as late as 1994²¹⁹. However, while both serve as independent administrative bodies for the Indian nations, they are also both in some ways impositions from the federal government rather than a free Native expression of self-governance, functioning as tools that compel them to enter into specific relationships amongst themselves and with the federal government, as it is the case for reservation tribal governments in the rest of the country²²⁰. Moreover, the way in which corporations and tribal governments operate can lead them to have competing interests²²¹.

Nevertheless, the right to self-government on reservations, and more recently in Alaska, comes from the historical recognition, in the American constitution and by the Congress, of the inherent sovereignty of Native nations. Indigenous sovereignty functions through both corporations and tribal governments in Alaska, and had previously been expressed through their own political associations where they could discuss their interests. An example of such an association is the grassroots *Alaska Federation of Natives* founded in 1966 which regrouped activists from all over the state in an attempt to palliate the absence of sovereignty for Indians before the introduction of corporations²²². In fact, “the AFN has served as a guiding compass for Native Alaska policy, economy and culture”²²³.

It is important to note, however, that the incorporation of tribal governments in Alaska in 1994 was quite rewarding for Alaskan Native tribes, since federally-recognized communities gain political and economic power in the state, as well as receive federal education, social services and resource protection services²²⁴. Tribal governments also became a source of self-governance for Alaskan Native communities left out of the corporations²²⁵. Ultimately, “Alaska Natives’ ability to sway policy through the amalgamation of tribes and corporations over mutual issues displayed the unexpected, and perhaps feared, power of unified collaboration across the memberships of both tribes and corporations”²²⁶. Corporations and federally legislated tribal



governments were meant to be instruments of subjection, but Alaskan Natives have been able to use them as tools of political expression. However, Alaskan tribal sovereignty has been under attack in recent years, notably through the restriction of their territorial jurisdiction²²⁷.

3.1.5 Increasing Native urbanization, greater off-reservation self-governance needs and growing urban Native institutions. As it is the case in Canada, the majority (approximately two thirds) of Native Americans now live in urban areas, where they generally no longer have access to the multiple Indian resources that their reservation counterparts do, or at least have access to fewer of them – indigenous social and health services, tribal schools, language programs and tribal governments exist on every reservations, which cannot be said of urban centres²²⁸. For example, many nations require voting for the tribal governments in person, which leads to many urban Indians becoming de facto disenfranchised. There are also some tribes that require their tribal members to possess an on-reservation address in order to be able to cast their vote²²⁹. Indian access to decision-makers is also much more present on reservations than in cities, and urban Indians generally have a much harder time maintaining their cultural identity²³⁰. These issues will be discussed further below. Yet, despite this influx of urban American Indians and Alaskan Natives over the past few decades, there is still a limited amount of

available information and scholarly analysis of the living situation of urban American Natives, much more so than for Indians living on reservation lands.

American Indians began to move from reservations to cities after World War II, when many veterans decided not to return to the greatly disadvantaged reservations and to relocate in urban centres in hope of higher chance of employment and higher physical comfort²³¹.

The federal government also implemented a policy of ‘relocation’ in the 1950s and 1960s in order to alleviate the burden on overpopulated reservations, and in an attempt to assimilate Indians into the mainstream culture. This further marginalized American Indians and Alaskan Natives who were encouraged to relocate to urban centers such as Los Angeles, Detroit and Chicago, leading to generations of urban American Indians “who ha[d] been left with insufficient financial, family, cultural and vocational support”²³². This was also a cost-saving measure, as Indians moving away from reservations were no longer eligible for federal services²³³. Indeed, Indians in the United States are considered wards of the state – but once they have left the reservations they are often no longer eligible for on-reservation service provisions, notably because eligibility requires they be enrolled members of a federally recognized tribe (this is sometimes also due to tribal policies, since Indians that leave the reservations may be considered as having given up their tribal rights), but they



are also often not eligible for services delivered to the rest of the American population²³⁴. During this relocation process, the *Bureau of Indian Affairs* (which was for a long time only serving on-reservation Indians²³⁵) was meant to provide employment and housing assistance to urban Indians, but had very limited success, mostly because of insufficient funds. This meant that many newly urban Indians ended up living in slums and occupying low-wage jobs. The *Indian American Movement* activism, marked by numerous protest and civil awareness events held in urban communities, also contributed to the relocation of Natives towards urban centres which had already started after World War II²³⁶.

However, the relocation policy, while very successful in its displacement of the Indian population, was much less successful in its assimilatory role. Indeed, Native Americans created new, urban communities which, while differing from reservation communities, since, for example, they are much more heterogeneous, are nevertheless distinctly Indian²³⁷. The degree of Indian-provided institutional development from one urban center to the next varies greatly, however, some being much more fragmented or, conversely, tightly-knit than others – they do not have a central entity that can keep track of them and their development. Nevertheless, there are some urban Indians communities that have developed Native-controlled, or Native-specific, social agencies, health centres as well as schools, as it is the case in Chicago,

for example, which has developed an impressive institutional network for human service provision²³⁸. Additionally, Indian relocation in cities has led to the creation of many pan-Indian organizations that serve as a basis for activism and advocacy²³⁹. One crucial problem, however, which quickly became apparent when researching this topic, is that these Indian-controlled initiatives rarely come to the attention of researchers and academics, especially outside of the Native community²⁴⁰.

3.2 Indian/Native non-territorial self-government in the sphere of education in the United States

As it is the case for indigenous peoples in Canada, Native Americans tend to have a higher dropout and a lower graduation rate than the rest of the population. As Beck explains, Natives have long been miseducated about their histories, their culture, and their role in the shaping of the country as it is today²⁴¹. This is in part why it has long been argued that culturally-sensitive schools and the re-appropriation of curricula are necessary.

3.2.1 Community-controlled schools.

The American Indian education policy has most often been one of ‘Americanization’, and the movement for self-governance in the education sphere has been slow, but steadfast. Throughout the 20th century, in fact, several gains were made with regards to Native input and control over educational processes and



institutions. However, these gains, beyond being most often strictly regularized by federal policies, have also often been short-lived and/or localized²⁴². By the 1920s, the rise of the *Progressive Education Movement*, coupled with other factors such as civil rights issues and the increasing professionalization of education, led to a few piecemeal changes in Indian education: the construction of on-reservation day schools, the curtailment of boarding schools and public school education became available to American Indian children²⁴³. A report commissioned by the Department of the Interior and published in 1928, *The Problem of Indian Administration* or *Meriam Report*, had a watershed impact of Indian education as a whole, which was not the case with the *Indian Reorganization Act* of 1934 that only awarded more scholarships to American Indians²⁴⁴. What was in some ways revolutionary in the *Meriam Report* was the claims that Native peoples should have the power to make their own decisions in the realm of education, and this, with the support of the federal government²⁴⁵. One of the impacts of the report was the implementation, although limited, of bilingual education and materials for Native children. There were also several special programs designed to increase Native educational status throughout the country established in the late 1960s, such as the 'Indians into Medicine' program²⁴⁶. And, in the 1960s and 1970s, this movement led to American-Indian community-controlled schools on reservations (the first one was opened in 1966 by the Navajo)²⁴⁷, which

became prime arenas for leadership and education control despite strict federal oversight²⁴⁸. This is of particular significance because schools are often the prime political, cultural and economic resource of reservation communities²⁴⁹. It was around that time that the *American Indian Education Association* and the *Coalition of Indian Controlled School Boards* were established. Consequently, the *Indian Education Act*, as Title IV to the amended 1965 *Elementary and Secondary Education Act*, was enacted, providing the first instance of federal support for bilingual education and materials as well as for parent and community involvement in education. This was followed by the ISDEAA²⁵⁰.

3.2.2 Tribal colleges and universities. When, in the 1960s, federal policies were still reluctant to open up higher education programs to American Indians and Alaskan Natives, and this, despite the important awakening that had happened following World War II, several tribal governments decided to take things into their own hands and to open tribal colleges and universities (TCUs), the first being founded by the Navajo in 1968²⁵¹. Indeed, Indians that had participated in the war were now more aware and willing to move to cities and sign up for higher education, but multiple factors, including lack of preparation, racism, foreign curricula and financial difficulties led to very low graduation rates. Indian leaders looked for solutions, and the establishment of the TCUs allowed for the creation of culturally



appropriate and familiar campuses, for the teaching of Indian issues, cultural history and Native languages, and provided for a smoother transition to master and doctoral programs in mainstream universities²⁵². TCUs also adopted a ‘holistic’ approach to education, which aimed to address the intellectual, affective, spiritual and physical needs of American Indian students, often with the support of Elders²⁵³. The success of the first Navajo university, supported by the *American Indian Movement*, as well as the many that followed, ultimately contributed to the previously mentioned adoption of the *Indian Self-Determination and Education Assistance Act* on 1975, which, among other things, led to the transfer of the administration of federal programs from the *Bureau of Indian Affairs* to the tribes directly, affording them greater control over their education programs²⁵⁴. The *American Indian Higher Education Consortium* was also created in 1972 by the first few TCUs in order to provide support to future tribe-controlled colleges, to campaign for funding and for support from the government that first came under the form of the *Tribally Controlled Community College Assistance Act* of 1978 and that provides funding to TCUs according to attendance²⁵⁵. While the federal government remains the main source of funding (62%), TCUs, which cannot rely on the impoverished tribal governments or on the states for funding, must complete funding with private donations, notably from the *American Indian College Fund* created in 1989.

While times have changed and a majority (about 80%) of Native students now attend mainstream universities for a variety of reasons, including the lack of Native specific schooling in urban areas, tribal colleges remain a powerful instrument of Native sovereignty, nation-building and empowerment educationally, economically and socially²⁵⁶⁻²⁵⁷. They contribute to the retention rates of reservations, and thus to tribal cohesion, and they provide reservations with qualified workers that contribute greatly to the economic development of reservations, allowing for better extraction and use of natural resources, technology-transfers towards the reservations, and so on²⁵⁸. However, all of these colleges are found on reservation land. One notable exception is that of the Deganawidah-Quetzalcoatl University which was not initially tied to a tribe and as such could not be built on reservation land, leading to its construction in the city of Davis, California in 1970²⁵⁹. This, it was not a tribal college per se, but was under the joint control of the Indian and Chicana communities. It unfortunately closed its doors in 2006 for financial reasons. Lack of funding was, and still is, without question the biggest hurdle that TCUs are faced with. It is interesting to note, however, that while most TCUs are found on reservations and controlled by their tribal governments, they have led to the creation of several pan-Indian, and Indian-controlled, institutions to assist in their development. Considering that urban Native Americans currently do not have access to



TCUs, the creation of a national pan-Indian university is often revisited, but has so far not been successful, both for financial reasons and due to the enormity of the task at hand, if only for the sheer number of potential partners involved²⁶⁰.

3.2.3 Indigenous institutions in Chicago and NAES. Another example of Native self-determination in the realm of education has occurred in the city of Chicago, one of the urban centres with the most important Native American population in the country, and where more than 100 organizations deserving the needs of the urban American Native population have been developed²⁶¹. Starting in the early 1920s, Chicago's Native American population began to lobby to change the curricula to more culturally appropriate versions – it should be noted that changes have progressively been made to curricula and published educational materials in Chicago, but the progress has been slow²⁶².

The *Indian Fellowship League* (IFL), consisting of both Native and non-Native Americans, was founded in 1919, and its main purpose was then the development of more culturally-appropriate Native education. The IFL regrouped members from an impressive 35 different tribes at that time²⁶³. The League was however short-lived, and was soon replaced by other organizations such as the *Grand Council Fire of American Indians*, later referred to as the *Indian Council Fire* and, in the early 1950s, by the *All-Tribes American Indian Center*, which is arguably one of the

oldest urban Native American centres, and provided a multitude of services to the urban Native community²⁶⁴. Following the relocation policy, the number of Native youth in Chicago increased, and became scattered throughout the Chicago Public School system, which is not suited to Native American needs and often severely distorts the Native American histories and their place in society. Unfortunately, Native and non-Native Americans alike then go on to take positions of power in the city without a proper understanding of the Native urban reality²⁶⁵.

Coupled with the legacy of Native education activism in Chicago, this led to the creation of the *Native American Educational Services College* (NAES) in 1974, the only private, Native-controlled, bachelor-granting college in the United States. It has 2 urban campuses, in Chicago and Minneapolis, as well as 2 reservation campuses. By focusing on adult education (the average student is an adult who has experience working within community or tribal organizations) and taking a self-reflective approach, NAES has allowed the native community of Chicago, notably, to take control of their educational process and simultaneously take control of the community's self-perception²⁶⁶. This has been done through two main strategies, dialogue and critical reflection, which allow students not only to understand their role in their own education, notably by (re)discovering their strengths and talents stemming from their culture and history, but also to understand that they must in fact take control over their own



education²⁶⁷. In this sense, NAES serves as a conduit of change throughout the community²⁶⁸.

There also exist in Chicago isolated cases of schools, including several Chicago Public Schools, teaching with a culturally-sensitive, Native American-focused curriculum, often times developed by Native American teachers²⁶⁹. Interestingly, the *Federal Office of Indian Education Title IX* program serves to provide federal funding for such school initiatives that have 10 or more Native American students and to allow them to have access to and afford culturally relevant material and curriculum. Finally, there have additionally been several school-based language revitalization programs in recent years. But these, just like other initiatives, remain severely underfunded and highly regulated²⁷⁰.

What is crucial in this re-appropriation of Native American education, as it has and keeps happening in Chicago and elsewhere, is the importance of situating it within its cultural, political and historical context in order to tackle the root causes of current Native American educational issues, acknowledging, for example, the historical distortions often conveyed by society and standard education. Taking charge and re-appropriating the sphere of education for themselves is an important step in the self-determination movement. For Native Americans to be able to fully take control of their governance and education, they must

themselves be educated in a number of areas, including leadership²⁷¹.

3.3 Indian/Native non-territorial self-government in the sphere of health care in the United States

Extensive literature is available regarding the different health issues that plague American Indians and Alaskan Natives, including some limited data regarding urban Indian populations. However, very little literature addresses actual instances of urban Indian health care facilities, which, while rare, do exist, and allow for American Indian communities to celebrate and maintain their tribal traditions by slowly incorporating them in culturally sensitive health care provision. Indeed, for American Indians and Alaskan Natives, participating in and receiving traditional healing and spirituality constitutes the core of enculturation in urban centres²⁷². Yet, illnesses, for Native peoples, are multidimensional, affecting body, mind and spirit, and they must be treated as such²⁷³. Unfortunately, studies that explore the needs of urban American Indians pertaining to culturally appropriate healing are rare, contributing to the deficit of information and scholarly work on the matter²⁷⁴. But, beyond culturally-specific needs, it seems crucial for Native Americans to take control of their own health care provision, especially for urban Native Americans, since they are often invisible in the eyes of the system and thus neglected by existing federally and locally administered programs²⁷⁵.



3.3.1 The Indian Health Service and urban Native health care. American Indians are the only Americans that enjoy a legal right to health care provision²⁷⁶. This medical service provision is mostly undertaken by or through the *Indian Health Service* (IHS), which is comprised of a network developed in 35 states that includes hospitals, health centers, Alaska Village clinics, and health stations²⁷⁷. The IHS aims to be culturally appropriate and community driven.

On-reservation medical care provision has been taken in charge by the federal government since its insertion in the War Department in 1824, was first appropriated by the Congress in 1832 as a means to fulfill many treaty obligations towards American Indians, was later transferred to the Department of the Interior and to civilian administration in 1849, and then to the *Public Health System* in 1955²⁷⁸⁻²⁷⁹. At that point, most health care provision had been conducted on behalf of Native Americans, but without much of their involvement. In fact, the *Snyder Act* of 1924 had officially given the federal government the permission to get involved in, and administrative responsibility over, Native American health care programs²⁸⁰. However, within the next 10 years, and with the cooperation of a few well-intentioned IHS directors, Native Americans gained more and more control – the IHS framework does provide for accountability in resource allocation as well as different avenues for community and tribal involvement in health care resource

management²⁸¹. One big step in this direction was the creation of the *Office of Economic Opportunity* funded training and development of community health representatives (CHRs) on reservations. This led for greater decentralization and community control, by allowing reservation members to become trained in health, sanitation, communication, first aid and nursing, becoming part of the health team²⁸². This contributed to the improvement of health care provision on reservations, and gained the IHS the political support of several tribal leaders, which now felt that the IHS was on their side and open to their ideas and input, giving them a sense of ownership²⁸³. Then, the *Indian Health Care Improvement Act* (IHCIA) of 1976²⁸⁴ was the first policy officially extending the IHS coverage to urban Native Americans, and was meant as

the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services²⁸⁵.

The Act also allowed native tribes to sign contracts with Secretaries of the Interior, Health, Education and Welfare to either develop new services or to take control over



services previously provided by the federal government²⁸⁶. Before this Act, mostly due to the severe underfunding of Indian health care, a few urban Indian health centres and programs had been developed starting in the late 1960s, and were eligible to apply for some grant money from the IHS²⁸⁷. As a whole, however, urban Native Americans, as well as Indians living off-reservations, had minimum access to health care. In addition, non-Native urban hospitals were even reluctant to serve American Indians for fear that the government would not reimburse them for the care provided. This led them to refer Indian patients to the closest Indian health care facilities, often situated too far for them to be a viable solution for patients²⁸⁸.

It is also interesting to note that while urban Native leaders consider health care provision to be a ‘portable’ entitlement that should follow them from reservation lands to urban areas, reservation leaders tend to be reluctant to support urban Indian health care development, if only because they fear a decrease in support of on-reservation care²⁸⁹.

And yet, despite the new IHCIA, its 1992 Congressional amendment stating that that policy of the United States was to “assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect this policy”, and the fact that two-thirds of American Indians now reside in cities, only one percent of the IHS funds are allotted to urban Native health care²⁹⁰⁻²⁹¹. This is partly because urban Native Americans are not properly represented,

precluding them from having a say in budget redistribution²⁹². The Native health care provision in cities is today mostly found in Urban Indian Health Programs (UIHPs) which provide services, ranging from ambulatory health care to outreach and referral services, and may include some behavioural health services through 34 urban, non-profit organizations at 57 locations²⁹³. This severe underfunding is all the more disheartening since the creation of the *Indian Health Service* within the *Public Health Service* (transferred from the *Bureau of Indian Affairs* within the Department of the Interior) had occurred more than 40 years prior²⁹⁴. And let’s not forget that most of the urban Native population is the result of federal programs, notably through relocation²⁹⁵.

In any case, this one-percent-of-the-budget-urban-funding occurs through grants, contracts and now the less-restrictive compacts. However, many urban Natives do not even attempt to receive IHS care, mainly due to their perceived ineligibility, or to the absence of IHS facilities where they live²⁹⁶. Indeed, a quick survey shows that only 34 % of urban Indians live in counties served by these organizations. This is profoundly problematic, as shown by current statistics regarding American Indian health, notably in cities²⁹⁷. This underfunding, which leads to underservice, is illustrated, for example, by the fact that despite it being home to one of the largest urban Native American population, American Indians and Alaskan Natives living in the Los Angeles and Orange County area



do not have access to IHS facilities, simply because they do not exist²⁹⁸. All services in that area, as well as many others where Native Americans do not have access to IHS or *Tribal Health Programs*, are thus contracted out through the IHS's *Contract Health Services Program*²⁹⁹. IHS and Native health care underfunding also leads to Indian health centres prioritizing the next generation when they have the choice, limiting even further health care provision for Elders³⁰⁰. Indeed, a general effect of the low level of expenditures for *Indian Health Service* hospitals and centres is that they tend to offer a more limited range of diagnostic and therapeutic services than regular community hospitals³⁰¹. All of these issues also contribute to a high degree of migration in urban Natives, who, for health care provision reasons as well as others, travel back and forth between their reservation and the urban areas³⁰².

As a response to these flagrant issues with American Indian health care provision, the *Indian Health Design Team*, comprised of tribal leaders, community members and IHS employees, released reports in 1995 and 1997 listing over 50 ways to transform the IHS into a new organization better able to respond to the health needs of the Native population, both urban and living on reservations, including mandating an urban Indian presence in the Office of the Director of the IHS³⁰³. Similarly, the *U.S. Commission for Civil Rights* issued in 2004 a report called 'Broken Promises: Evaluation the Native American Health Care System' which made numerous

recommendations for improvement, including legislative change propositions³⁰⁴. Unfortunately, these recommendations are largely ignored. Yet, while it occurs mostly on reservations, it is interesting to note that, especially since 1976, tribes have increasingly taken over control of Indian health care provision and operations, which has become increasingly decentralized, to mixed results³⁰⁵. And, between 1955 and 1994, the disparity in health statistics between Native and non-Native populations in the United States had greatly narrowed, a feat that Bergman *et. al.* attribute in part to the IHS³⁰⁶.

3.3.2 Local, community-based health care provision centres. Some urban Indian Health treatment centres that serve large populations of American Indians have also developed programs that reflect their culture, beginning with ritual or traditional healing, and which promote a uniquely indigenous approach to mental and physical well-being³⁰⁷. An example of one such treatment centre, a non-profit health centre that serves urban American Indians in a metropolitan region of the Midwestern United States, is explored in Moghaddam *et. al.*'s article, and provides services ranging from medical, dental, mental health and addiction issues by combining traditional healing – which focuses on inner balance and well-being – and Western approaches to wellness that focus on symptom relief³⁰⁸. The clinic's Board of Directors is composed of a combination of members from surrounding universities, administrators, youth



coordinators, financial consultants and community members. The majority of the Board members, just like the staff, are Native American, yet remain open to multicultural hiring of individuals interested in learning and pursuing traditional Indian healing practices. The centre, while officially strictly medical, is often seen as a cultural pillar in the urban Indian community³⁰⁹.

3.3.3 The impact of the Patient Protection and Affordable Care Act on urban Native health care. Finally, the *Patient Protection and Affordable Care Act* (ACA) of 2010, which, as of April 2017, has not been repealed, may affect Native health care provision depending on the service provider, who the patient is and where he lives, as well as the type of service he seeks³¹⁰. Nevertheless, an important improvement to come from the ACA is the extension of application for grants and contracts to urban Indian organizations found in a larger area than it was previously the case. It should also overall extend the health care coverage for American Indians. The ACA also places tribal consultation as a necessary step to the implementation of any measure that might affect said tribes³¹¹. These improvements insert themselves in the larger, and growing, self-determination narrative that Native Americans have been fighting for over the past few decades.

3.4 General issues and comments regarding Indian/Native non-territorial self-government in the United States

Overall, past and ongoing injustices, vacillating federal policies and Congress's self-proclaimed plenary power over American Indians have left American Indians, and urban American Indians especially, in a vulnerable position³¹².

3.4.1 Economic under-development, dependence and gaming establishment. Severe underfunding of American Indians affairs, notably in the realms of health care and education, coupled with growing control and responsibility over service provision, has led to increasing pressure and burden being put on tribes to contribute and supplement government appropriations. This can account in great part for another phenomenon of Indian self-governance development (although highly problematic and leading to high levels of addiction), that of gaming establishments, most often found in the form of casinos, which have become one of the fastest growing branches of legal gambling in the United States³¹³. This phenomenon is particularly interesting because, unlike so many other self-governing instances, it was not born out of a federal policy, but out of sheer economic desperation³¹⁴. It mostly occurs on reservation lands, however, although some tribes are attempting to expand their gaming operations to non-reservation land³¹⁵. And, of course, it has been regulated by the *Indian Gaming*



Regulatory Act of 1988, which promoted legal tribal economic development and self-sufficiency, as well as strong tribal governments³¹⁶. While over 300 tribes have negotiated a compact with the federal government, only about 30 casinos make a profit – the communities that own these casinos have consequently managed to yield significant political influence and have gained access to the political leadership. Tribes nevertheless continue to operate all of these casinos as they provide employment, economic development and revenue for reservations. The meagre profits are used not only to alleviate poverty, but are invested in strategies to reintroduce native languages, ceremonies and to develop museums and cultural centres, in addition to donations made to local and national native organizations and charities. They are used to support legislations, contribute to the elections of political officials, finance advocacy campaigns, and so on³¹⁷. Interestingly, these funds have also been increasingly used to develop tribal business off reservations³¹⁸.

Unfortunately, the rise of gaming establishments has led to the perception that ‘government handouts’ are no longer necessary, endangering the already insufficient funding allotted to Native programs. This perception largely overestimates revenues from gaming, and ignores the fiduciary duty of the government towards Native Americans³¹⁹⁻³²⁰.

It should not be forgotten, however, that these gaming establishment are the

manifestation of some of the biggest obstacles to Native American autonomous self-determination: that of economic dependence, and program underfunding. Going back to the issue of economic autonomy mentioned earlier when discussing non-territorial self-government for Canadian Natives, Weaver argues that in order to even begin to address health and other spheres related to American Indian self-determination in general, but even more so to urban American Indians, issues of poverty, inadequate education, disability and unemployment must be tackled first³²¹. There is a dire need to move beyond the ‘deficit perspective’ and the federal-fund dependency, both on and off-reservations³²². While some legislations have given more self-governing power to Native tribes, such as the *Indian Self-Determination and Education Assistance Act* of 1975, or the *Indian Health Care Improvement Act* of 1976, funding for these acts, as for the IHS, is severely lacking and largely prevents Native Americans from taking advantage of these self-government opportunities³²³. For example, “[i]n 1996, the large growth in self-determination contracts coupled with static appropriations and the failure to account for inflation led to contract support shortfalls in the IHS’s Indian Self-Determination Fund”³²⁴. Overall, funding for the IHS is found inadequate by every single standard³²⁵. As such, the United States government has failed to uphold its fiduciary duty to Native Americans, which has had dire repercussions for urban Indians in particular³²⁶.



3.4.2 Cultural assimilation. Another central issue that plagues the entire enterprise of Native self-government in the United States is cultural assimilation. This is even more so a problem in the United States than it is in Canada, because indigenous communities in Canada tend to be more isolated and come into less contact with non-Natives than their American counterparts³²⁷. In fact, for Weaver, one of the main changes needed in order to advance Native American self-determination must occur in the realm of culture: cultural appropriateness in service provision, as well as re-appropriation of culture and mores, must take place before social and health issues can be resolved and for Indian off-reservation self-government to truly develop in the United States³²⁸. And while there are some urban Native organizations and social agencies that provide services that can reinforce cultural belonging and weaken feelings of alienation, such as sweat lodges and drumming lessons, or what is sometimes called ‘wellness programming’, they are still too few and far between³²⁹.

Another issue with federal programs, beyond how they can interfere with and limit Native sovereignty and self-governance, is that they tend to see Native Americans as a monolithic, homogeneous whole, which ignores cultural differences and can often lead to the failure of these programs³³⁰.

3.4.3 Off-reservation hunting rights. Finally, almost as a side note, another, less-discussed sphere of activity where Native Americans

have been able to exercise some level of self-governance is that of off-reservation hunting rights. While the courts have typically taken a confusing approach to off-reservation Native rights, it is so far through a combination of self-regulation and cooperation between tribes and the federal government that the approach to off-reservation hunting has most effectively managed to find a balance between conservation and cultural needs³³¹.

IV. CONCLUDING THOUGHTS

Despite a largely different heritage when it comes to self-government rights for indigenous peoples and Natives, indigenous self-determination movements as well as demands for non-territorial self-government have existed in both Canada and the United States since the late 1960, early 1970s. The main differentiation between Canadian iterations of indigenous self-governance and American Native self-governance is in the diversity and range of political, economic and cultural organization they enjoy³³². What is expected is that the greater Native diversity in the United States will yield a greater variety in responses and strategies of self-governance, while accumulating jurisprudence indicates that the most viable and likely form of indigenous self-government in Canada is that of a third order of government within the Canadian federation³³³. But Canadian indigenous peoples and Native American self-determination differ in other ways.



It is true that the federal government in both countries holds ultimate authority over indigenous peoples and Natives, and have in many ways tried, and often succeeded, in limiting the enactment of the indigenous self-determination right recognized. But, so far, while some forms of self-government have been granted in the United States for much longer than they have in Canada, this right seems to have been further limited and controlled by the American federal government – it must be conceded, however, that this impression might be the result of the selection bias in the research behind this overview. First, the U.S. government has prohibited tribal governments from enacting and enforcing certain laws on their own, therefore limiting native sovereignty. Second, Native peoples have been prevented from forming their own forms of government – existing self-government structures have been formulated through policy, or at least vetted by the federal government. And finally, different forced ‘movements’ or ‘relocations’, as well as coercion in treaty signing, has resulted in fact in loss of power and land for many Native nations³³⁴. What has occurred over time is something Ford calls ‘delegated authority’,

a twist on the idea of inherent authority. Under this theory, while tribes were originally independent, over time they have come to rely on the United States government for protection and

thus, naturally have limited powers. Further, they exist within the boundaries of the United States and this fact limits their power. Ultimately, under this theory, entities due to their geography and history tribes only have as much power as the federal government, Congress, confers to them and thus, they are not absolute sovereigns³³⁵.

As things stand now, the United States government can choose to limit tribal sovereignty and independence at any time³³⁶. The public rhetoric seems open to self-determination, yet the federal government has ‘stifled and sabotaged self-determination at every turn’³³⁷. So while appearances may have made it seem that for the longest time, Canada, championing a policy of assimilation characterized by the suspension of any right to self-government, enforced a worse (but clearer) ‘Native policy’ than the American federal government’s official recognition of tribal sovereignty (limited by policies vacillating between assimilation and isolation)³³⁸, the situation in the United States might be considered worse.

This is not to say that Canada is not also guilty of ‘delegated authority’. However, American tribes have enjoyed for decades forms of federally-sponsored governments masquerading as Native self-governance, whereas in Canada, the inherent right to self-government was only very recently



acknowledged. As such, indigenous peoples may now have more of a say in the discussion than their American counterparts initially did, and they do not have to fight to retain their existing self-determination right while simultaneously attempting to expand it beyond the reserves' boundaries. As a matter of fact, Canadian indigenous self-government seems to have mostly occurred so far through 'nation-to-nation' negotiations. Moreover, as Canadian indigenous peoples have had less contact with non-Indians than American Natives, they might require less 'enculturation' in order to devise truly Native forms of self-government than American Indians will need to³³⁹.

Finally, 'delegated authority' is still, in the end, 'authority': some argue that federally-sponsored or controlled self-determination can still be empowering for American Indians moving forward, but only if it is done while exposing, as well as transforming, the existing policies driven by ideologies of repression and assimilation against tribal sovereignty and cultural and linguistic differences that generally accompany the federal policy of self-determination³⁴⁰. In fact, now that they have been afforded greater possibilities and have received some encouragement, and despite a long history of federal, and often non-beneficial, authority over Indian affairs, most Native American nations are rethinking their constitutional governments. It is expected that they will develop new and diverse forms of non-territorial self-government better suited

to their needs, their democratic and economic development, and to the management of their culture and of their bureaucratic relationships with the United States federal government³⁴¹. Self-government has the potential to allow Native Americans to develop local, appropriate, responsive institutions. So far, however, it has mostly led to fragmented, expensive programs that require severe expenditure redistribution and that remain profoundly underfunded and underdeveloped³⁴²⁻³⁴³. Furthermore, recent trends show that central governments seem at times more willing to recognize and even encourage self-governance in spheres such as land administration, economic development or internal affairs. But more importantly, indigenous movements, notably in Canada and the United States, are moving away from efforts devoted to updating central government policies, and are rather oriented towards "indigenous agendas and actions"³⁴⁴.

As this overview has shown, indigenous non-territorial self-government is still in many ways in the early stages of its development. While it has made great strides in the past few decades, it is still very localized, scattered, and underdeveloped. But emerging urban health, education and cultural organizations might suggest that urban indigenous populations in Canada and the United States are heading towards institutional completeness.



Notes:

¹ While the term “Aboriginal” was long used to designate the indigenous population of Canada, recent demands and movements have pushed for the term « indigenous » to be used instead, rejecting the pejorative and negative aspect of ‘Ab’-‘Original’ (as it was explained to me by Selina Young, Deputy Director, Negotiations Branch at the Ministry of Indigenous Relations and Reconciliation of Ontario on June 24th 2016). This was for example reflected in the recent renaming of the former Ontario *Ministry of Aboriginal Affairs* to the *Ministry of Indigenous Relations and Reconciliation*. Where possible, this working paper will use the term indigenous to refer to the First Nations, Métis and Inuit peoples of Canada. The term “Native” will also be used to refer to indigenous peoples in the United States, both because this is usually the term used in the literature, but also because it is useful here for differentiation purposes with Canada’s indigenous population.

² Silveri, Jean M. “A Comparative Analysis of the History of the United States and Canadian Federal Policies Regarding Native Self-Government”, 16, *Suffolk Transnational Law Review* (1993), 657.

³ Rollo, Toby. “Mandates of the State: Canadian Democracy, Sovereignty and Indigenous Claims”, XXVII (1), *Canadian Journal of Law and Jurisprudence* (2014), 225.

⁴ Bédard, Mario. “Les vertus identitaire, relationnelle et heuristique de la territorialité – II. D’une conception culturelle à une conceptualisation tripartite”, *Cybergeo*, forthcoming, December 2017, 2, 14, 24.

⁵ Considering the high proportion of indigenous peoples that now live in cities, the focus of the overview is put on urban rather than rural areas.

⁶ Dalton, Jennifer E. “Aboriginal Self-Determination in Canada: Protections Afforded by the Judiciary and Government”, 21 (1), *Canadian Journal of Law and Society* (2006), 12.

⁷ Cornell, Stephen. “Processes of Native Nationhood: The Indigenous Politics of Self-Government”, 6(4), *The International Indigenous Policy Journal*, (2015), 1-2.

⁸ Dalton, Jennifer E., *ibid.*, 14.

⁹ Lavoie, Josée G., Amohia Frances Boulton and Laverne Gervais. “Regionalization as an Opportunity for Meaningful Indigenous Participation in Healthcare: Comparing Canada and New Zealand”, 3(1) *The International Indigenous Policy Journal* (2012) at < <http://ir.lib.uwo.ca/iipj/vol3/iss1/2/> > (Accessed: December 9, 2015), 2.

¹⁰ Murphy, Michael. “Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?”, XXXIV(1), *Canadian Journal of Political Science / Revue canadienne de science politique* (2011), 114.

¹¹ Lemchuk-Favel, Laurel and Richard Jock. “Aboriginal Health Systems in Canada: Nine Case Studies”, *Journal of Aboriginal Health* (2004), 39.

¹² At least, however, the majority status that the Métis, off-reserve First Nations and Inuit enjoy in the Northwest Territories, the Yukon and Nunavut means their needs are better met, and ensures representation (Lavoie, Josée G., Amohia Frances Boulton and Laverne Gervais, *ibid.*, 8).

¹³ *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, at < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15858/index.do> > (Accessed: October 23, 2016).

¹⁴ N/A. “Supreme Court of Canada Gives Metis and Non-Status Indians Same Rights as First Nations”, 36 (6), *Indian Life* (May-June 2016), 1.

¹⁵ It is too early to tell the true impact of this ruling, and its implications in practice for Métis and “non-status Indians”.

¹⁶ Abele, Frances and Katherine Graham. “What Now? Future Federal Responsibilities Towards Aboriginal Peoples Living in Cities”, 1 (1), *Aboriginal Policy Study* (2011), 171.



¹⁷ De Verteuil, Geoffrey and Kathi Wilson. “Reconciling Indigenous Need with the Urban Welfare State? Evidence of Culturally-Appropriate Services and Spaces for Aboriginals in Winnipeg, Canada”, 41, *Geoforum* (2010), 498; Lavoie, Josée G., Amohia Frances Boulton and Laverne Gervais, *ibid.*, 1.

¹⁸ While approximately one quarter of Aboriginal reserves in Canada are found near or within a Census Metropolitan Area, ‘urban Aboriginals’ in this overview refers to Aboriginals living *off-reserve* in urban settings.

¹⁹ Abele, Frances and Katherine Graham, *ibid.*, 162.

²⁰ Belanger, Yale D. “The United Nations Declaration on the Rights of Indigenous Peoples and Urban Aboriginal Self-Determination in Canada: A Preliminary Assessment”, 1(1), *Aboriginal Policy Studies* (2011), 138.

²¹ It is true that historically, Aboriginals in Canada have not expressed a desire for external self-determination. However, a right to Aboriginal self-government, properly understood, does not take the Canada state for granted but, on the contrary, questions it by demanding a redistribution of the legislative authority between the federal Parliament and provincial and territorial governments and the current Canadian administrative structures of justice (Macklem, Patrick. “Normative Dimensions of an Aboriginal Right of Self-Government”, 21, *Queen’s Law Journal* (2005), 214.

²² Champagne, Duane. “Native-Directed Social Change in Canada and the United States”, 50(4), *American Behavioral Scientist* (2006), 442.

²³ Lavoie, Josée G. “Looking for Aboriginal Health in Legislation and Policies, 1970 to 2008 – The Policy Synthesis Project”, *National Collaborating Centre for Aboriginal Health/Centre de collaboration national de la santé autochtone* (2011) at < <http://www.nccah-ccnsa.ca/en/publications.aspx?sortcode=2.8.10&publication=28> > (Accessed: December 8, 2015), 20.

²⁴ Abele, Frances and Michael J. Prince. “Four Pathways to Aboriginal Self-Government in Canada”, 36 (4), *The American Review of Canadian Studies* (2006), 569.

²⁵ For an extensive overview of the development of the ‘Aboriginal self-government movement’ in Canada, please see Belanger and Newhouse 2004.

²⁶ Belanger, Yale D. and David R. Newhouse. “Emerging from the Shadows: The Pursuit of Aboriginal Self-Government to Promote Aboriginal Well-Being”, XXIV(1), *The Canadian Journal of Native Studies* (2004), 131, 134.

²⁷ Isaac, Thomas. “The Concept of the Crown and Aboriginal Self-Government” (n.a.) at < <http://www3.brandonu.ca/library/cjns/14.2/isaac.pdf> > (Accessed: December 7, 2015), 234.

²⁸ Belanger, Yale D. and David R. Newhouse, *ibid.*, 137-8.

²⁹ *Ibid.*, 139.

³⁰ *Ibid.*, 146.

³¹ *Ibid.*, 152-3.

³² *Ibid.*, 154.

³³ *Ibid.*, 163, 187.

³⁴ Abele, Frances and Katherine Graham, *ibid.*, 168; Belanger, Yale D. and David R. Newhouse, *ibid.*, 168.

³⁵ The most common justification of the inherent quality of the right to self-government of Aboriginals is that of prior occupation of traditional territories, which has some traction politically and legally in Canada, and resonate with Aboriginal peoples (Murphy, Michael, *ibid.*, 113; Macklem, Patrick, *ibid.*, 181, 183). Other philosophical or normative justifications are prior sovereignty, treaty-based perspective, the right of nation to self-determination, preservation of minority culture (Macklem, Patrick, *ibid.*, 185, 191, 197, 208).



³⁶ Belanger, Yale D. and David R. Newhouse, *ibid.*, 156; Denis, Claude. “The Nisga’a Treaty: What Future for the Inherent Right to Aboriginal Self-Government?”, VII (1-2) *Review of Constitutional Studies/Revues d’études constitutionnelles* (2002), 38; Abele, Frances and Katherine Graham, *ibid.*, 166-7.

³⁷ Abele, Frances and Katherine Graham, *ibid.*, 168.

³⁸ Belanger, Yale D. and David R. Newhouse, *ibid.*, 166.

³⁹ *Ibid.*, 174-5.

⁴⁰ It should be noted that the conclusion of the article includes insightful comparisons of the four models.

⁴¹ Abele, Frances and Michael J. Prince, *ibid.*, 572.

⁴² *Ibid.*, 575.

⁴³ *Ibid.*, 576-7.

⁴⁴ *Ibid.*, 587.

⁴⁵ *Ibid.*, 580.

⁴⁶ Alcantara, Christopher and Greg Whitfield. “Aboriginal Self-Government Through Constitutional Design: A Survey of Fourteen Aboriginal Constitutions in Canada”, 44(2), *Journal of Canadian Studies/Revue d’études canadiennes* (2010), 123-4.

⁴⁷ Nevertheless, land claims settlements and negotiations have led to increased Aboriginal control over land and resources, and thus greater opportunities for economic self-sufficiency and development, as well have provided greater self-government opportunities for on-reserve Aboriginals (Champagne 2006, *ibid.*, 441).

⁴⁸ *Ibid.*, 135-6.

⁴⁹ Aboriginal Affairs and Northern Development Canada. *Nisga’a Final Agreement 2001 Annual Report* (2001) at < https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/_/texte-text/nfaap_1100100031763_eng.pdf > (Accessed: April 20, 2014), 160, Chapter 11, 9g.

⁵⁰ Belanger, Yale D. and David R. Newhouse, *ibid.*, 177.

⁵¹ Blackburn, Carole. “Producing Legitimacy: Reconciliation and the Negotiation of Aboriginal Rights in Canada”, 13, *Journal of the Royal Anthropological Institute* (2007), 631.

⁵² Denis, Claude, *ibid.*, 44.

⁵³ *Ibid.*, 49.

⁵⁴ De Verteuil, Geoffrey and Kathi Wilson, De Verteuil, Geoffrey and Kathi Wilson, “Reconciling Indigenous Need with the Urban Welfare State? Evidence of Culturally-Appropriate Services and Spaces for Aboriginals in Winnipeg, Canada”, 41, *Geoforum* (2010), 501.

⁵⁵ Lavoie, Josée G. et. al. “Missing Pathways to Self-Governance: Aboriginal Health Policy in British Columbia”, 6 (1) Article 2, *The International Indigenous Policy Journal* (2015), 2, 10.

⁵⁶ *Ibid.*, 1 ; John, Edward (Grand Chief). “Getting Out of the Way: On the Road to Aboriginal Self-Government”, 37(3) *Canadian Public Administration/Administration publique du Canada* (1994), 448.

⁵⁷ Belanger, Yale D., *ibid.*, 135.

⁵⁸ *Ibid.*, 142-3.

⁵⁹ *Ibid.*, 142.

⁶⁰ *Ibid.*

⁶¹ Another landmark case in the development of the concept of Aboriginal self-government in Canada is the Calder case, 1973 (Belanger, Yale D. and David R. Newhouse, *ibid.*, 142).

⁶² Bedford, David. “Emancipation as Oppression: The Marshall Decision and Self-Government”, 44(1), *Journal of Canadian Studies/Revue d’études canadiennes* (2010), 206.

⁶³ *Ibid.*, 207.



⁶⁴ Otis, Ghislain. “Territorialité, personnalité et gouvernance autochtone”, 47, *Les Cahiers de droit* (2006), 798.

⁶⁵ Bedford, David, *ibid.*, 210.

⁶⁶ *Ibid.*, 213.

⁶⁷ *Ibid.*, 214.

⁶⁸ Belanger, Yale D. and David R. Newhouse, *ibid.*; Belanger, Yale D., *ibid.*, 138.

⁶⁹ McCaskill, Don. “Revitalization of Indian Culture: Indian Cultural Survival Schools” in *Indian Education in Canada (Vol. 2): The Challenge*, Jean Barman *et. al.* (Eds.). Vancouver: UBC Press, (1987), 153.

⁷⁰ *Ibid.*, 168.

⁷¹ *Ibid.*, 154.

⁷² Belanger, Yale D. and David R. Newhouse, *ibid.*, 140.

⁷³ Regnier, Robert. “An Aboriginal Approach to Healing Education at an Urban High School”, *First Nations Education in Canada: The Circle Unfolds*, Marie Battiste and Jean Barman (Eds.). Vancouver: UBC Press, (1995), 314-5.

⁷⁴ McCaskill, Don, *ibid.*, 154, 159, 162.

⁷⁵ *Ibid.*, 165-6.

⁷⁶ *Ibid.*, 167.

⁷⁷ *Ibid.*, 165, 169-70.

⁷⁸ *Ibid.*, 174-5.

⁷⁹ *Ibid.*, 173.

⁸⁰ *Ibid.*, 176.

⁸¹ Regnier, Robert, *ibid.*, 313-4, 322.

⁸² *Ibid.*, 318.

⁸³ *Ibid.*, 319-20.

⁸⁴ Kativik School Board. “About Kativik School Board”, (n.a.) at <<http://www.kativik.qc.ca/en/about-kativik-school-board>> (Accessed: December 9, 2015).

⁸⁵ Cree School Board. “Our Organization”, (n.a.) at <<https://www.cscree.qc.ca/en/our-organization>> (Accessed: December 9, 2015).

⁸⁶ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 31.

⁸⁷ De Verteuil, Geoffrey and Kathi Wilson, *ibid.*, 499.

⁸⁸ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 35.

⁸⁹ De Verteuil, Geoffrey and Kathi Wilson, *ibid.*, 500.

⁹⁰ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 29.

⁹¹ What is more, very little attention is paid to the cultural responsiveness and ‘safety’ of this health care provision (Lavoie, Josée G., Amohia Frances Boulton and Laverne Gervais, *ibid.*, 4).

⁹² Lavoie, Josée G. *et. al.*, *ibid.*, 4.

⁹³ And yet, it is interesting to note that the First Nations and Inuit Health Branch (FNIHB) of Health Canada is Health Canada’s largest program, and has slowly moved away from direct service delivery in favour of devolution (Lavoie, Josée G. “Looking for Aboriginal Health in Legislation and Policies, 1970 to 2008 – The Policy Synthesis Project”, *National Collaborating Centre for Aboriginal Health/Centre de collaboration national de la santé autochtone*, (2011) at <<http://www.nccah-ccnsa.ca/en/publications.aspx?sortcode=2.8.10&publication=28>> (Accessed: December 8, 2015), 23.

⁹⁴ *Ibid.*, 6, 24, 25.

⁹⁵ *Ibid.*, 18, 20.



⁹⁶ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 37.

⁹⁷ Lavoie, Josée G. *et. al.*, *ibid.*, 4; Lavoie, Josée G., 2011, *ibid.*, 16.

⁹⁸ Lavoie, Josée G. (2011), *ibid.*, 18.

⁹⁹ *Ibid.*, 30.

¹⁰⁰ *Ibid.*, 6.

¹⁰¹ Lavoie, Josée G. “Policy Silences: Why Canada Needs a National First Nations, Inuit and Métis Health Policy”, 72, *International Journal of Circumpolar Health* (2013), 4.

¹⁰² Lavoie, Josée G. “Chapter 18 – The Decolonization of the Self and the Recolonization of Knowledge: The Politics of Nunavik Health Care”, *Aboriginal Autonomy and Development in Northern Quebec and Labrador*, Collin Scott (Ed.), (2001), 335.

¹⁰³ *Ibid.*, 336-7.

¹⁰⁴ *Ibid.*, 339.

¹⁰⁵ *Ibid.*, 334

¹⁰⁶ Please see Lavoie, Josée G. (2011), *ibid.*, page 8, for a few more examples.

¹⁰⁷ *Ibid.*, 341-2 ; Lavoie, Josée G. (2011), *ibid.*, 27.

¹⁰⁸ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 46.

¹⁰⁹ Lavoie, Josée G. (2001), *ibid.*, 334-5.

¹¹⁰ It is also interesting to note that the political mobilization during the negotiation process leading up to the JBNQA, as well as the negative response to the agreement once it was signed, both fueled the desire of the community to become more involved in its own governance and contributed to the strengthening of the community’s identity (*Ibid.*, 340-1).

¹¹¹ *Ibid.*, 344.

¹¹² *Ibid.*, 347, 351.

¹¹³ *Ibid.*, 352.

¹¹⁴ Lavoie, Josée G. *et. al.*, *ibid.*, 9.

¹¹⁵ A similar framework, the 2005 *Providing Health Care, Achieving Health – Mi’kmaq* was also adopted in Nova Scotia, but only addresses the health care needs of the Mi’kmaw people (Lavoie, Josée G. (2011), *ibid.*, 7).

¹¹⁶ Lavoie, Josée G. *et. al.*, *ibid.*, 1.

¹¹⁷ *Ibid.*, 2.

¹¹⁸ *Ibid.*, 12.

¹¹⁹ *Ibid.*, 4.

¹²⁰ *Ibid.*, 10.

¹²¹ It is also interesting to note that local health committees exist in twenty-four communities throughout Nunavut in order to advise to territorial government on health priorities and goals (Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 45).

¹²² Lavoie, Josée G. (2011), *ibid.*, 7.

¹²³ Lavoie, Josée G. (2013), *ibid.*, 5.

¹²⁴ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 44.

¹²⁵ Lavoie, Josée G. (2011), *ibid.*, 12, 25.

¹²⁶ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 39.

¹²⁷ Lavoie, Josée G. (2011), *ibid.*, 7, 31.

¹²⁸ Lavoie, Josée G. (2013), *ibid.*, 6.

¹²⁹ Lavoie, Josée G., Amohia Frances Boulton and Laverne Gervais, *ibid.*, 10.



¹³⁰ Lemchuk-Favel, Laurel and Richard Jock, *ibid.*, 49.

¹³¹ This issue was especially singled out in the JBNQA, where the Québec government recognized its obligation to palliate recruitment difficulties and compensate for the high costs of development in the North, among others (*Ibid.*, 35).

¹³² *Ibid.*, 34-5.

¹³³ Lavoie, Josée G. *et. al.*, *ibid.*, 4, 7-8.

¹³⁴ De Verteuil, Geoffrey and Kathi Wilson, *ibid.*, 505.

¹³⁵ Peters, Evelyn [and Ryan Walker, co-author of chapter 1]. “Indigeneity and marginalisation: Planning for and with urban Aboriginal communities in Canada”, 63, *Progress in Planning* (2005), 360.

¹³⁶ De Verteuil, Geoffrey and Kathi Wilson, *ibid.*, 499.

¹³⁷ Abele, Frances and Katherine Graham, *ibid.*, 169.

¹³⁸ Belanger, Yale D., *ibid.*, 140.

¹³⁹ Peters, Evelyn J. “Self-Government for Aboriginal People in Urban Areas: A Literature Review and Suggestions for Research” at < http://www3.brandonu.ca/Library/cjns/12.1/pete_rs.pdf > (Accessed: December 11, 2015) (1992), 54.

¹⁴⁰ Peters, Evelyn (2005), *ibid.*, 385.

¹⁴¹ Abele, Frances and Katherine Graham, *ibid.*, 171.

¹⁴² Walker, Ryan. “Aboriginal Self-determination and Social Housing in Urban Canada: A Story of Convergence and Divergence”, 45(1), *Urban Studies* (2008), 191.

¹⁴³ Peters, Evelyn (2005), *ibid.*, 344.

¹⁴⁴ Lavoie, Josée G. *et. al.*, *ibid.*, 5, 7.

¹⁴⁵ Peters, Evelyn (2005), *ibid.*, 336.

¹⁴⁶ *Ibid.*, 351.

¹⁴⁷ Graham, John and Mackenzie Kinmond. “Friendship Centre Movement – Best Practices in Governance and Management”, National Association of Friendship Centres (2008) at < http://www.uquebec.ca/observgo/fichiers/80533_2008_nafc_bestpractices.pdf > (Accessed: December 7, 2015), 2.

¹⁴⁸ *Ibid.*, A :46.

¹⁴⁹ *Ibid.*, A :49.

¹⁵⁰ Peters, Evelyn (2005), *ibid.*, 386.

¹⁵¹ Graham, John and Mackenzie Kinmond, *ibid.*, A :61.

¹⁵² *Ibid.*, A :71.

¹⁵³ Walker, Ryan, *ibid.*, 186.

¹⁵⁴ *Ibid.*, 188.

¹⁵⁵ Abele, Frances and Katherine Graham, *ibid.*, 170.

¹⁵⁶ Peters, Evelyn (2005), *ibid.*, 366.

¹⁵⁷ *Ibid.*, 370.

¹⁵⁸ Land settlements have at least allowed increased Aboriginal control over land, resources and economic assets.

¹⁵⁹ Peters, Evelyn (2005), *ibid.*, 374.

¹⁶⁰ *Ibid.*, 379.

¹⁶¹ *Ibid.*, 373.

¹⁶² It is interesting to note that the leaders of the four main Aboriginal organizations in Canada have, upon invitation, a ‘seat’ at the First Ministers’ Conference (Abele, Frances and Michael J. Prince, *ibid.*, 575).



¹⁶³ Peters, Evelyn (2005), *ibid.*, 388-9.

¹⁶⁴ *Ibid.*, 392, 395.

¹⁶⁵ Isaac, Thomas, *ibid.*, 232.

¹⁶⁶ Otis, Ghislain, *ibid.*, 781-2.

¹⁶⁷ *Ibid.*, 788-9, 786.

¹⁶⁸ Murphy, Michael, *ibid.*, 114.

¹⁶⁹ Otis, Ghislain, *ibid.*, 789.

¹⁷⁰ *Ibid.*, 793. Translation: “The personality principle could, however, allow national groups, dispersed or intertwined, to be established as a political unit endowed with a legal personality and to govern themselves without any spatial exclusiveness in matters that are essential to their national development, all the while cohabiting on the same territory.”

¹⁷¹ Belanger, Yale D. and David R. Newhouse, *ibid.*, 183.

¹⁷² Nieguth, Tim. “An Austrian Solution for Canada? Problems and Possibilities of National Cultural Autonomy”, 42 (1), *Canadian Journal of Political Science/Revue canadienne de science politique* (2009), 5-6.

¹⁷³ *Ibid.*, 10.

¹⁷⁴ *Ibid.*, 10-1.

¹⁷⁵ *Ibid.*, 13-5.

¹⁷⁶ Belanger, Yale D. and David R. Newhouse, *ibid.*, 186.

¹⁷⁷ *Ibid.*, 189 ; Champagne, Duane. “Native-Directed Social Change in Canada and the United States”, 50(4), *American Behavioral Scientist* (2006), 438-9.

¹⁷⁸ Walker, Ryan, *ibid.*, 192.

¹⁷⁹ Peters, Evelyn (2005), *ibid.*, 386.

¹⁸⁰ The use of the terms ‘Indian’ and ‘Native’ to describe the indigenous populations of the United States is not meant to evoke any pejorative or negative connotations, but rather reflects the terminology used in the bulk of the available literature. It also is useful in distinguishing between Canadian and American indigenous populations.

¹⁸¹ The recognition of a native right to self-government by the Canadian government in the *Indian Act* of 1876 was done in an assimilationist optic in order to progressively shape native bands (on reserves) into communities resembling non-native municipalities, and only afforded bands a very limited scope of powers (Silveri, Jean M. “A Comparative Analysis of the History of the United States and Canadian Federal Policies Regarding Native Self-Government”, 16, *Suffolk Transnational Law Review*, (1993), 645).

¹⁸² *Ibid.*, 619-623

¹⁸³ *Ibid.*, 658-9; Champagne, Duane. “From First Nations to Self-Government -- A Political Legacy of Indigenous Nations in the United States”, 51(12), *American Behavioral Scientist* (2008), 1677.

¹⁸⁴ It is interesting to note that the first instances of tribal self-government in the United States date back to 1828 all the way through the 1860s, when the Choctaw, Chickasaw, Cherokee and Creek each formed their own constitutional governments modeled off the American Constitution but adapted to their own history and culture, and, while being supported by the federal government, without being controlled by it (Champagne, Duane (2006), *ibid.*, 437-8).

¹⁸⁵ Champagne, Duane (2008), *ibid.*, 1677.

¹⁸⁶ Morgan, Edward M. “Self-Government and the Constitution – A Comparative Look at Native Canadians and American Indians”, 12, *American Indian Law Review*, (1984), 48-9.

¹⁸⁷ Champagne, Duane (2008), *ibid.*, 1672, 1678.



¹⁸⁸ Silveri, Jean M., *ibid.*, 627-8; Champagne, Duane (2008), *ibid.*, 1679; Getches, David H. “Negotiated Sovereignty: Intergovernmental Agreements with American Indian Tribes as Models for Expanding Self-Government”, 1(1), *Review of Constitutional Studies* (1994), 138.

¹⁸⁹ Champagne, Duane (2008), *ibid.*, 1679.

¹⁹⁰ Silveri, Jean M., *ibid.*, 631.

¹⁹¹ Champagne, Duane (2006), *ibid.*, 439; Hauptman, Laurence M. “The American Indian Federation and the Indian New Deal: A Reinterpretation”, 52(4), *Pacific Historical Review*, (1983), 391.

¹⁹² Hauptman, Laurence M., *ibid.*, 391, 401.

¹⁹³ Morgan, Edward M., *ibid.*, 44.

¹⁹⁴ *Ibid.*, 46-7.

¹⁹⁵ Champagne, Duane (2008), *ibid.*, 1681.

¹⁹⁶ *Ibid.*, 1681-2.

¹⁹⁷ Champagne, Duane (2006), *ibid.*, 428-30.

¹⁹⁸ Even though it is generally recognized in Canada as pejorative, where the term ‘Aboriginal’ is preferred, the term ‘Indian’ or ‘American Indians’ will mostly be used here to refer to ‘American Indians’ and ‘Alaskan Natives’ alike.

¹⁹⁹ Silveri, Jean M., *ibid.*, 636.

²⁰⁰ Champagne, Duane (2008), *ibid.*, 1674-5.

²⁰¹ Silveri, Jean M., *ibid.*, 636; Burhansstipanov, Linda. “Urban Native American Health Issues”, 88(5) *Cancer Supplement* (2000), 1210; Champagne, Duane (2008), *ibid.*, 1682; Champagne, Duane (2006), *ibid.*, 440.

²⁰² Champagne, Duane (2008), *ibid.*, 1685.

²⁰³ Champagne, Duane (2006), *ibid.*, 440.

²⁰⁴ [My emphasis]. Champagne, Duane (2008), *ibid.*, 1683.

²⁰⁵ Champagne, Duane (2008), *ibid.*, 1688-9.

²⁰⁶ Graleski, Berverly. “Comment – The Federal Government’s Failure to Provide Health Care to Urban Native Americans in Violation of the Indian Health Care Improvement Act”, 82, *University of Detroit Mercy Law Review*, (2005), 472.

²⁰⁷ King, Marie Anne. “Co-Management or Contracting? Agreements Between Native American Tribes and the National Park Service Pursuant to the 1994 Tribal Self-Government Act”, 34, *Harvard Environmental Law Review* (2007), 494.

²⁰⁸ Graleski, Berverly, *ibid.*, 472-3.

²⁰⁹ King, Marie Anne, *ibid.*, 496; Ross, Raven E. *et. al.* “The Affordable Care Act and Implications for Health Care Services for American Indian and Alaska Native Individuals”, 26(4), *Journal of Health Care for the Poor and Underserved*, (2015), 1083; Warne, Donald and Linda Bane Frizzell. “American Indian Health Policy: Current Trends and Contemporary Issues” 104(S3), *American Journal of Public Health* (2013), S264.

²¹⁰ Warne, Donald and Linda Bane Frizzell, *ibid.*, S265.

²¹¹ King, Marie Anne, *ibid.*, 475.

²¹² [My emphasis]. King, Marie Anne, *ibid.*, 479.

²¹³ *Ibid.*, 477.

²¹⁴ *Ibid.*, 481.

²¹⁵ *Ibid.*, 488.

²¹⁶ *Ibid.*, 485.



²¹⁷ *Ibid.*, 488.

²¹⁸ Champagne, Duane (2008), *ibid.*, 1689.

²¹⁹ Swensen, Thomas Michael “Of Subjection and Sovereignty: Alaskan Native Corporations and Tribal Governments in the Twenty First Century”, 30(1), *Wicazo Sa Review* (2015), 100-2.

²²⁰ *Ibid.*, 101.

²²¹ *Ibid.*, 113.

²²² *Ibid.*, 101-2.

²²³ *Ibid.*, 102.

²²⁴ *Ibid.*, 107-8.

²²⁵ *Ibid.*, 111.

²²⁶ *Ibid.*, 115.

²²⁷ Stromner, Geoffrey D. and Stephen D. Osbourne. “‘Indian Country’ and the Nature and Scope of Tribal Self-Government in Alaska”, 22, *Alaska Law Review* (2005), 2-3, 8.

²²⁸ Weaver, Hilary N. “Urban and Indigenous: The Challenge of Being a Native American in the City”, 20, *Journal of Community Practice* (2012), 470.

²²⁹ *Ibid.*, 476.

²³⁰ It is interesting to note, however, that American Indians living on reservations have less employment and higher education opportunities than city dwellers (*Ibid.*, 474-5).

²³¹ Burhansstipanov, Linda, *ibid.*, 1209.

²³² Moghaddam, Jacqueline F. *et. al.* Crystalizing the Role of Traditional Healing Community in an Urban Native American Urban Health Center”, 51, *Mental Health Journal* (2015), 305.

²³³ Weaver, Hilary N., *ibid.*, 472.

²³⁴ Bittker, Thomas E. “Dilemmas of Mental Health Service Delivery to Off-Reservation Indians”, 46(3), *Anthropological Quarterly* (1973), 173; Burhansstipanov, Linda, *ibid.*, 1211; Neff, Donna Felber *et. al.* “Nurse Managed Center: Access to Primary Health Care for Urban Native Americans”, 24(1), *Journal of Community Health Nursing* (2007), 20.

²³⁵ Organizations often tried to stretch the service delivery to include urban Native Americans, however (Bittker, Thomas, E., *ibid.*, 176).

²³⁶ Burhansstipanov, Linda, *ibid.*, 1210.

²³⁷ Weaver, Hilary N., *ibid.*, 473.

²³⁸ *Ibid.*, 474-5, 481.

²³⁹ *Ibid.*, 475.

²⁴⁰ *Ibid.*, 480.

²⁴¹ Beck, David R. M. “Native American Education in Chicago – Teach Them Truth”, 32(2), *Education and Urban Society* (2000), 237.

²⁴² Lomawaima, K. Tsianina and Teresa L. McCarthy. “When Tribal Sovereignty Challenges Democracy: American Indian Education and the Democratic Ideal”, 39(2), *American Educational Research Journal* (2002), 282-3.

²⁴³ *Ibid.*, 286.

²⁴⁴ Clermont, Guy. « Les collèges et universités sous contrôle tribal », 116(2), *Revue française d'études américaines* (2008), 68.

²⁴⁵ Lomawaima, K. Tsianina and Teresa L. McCarthy, *ibid.*, 287.

²⁴⁶ Burhansstipanov, Linda, *ibid.*, 1210.



²⁴⁷ This actually represents the second wave of Indian-controlled schools. At the beginning of the 19th century, five south-eastern tribes, the Cherokee, Choctaw, Chickasaw Creek and Seminole, had implemented over 200 schools, seminaries and academies before their forced relocation to Oklahoma obliterated this school system (Manuelito, Kathryn. “The Role of Education in American Indian Self-Determination: Lessons from the Ramah Navajo Community School”, 36(1), *Anthropology and Education Quarterly* (2005), 75).

²⁴⁸ Lomawaima, K. Tsianina and Teresa L. McCarthy, *ibid.*, 289-90.

²⁴⁹ *Ibid.*, 297.

²⁵⁰ *Ibid.*, 291.

²⁵¹ Clermont, Guy, *ibid.*, 66.

²⁵² *Ibid.*, 69.

²⁵³ *Ibid.*, 75.

²⁵⁴ Silveri, Jean M., *ibid.*, 636.

²⁵⁵ Clermont, Guy, *ibid.*, 72.

²⁵⁶ Indeed, starting in the 19th century, Indian education has been mostly provided through off-reservation boarding schools until the mid-1950s or, starting in the mid-1800s, by higher education establishments created in partnership with evangelical missions (*Ibid.*, 67). These boarding schools especially proved to be profoundly disruptive of native communities, but Indians did not remain passive, and this experience also led to important and various forms of rebellion by Native students and their parents alike, becoming sites of both cultural loss and cultural persistence (Beck, David R. M., *ibid.*, 241, Davis, Julie. “American Indian Boarding School Experiences: Recent Studies from Natives Perspectives”, 15(2), *OAH Magazine of History*, (2001), 20).

²⁵⁷ Clermont, Guy, *ibid.*, 66-7; Champagne, Duane (2008), *ibid.*, 1686.

²⁵⁸ Clermont, Guy, *ibid.*, 76.

²⁵⁹ *Ibid.*, 70-1.

²⁶⁰ *Ibid.*, 79.

²⁶¹ Beck, David R. M., *ibid.*, 242.

²⁶² *Ibid.*, 247, 238.

²⁶³ *Ibid.*, 243.

²⁶⁴ *Ibid.*, 243-4.

²⁶⁵ *Ibid.*, 245-6.

²⁶⁶ *Ibid.*, 248-9.

²⁶⁷ *Ibid.*, 249.

²⁶⁸ *Ibid.*, 250.

²⁶⁹ *Ibid.*

²⁷⁰ Lomawaima, K. Tsianina and Teresa L. McCarthy, *ibid.*, 297, 299.

²⁷¹ Beck, David R. M., *ibid.*, 252-3.

²⁷² Moghaddam, Jacqueline F. *et. al.*, *ibid.*, 305-6.

²⁷³ *Ibid.*, 312.

²⁷⁴ *Ibid.*, 307.

²⁷⁵ Bittker, Thomas, E., *ibid.*, 172; Bergman, Abraham B. *et. al.* “A Political History of the Indian Health Service”, 77(4), *The Milbank Quarterly* (1999), 593.

²⁷⁶ Ross, Raven E. *et. al.*, *ibid.*, 1082.

²⁷⁷ *Ibid.*, 1083.



²⁷⁸ For a full, detailed history of federal native health care provision, please see Kunitz, Stephen J. “The History and Politics of U.S. Health Care Policy for American Indians and Alaskan Natives”, 86(10), *American Journal of Public Health* (1996), pp. 1464-73.

²⁷⁹ Bergman, Abraham B. *et. al.*, *ibid.*, 576-7; Graleski, Berverly, *ibid.*, 465.

²⁸⁰ Graleski, Berverly, *ibid.*, 466.

²⁸¹ Bergman, Abraham B. *et. al.*, *ibid.*, 585; Graleski, Berverly, *ibid.*, 470.

²⁸² Bergman, Abraham B. *et. al.*, *ibid.*, 585-6.

²⁸³ Bergman, Abraham B. *et. al.*, *ibid.*, 587; Kunitz, Stephen J., *ibid.*, 1466.

²⁸⁴ Before this act, the only statute authorizing health care provision for American Natives was the *Snyder Act* of 1921 which called for the *Bureau of Indian Affairs* to utilize Congress appointed money to this effect (Bergman *et. al.*, *ibid.*, 591).

²⁸⁵ *Ibid.*

²⁸⁶ Kunitz, Stephen J., *ibid.*, 1467.

²⁸⁷ Bergman, Abraham B. *et. al.*, *ibid.*, 592

²⁸⁸ Graleski, Berverly, *ibid.*, 468.

²⁸⁹ Kunitz, Stephen J., *ibid.*, 1472.

²⁹⁰ The IHS service provision is now divided into three different branches, forming the ITU (IHS/tribal/urban); that of the Compact Tribes (Tribal Health Program/638 programs), which manage their own operations, that of the Direct Service Tribes, which still receive service provision directly from the federal government, and finally the urban program catering to urban Native Americans (Rhoades, Everett R. and Dorothy A. Rhoades. “The Public Health Foundation Services for American Indians and Alaska Natives”, 104(S.3), *American Journal of Public Health, Public Health Then and Now* (2014), S283).

²⁹¹ It is also the case, however, that more than half the budget of the IHS is now controlled by tribes (Warne, Donald and Linda Bane Frizzell, *ibid.*, S264).

²⁹² Berry, Mary Frances *et. al.* “Broken Promises: Evaluating the Native American Health Care System”, *U.S. Commission on Civil Rights* (2004), at <<https://www.law.umaryland.edu/marshall/usccr/documents/cr122004024431draft.pdf>> (Accessed: January 7, 2016), 70.

²⁹³ Ross, Raven E. *et. al.*, *ibid.*, 1083; Berry, Mary Frances *et. al.*, *ibid.*, 67.

²⁹⁴ Indian Health Care Improvement Act in Graleski, Berverly, *ibid.*, 461, Weaver, Hilary N., *ibid.*, 477; Bergman, Abraham B. *et. al.*, *ibid.*, 579.

²⁹⁵ Graleski, Berverly, *ibid.*, 471.

²⁹⁶ Burhansstipanov, Linda, *ibid.*, 1209; Kunitz, Stephen J., *ibid.*, 1469.

²⁹⁷ Weaver, Hilary N., *ibid.*, 477; Burhansstipanov, Linda, *ibid.*, 1207.

²⁹⁸ Burhansstipanov, Linda, *ibid.*, 1208.

²⁹⁹ Berry, Mary Frances *et. al.*, *ibid.*, 62.

³⁰⁰ Burhansstipanov, Linda, *ibid.*, 1209.

³⁰¹ Kunitz, Stephen J., *ibid.*, 1468.

³⁰² Burhansstipanov, Linda, *ibid.*, 1210.

³⁰³ *Ibid.*, 1209.

³⁰⁴ Berry, Mary Frances *et. al.*, *ibid.*

³⁰⁵ Bergman, Abraham B. *et. al.*, *ibid.*, 600.

³⁰⁶ *Ibid.*, 572.

³⁰⁷ Moghaddam, Jacquelene F. *et. al.*, *ibid.*, 306.



³⁰⁸ *Ibid.*, 307, 312.

³⁰⁹ *Ibid.*, 307.

³¹⁰ Ross, Raven E. *et. al.*, *ibid.*, 1083-4.

³¹¹ *Ibid.*, 1084-5.

³¹² Manuelito, Kathryn, *ibid.*, 73.

³¹³ Kunitz, Stephen J., *ibid.*, 1470; Meister, Alan P. *et. al.* “Tribal Gaming and Beyond: Tribal Economic Development and Diversification”, 54, *South Dakota Law Review* (2009), 376.

³¹⁴ Champagne, Duane (2008), *ibid.*, 1687.

³¹⁵ Cornell, Stephen. “The Political Economy of American Indian Gaming”, 4, *Annual Review of Law and Social Science* (2008), 67.

³¹⁶ Meister, Alan P. *et. al.*, *ibid.*, 375, 378.

³¹⁷ Champagne, Duane (2008), *ibid.*, 1687-8.

³¹⁸ Meister, Alan P. *et. al.*, *ibid.*, 395.

³¹⁹ For a detailed analysis of the funding obstacles to self-governing health care among American Indians, please see Berry, Mary Frances *et. al.*, *ibid.*, Chapter 4.

³²⁰ *Ibid.*, 89.

³²¹ Weaver, Hilary N., *ibid.*, 478.

³²² *Ibid.*, 486; Champagne, Duane (2008), *ibid.*, 1684.

³²³ Graleski, Berverly, *ibid.*, 473; Warne, Donald and Linda Bane Frizzell, *ibid.*, S263.

³²⁴ Graleski, Berverly, *ibid.*, 474.

³²⁵ Berry, Mary Frances *et. al.*, *ibid.*, 120.

³²⁶ *Ibid.*, 3, 88.

³²⁷ Getches, David H. “Negotiated Sovereignty: Intergovernmental Agreements with American Indian Tribes as Models for Expanding Self-Government”, 1(1), *Review of Constitutional Studies* (1994), 123.

³²⁸ Weaver, Hilary N., *ibid.*, 479.

³²⁹ *Ibid.*, 482-3.

³³⁰ Bittker, Thomas, E., *ibid.*, 172.

³³¹ McCorquodale, Scott M. “Historical and Contemporary Policies Regarding Off-Reservation Hunting by Native Americans”, 27(2), *Wildlife Society Bulletin* (1999), 450, 453.

³³² Champagne, Duane (2006), *ibid.*, 431-2.

³³³ Abele, Frances and Michael J. Prince, *ibid.*, 574.

³³⁴ Ford, Algeria R. “The Myth of Tribal Sovereignty: An Analysis of Native American Tribal Status in the United States”, 12, *International Community Law Review* (2010), 498.

³³⁵ *Ibid.*, 403-4.

³³⁶ *Ibid.*, 406.

³³⁷ Lomawaima, K. Tsianina and Teresa L. McCarthy, *ibid.*, 283.

³³⁸ Getches, David H., *ibid.*, 123-4.

³³⁹ *Ibid.*, 123.

³⁴⁰ Lomawaima, K. Tsianina and Teresa L. McCarthy, *ibid.*, 283.

³⁴¹ Champagne, Duane (2006), *ibid.*, 443; Getches, David H., *ibid.*, 135-6.

³⁴² One alternative, as exposed at length by Getches, is that of intergovernmental agreements between tribes and individual states, which he considers as closing the gap between sovereignty and the necessities of governance by attaching practical meaning to tribal and state authority (Getches, David H., *ibid.*, 121, 129). Such agreements, which cover a wide-ranging variety of subject matters, bypass the federal government



approval or permission (Getches, David H., *ibid.*, 145). While they have become increasingly utilized in the United States, Getches suggests their exportation to Canada as well.

³⁴³ Kunitz, Stephen J., *ibid.*, 1471.

³⁴⁴ Cornell, Steven, *ibid.*, 5-6, 14.



ABOUT THE AUTHOR

Raphaëlle Mathieu-Bédard

M.A. in Political Science, McGill University, Canada

*Contact: raphaelle.mbedard@gmail.com

FOR FURTHER INFORMATION SEE

EUROPEAN CENTRE FOR MINORITY ISSUES (ECMI)

Schiffbruecke 12 (Kompagnietor) D-24939 Flensburg

 +49-(0)461-14 14 9-0 * fax +49-(0)461-14 14 9-19

* E-Mail: info@ecmi.de * Internet: <http://www.ecmi.de>