Indigenous Right to Self-determination: A Controversy

Maxime Sotsky

Political Science 1001

Dr. James Devine

Mount Allison University

December 4th, 2018

0270251

Abstract

This paper explains the controversy of Indigenous rights in separating the point of views of both sides (I.e. Indigenous perspective and the perspective of the Candian Government). First the paper provides a brief history of the Indigenous peoples and their struggles going through colonialism. Secondly the paper talks about the problem of Eurocentric government framework that Indigenous communities must obey and stay within its boundaries, refraining them in fully practicing their culture’s activities to maintain their identities. This paper provides two examples on two different Indigenous communities. One being the Grassy Narrow, a indigenous community that was forced to assimilate, leading to the destruction of their people. The other community, the Kitchenuhmakoosib Inninywug which provides an example on the Canadian governments approach regarding Indigenous rights. The second half of the paper provides reasons why the Canadian government resist the full practice of the promised Indigenous rights which has to do with the distribution of resources and the implementation of laws of two separate governments which may have a contradicting affect.

**Self - Determination / Self - Government**

There are over 370 million Indigenous peoples around the world.[[1]](#footnote-10827) The story of Indigenous people is one of struggle, from overcoming genocide due to the European colonization process. The Indigenous peoples had their own form of government prior from the European-Settlers who began the process of conquering their lands in 1492. The Indigenous peoples also known as Aboriginal peoples, were truly self-determinate before the European-ideals on government along with its frame-work was forced upon them and still are to this day. The British North American act that is known today as the Constitution act, gave the federal government of Canada the authority to make decisions on laws regarding Indigenous lands who are known as Indian reserves.[[2]](#footnote-19233) This is concerning for the Indigenous peoples because European ideologies, laws, and policies are restricting and limiting the Indigenous “way of life”, thus interrupting them from practicing their cultures and their natural life-styles.[[3]](#footnote-26415) This includes laws who set restrictions on fishing, hunting, and trespassing parameters. The right of Indigenous self-determination is referred to as a “internal right” meaning, the right of self-determination can only be expressed within the set boundaries that have been implemented by the state thus limiting their independence and rights to self-government.[[4]](#footnote-31288) Federal and provincial governments make the self-government of Indigenous peoples very limited, they restrict them from fully practicing their rights promised in treaties during their colonization period. The federal and provincial government can over-rule any of the laws set by aboriginals if they create conflict with those of the Canadian state.[[5]](#footnote-20312) As Dov Ronen, a scholar exclaims “The right of self-determination is an expression, in succinct form, of the aspiration to rule one’s self and not to be ruled by others”.[[6]](#footnote-5758) Indigenous peoples want to utilize their right of self-determination in constructing their own government that will make decisions based on their interests, to separate from the federal and provincial government’s control that has shown to be harmful to their culture and communities.

**Why do Indigenous peoples want self-determination?**

Indigenous peoples emphasize their right of self-determination at regards to it being an essential component for their culture to develop and survive.[[7]](#footnote-18384) A “stranger’s policy” cannot make the best decisions for a community, hence why Indigenous people want to make the decisions on the way their communities' function and the utilization of their land. Self-determination is an undeniable right for all Indigenous peoples under article 3 of the United Nations Declaration of the rights of Indigenous peoples.[[8]](#footnote-1952) Specifically, in Canada, Indigenous peoples still possess sovereignty due to their international right of self-determination and their “immemorial right” to be self-determinate based on their pre-colonization sovereignty.[[9]](#footnote-27277)

**Grassy Narrows**. Many indigenous communities have had their rights neglected by the federal and provincial governments. The Grassy Narrows, also known as “Asubpeeschoseewagong Netum Anishinabek” in Ojibway (First Nation language), is one of many Indigenous communities who have suffered through government oppression. The community consisting of 1000 Anishnabek band members near Konora, Ontario, who have 2,500 square miles of traditional land rightfully dedicated to them by the North-West Angle Treaty.[[10]](#footnote-29147) The community’s waterways were contaminated by mercury that was dumped by an industry which was given permission by the government. In attempted to help the community, the department of Indian Affairs began to implement an “aggressive policy of assimilation” to modernize the community forcing them in relocating, hence overruling their rights promised by the treaty.[[11]](#footnote-24926) The government was motivated by the assumption that the indigenous people want to be modernized. This led to the destruction of the Grassy Narrows community, turning their once healthy and functional community to a life of relying on federal government of welfare and unemployment cheques.[[12]](#footnote-23947) Those exposed to the mercury, unable to work, were given 250 dollars per month as government compensation, a wage that is unlivable.[[13]](#footnote-28168) The leaders of the Indigenous communities referred to this as “industrial genocide”.[[14]](#footnote-17044) The Canadian Government continues their “industrial genocide” with plans on clear-cutting their forest without adequate consultation, consent, with also little to no compensation.[[15]](#footnote-1524) This is only one of many examples of why Indigenous people want their promised right to self-determination/self-government without federal and provincial government intervention.

Indigenous wish to use their rights granted to them that include the right to own their territory, the right to use natural resources, the right to create their own social organizations, and to create their own institutions that will help them keep their culture and ways of life, alive and healthy.[[16]](#footnote-32372) Indigenous people do not want government to interfere with their decision-making regarding Indigenous laws and rights since it often leads to their destruction. They want to govern themselves and refer to their self-government right as an “inherent right” since they occupied the land previously to the settlement of the Europeans. The government of Canada knows that the “inherent right” of aboriginal self-government remains within the constitution act of 1982 section 35.[[17]](#footnote-6971) However, the Canadian government has been resentful to the fact that Indigenous peoples have these rights. The Indigenous communities want to spark a “spiritual revolution” that will give let them practice their inherent rights again, instead of relying on “state-based solutions” who are detached from their communities and their perspectives/relationships towards nature.[[18]](#footnote-13504) Indigenous people believe that if they are not given the chance to renew their bonds with the natural world for example, gathering medicines, hunting, and fishing, their traditions and family structures will gradually dive deeper into the jeopardized state they are already in. These practices are essential for their self-determination that is required to keep their identity as Indigenous peoples. Indigenous peoples want to implement their natural rights on their homelands back to restore and expand their culture hence the process of self-determination.[[19]](#footnote-13456) These natural rights will begin a process of “re-strengthening” their economies who are referred to “inherently sustainable”.[[20]](#footnote-13667) With this process of restoration, it will create potential on reestablishing their old trading networks with other communities and bolster strong alliances that will help preserve their culture in the future that is to come.[[21]](#footnote-28246)

**The Government’s Views on Indigenous Self-Government**

The government representatives do not have the same views on the recognition of the right of self-determination for the Indigenous peoples.[[22]](#footnote-2193) They reject the full right of self-determination regarding Indigenous people.[[23]](#footnote-27519) The government has broken every single treaty agreement in their assimilation attempts to modernize the Indigenous peoples.[[24]](#footnote-8050) The government fears the political divisions in power that would come from secession of the Indigenous peoples.[[25]](#footnote-2637) The government recognizes several problems that may occur with the full practice of self-determination that involve contradictions with the Indigenous self-government and the federal and provincial governments.

**Self-Government.** In 1887 two Indigenous chiefs from Nisaga’a and Tsimshian clans requested a treaty of the Indigenous right to self-government.[[26]](#footnote-21850) The treaty was signed more than 100 years later, that includes indigenous peoples on the right of self-determination. The treaty however, only gives Indigenous people the right to freely seek economic, social, and cultural advancements, the document does not say or imply anything about allowing them to contradict the Charter of the United Nations in their process of self-government.[[27]](#footnote-5786) The document also does not authorize any activities who “dismember or impair” the rules set towards territories of the political sovereign states.[[28]](#footnote-17791) This makes Indigenous governments secondary because they must work within the frameworks of the primary Canadian government. For example, Indigenous communities in the Northern Territories utilize their right to of self-determination and have formed their own form of government. But because their power is treated as secondary to the Canadian government, they can only have the power to make bylaws over a limited amount of issues like the consumption of alcohol, regulations on hunting and issuing licenses.[[29]](#footnote-7166) This is not true self-government that Indigenous people seek, but rather an illusion of the right.

**Government Approach to Indigenous Rights**. In Canada Ontario, an Indigenous community called the Kitchenuhmaykoosib Inninvwug had a disagreement with the Canadian government in allowing a company called the Platinex to “explore” a part of their traditional territories where they had control over the hunting and fishing rights. The Indigenous people insisted in going through their own protocols first to permit the “exploration”. After little time, the judge part of the Canadian government decided that the indigenous right of consultation has been satisfied, giving the company the permission to trespass on the community’s territory. The community resisted this exploitation through protesting and blocking accessibility. In reaction, the judge sentenced the chief along with most of the elected members of the Indigenous council for contempt of court in serving six months in prison. This was the longest sentence given for contempt of court from an act of protest in a long time.[[30]](#footnote-4196)

**Problem: Who is Indigenous?** Determining who is a legitimate Indigenous individual may have its complications. Indigenous peoples argue that identifying whether a person is Indigenous or not should be left for their communities to decide rather than leaving it up to the state.[[31]](#footnote-3595) This concept of self-identification is similar in comparison to how the state would identify its members based on citizenship laws.[[32]](#footnote-25978) A solution would be to implement a universal definition of who is Indigenous that would satisfy both sides of the argument, however that solution has its flaws. With a basic definition, the risk of excluding certain Indigenous groups who “seek protection” but without a universal definition, it could lead to the abuse of the concept of self-identifying.[[33]](#footnote-12424)

**Problem: Law Interference**. The representatives of the state have denied the Indigenous rights to self-determination since it is an international law that only applies to colonized states.[[34]](#footnote-28097) Giving the indigenous people this right would interfere with other international laws including domestic affairs and territorial integrity.[[35]](#footnote-5844) Government representatives also agree that the declaration of this right must have “universal support” which then needs be “adopted by consensus” for the right to take effect.[[36]](#footnote-17066) This need for universal support plays in favor of the Candian government since the Indigenous people are a smaller population in comparison to the one of Canadians, only making up 4.5 percent of the Canadian total population[[37]](#footnote-1123) thus making it close to impossible to get universal recognition let alone their support.

**Conclusion**

In conclusion, “why is the right to indigenous self-determination so controversial?”. This is a case of power struggles. The Canadian government, like any other government, wants to maintain their power. This is apparent from the breakage of treaties and the violation of the Indigenous rights that were promised throughout history. The Canadian government resists on letting Indigenous communities to have their own government, one without a frame work which limits them in truly practicing a self-government. They resist this because it involves sharing resources and risk interference with the laws that both governments choose to implement, which is likely to happen from the differences in ideologies and ways of life. Are Indigenous people asking for too much? Or are they being reasonable in their fight on their promised rights?

Bibliography

Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics.* Toronto: Pearson Prentice Hall, 2009.

Catherine J. Lorns. *Indigenous Peoples and Self Determination: Challenging State Sovereignty*, 24Case W. Res. J. Int’l L.199 (1992) Available at: <http://scholarlycommons.law.case.edu/jil/vol24/iss2/3>

Corntassel. Jeff. *“Towards Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse.”* Alternative: Global, Local, Political 33. No. 1 (2008): 105-32. Doi:10.1177/030437540803300106

Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2007.

Imai, Shin, Kent McNeil, and Benjamin J. Richardson. *Indigenous People and the Law: Comparative and Critical Perspectives*. Oxford: Hart, 2009.

Joseph, Robert P.C. *Indigenous Self-Government: Indigenous Corporate Training Inc*. Vancouver, British Columbia: Page Two Books, 2018.

Policies of Forced Aboriginal Assimilation in Canada. Accessed November 28, 2018. Retrieved from <http://caid.ca/Dself_det_canada.html>.

Went, Jesse. “*Beyond Reconciliation: Looking Towards the Future of Canada*.” Power Point presentation, Center for Canadian Studies as the Edgar and Dorothy Davidson Lecture in Canadian Studies, Sackville, November 19, 2018, 7pm.

1. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 227 [↑](#footnote-ref-10827)
2. Joseph, Robert P. C. Indigenous Self-Government*: Indigenous Corporate Training Inc*. Vancouver, British Columbia: Page Two Books, 2018, 11 [↑](#footnote-ref-19233)
3. Joseph, Robert P. C. Indigenous Self-Government*: Indigenous Corporate Training Inc*. Vancouver, British Columbia: Page Two Books, 2018, 11 [↑](#footnote-ref-26415)
4. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 232 [↑](#footnote-ref-31288)
5. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 227 [↑](#footnote-ref-20312)
6. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 225 [↑](#footnote-ref-5758)
7. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 210 [↑](#footnote-ref-18384)
8. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 210 [↑](#footnote-ref-1952)
9. Polices of Forced Aboriginal Assimilation in Canada. Accessed November 28, 2018. <http://caid.ca/Dself_det_canada.html> [↑](#footnote-ref-27277)
10. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 189 [↑](#footnote-ref-29147)
11. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 189 [↑](#footnote-ref-24926)
12. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 190 [↑](#footnote-ref-23947)
13. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 190 [↑](#footnote-ref-28168)
14. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 190 [↑](#footnote-ref-17044)
15. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 191 [↑](#footnote-ref-1524)
16. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 232 [↑](#footnote-ref-32372)
17. Joseph, Robert P. C. Indigenous Self-Government*: Indigenous Corporate Training Inc*. Vancouver, British Columbia: Page Two Books, 2018, 14 [↑](#footnote-ref-6971)
18. Corntassel, Jeff. "Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse." *Alternatives: Global, Local, Political* 33, no. 1 (2008), 124 [↑](#footnote-ref-13504)
19. Corntassel, Jeff. "Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse." *Alternatives: Global, Local, Political* 33, no. 1 (2008), 119 [↑](#footnote-ref-13456)
20. Corntassel, Jeff. "Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse." *Alternatives: Global, Local, Political* 33, no. 1 (2008), 119 [↑](#footnote-ref-13667)
21. Corntassel, Jeff. "Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse." *Alternatives: Global, Local, Political* 33, no. 1 (2008), 119 [↑](#footnote-ref-28246)
22. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 211 [↑](#footnote-ref-2193)
23. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 212 [↑](#footnote-ref-27519)
24. Went, Jesse. “Beyond Reconciliation: Looking Towards the Future of Canada.” Power Point presentation, Center for Canadian Studies as the Edgar and Dorothy Davidson Lecture in Canadian Studies, Sackville, November 19, 2018, 7pm. [↑](#footnote-ref-8050)
25. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 221 [↑](#footnote-ref-2637)
26. Joseph, Robert P. C. Indigenous Self-Government*: Indigenous Corporate Training Inc*. Vancouver, British Columbia: Page Two Books, 2018, 11 [↑](#footnote-ref-21850)
27. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 232 [↑](#footnote-ref-5786)
28. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 232 [↑](#footnote-ref-17791)
29. Imai, Shin, Kent McNeil, and Benjamin J. Richardson. *Indigenous Peoples and the Law: Comparative and Critical Perspectives*. Oxford: Hart, 2009, 299 [↑](#footnote-ref-7166)
30. Imai, Shin, Kent McNeil, and Benjamin J. Richardson. *Indigenous Peoples and the Law: Comparative and Critical Perspectives*. Oxford: Hart, 2009, 302 [↑](#footnote-ref-4196)
31. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 230 [↑](#footnote-ref-3595)
32. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 230 [↑](#footnote-ref-25978)
33. Brodie, M. Janine, and Sandra Rein. *Critical Concepts: An Introduction to Politics*. Toronto: Pearson Prentice Hall, 2009, 231 [↑](#footnote-ref-12424)
34. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 224 [↑](#footnote-ref-28097)
35. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 224 [↑](#footnote-ref-5844)
36. Catherine J. Iorns,Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24Case W. Res. J. Int'l L.199 (1992), 229 [↑](#footnote-ref-17066)
37. Fleras, Augie. *Inequality Matters: Diversity and Exclusion in Canada*. Don Mills, Ontario, Canada: Oxford University Press, 2017, 155 [↑](#footnote-ref-1123)