

Indigenous Peoples and the Evolution of Federalism: Understanding and Improving Self-Government Agreements for Indigenous Communities in Canada

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Abstract

The political theoretical framework of federalism is employed to compare and contrast emerging indigenous self-government structures and to identify similar patterns and differences in the continuing evolution of the self-governments of three culturally distinct indigenous peoples in three major regions of Canada. The federal government has granted various forms of self-government to dozens of indigenous groups across the country, and self-government negotiations are continuing with more than fifty other indigenous groups. In this research-based study, links are made to important policy making at the local, provincial, and federal levels of Canadian government in significantly different regions. Levels of decentralization and regional cooperation, intergovernmental relations, power sharing arrangements, and the institutional characteristics of different self-governments are examined, compared, and contrasted to identify patterns. Predictions are also made concerning the future of self-government in indigenous communities in Canada based on current data and emerging patterns and trends. This study contributes to the understanding of self-determination negotiations by framing and explaining them clearly in the context of federalism, and such an enhanced understanding can increase the prospects of successful, peaceful outcomes for indigenous communities and for local, provincial, and federal governments.

Keywords: Indigenous peoples, federalism, self-government, Canada, autonomy

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Introduction

In accordance with the official national policy of reconciliation with Indigenous peoples for past wrongs, the federal Canadian government has been actively exploring and promoting many different forms of Indigenous self-government and increased levels of local autonomy for distinct Indigenous groups within Canada (Crown-Indigenous Relations and Northern Affairs Canada, n.d.). Dozens of small and large Indigenous groups across Canada have already successfully negotiated various types of self-government agreements that are congruent with the Canadian Constitution and the Canadian legal system, and many more Indigenous groups have entered into self-government negotiations to protect their unique cultures and to create a more prosperous future for their communities. The political theoretical framework of federalism can be used to clearly understand the development of Indigenous self-government. The three major Indigenous groups in Canada, the First Nations, the Inuit, and the Métis, are not seeking to separate from Canada. Rather than aiming for full political independence, Indigenous peoples desire to substantially increase their local control and regional autonomy within the nation state of Canada and wish to increase cooperation in many areas with all levels of Canadian government to deliver better results to their respective Indigenous communities.

The movement towards Indigenous self-government is actively supported by the Canadian government and is a peaceful process based on lengthy negotiations with the goal of meeting the local needs of Indigenous peoples in a more effective and equitable manner. The Canadian provinces and territories operate within a federal system, in which each province and territory exercises a significant amount of political autonomy while cooperating closely with the federal government in a mutually beneficial national political structure. The provinces and territories have their own distinct regional cultures, history, and traditions but also derive numerous benefits from being valued members of the larger nation state. Similar to the provinces and territories, Indigenous peoples are now engaging in various forms of self-government to better address their own specific needs and to protect their unique cultures (Abele & Prince, 2006). The current self-government movement of Indigenous peoples may be viewed as a natural evolution of Canadian federalism, providing more effective forms of local and regional government in diverse regions while strengthening national unity and democratic institutions.

Indigenous peoples in every region of what is now known as Canada practiced a wide range of different forms of self-government and of culturally specific social organization for thousands of years before the colonial period and the use of European forms of governance and of European laws. At the beginning of the colonial period, indigenous people were often treated as important military allies and as essential partners in the lucrative fur trade, but colonial laws and governments over the course of centuries slowly increased control over the lives of Indigenous peoples. The now controversial Indian Act, passed by the federal Canadian government in 1876, was based on many colonial-era laws and represented the culmination of a long process to assert comprehensive, central government control over the lives of Indigenous peoples (Painter, 2025). In recent decades, Indigenous peoples have been actively asserting their right to self-determination by negotiating with the Canadian government for different forms and degrees of culturally appropriate self-government.

The Historical Development of the Governance Structures of Indigenous Peoples in Canada

Indigenous peoples in Canada had their own distinct social organization before the arrival of Europeans. In the early colonial period, Indigenous peoples maintained large degrees of social

and political independence, but the rights of Indigenous peoples were gradually eroded by new colonial laws which favored the increasing number of European settlers. A royal edict, issued in 1763, protected recognized Indigenous lands in British colonies in North America from outside interference, but the federal Canadian government has sometimes acted as if Indigenous peoples in Canada have no sovereign powers (Vernon, 1994). The 1763 royal edict, which was never officially annulled, created a strong legal precedent under British law for Indigenous self-government in British colonies.

The number of European settlers continued to increase for more than a century, and the need for more land for new farms and towns increased. Colonial laws restricting the freedom, cultural practices, movements, and land use of Indigenous peoples increased steadily. The 1876 Indian Act was based on colonial laws and promoted many oppressive measures designed to assimilate Indigenous peoples and their culture into the dominant Canadian settler society (Painter, 2025). Indigenous peoples continued to lose traditional lands, and Indigenous cultures and languages were often banned in a national residential school system for Indigenous children. Some early forms of Indigenous self-government in Canada resulting from the federal 1876 Indian Act led to high levels of discrimination against Indigenous women by male Indigenous community members (Herr, 2021). Although the Indian Act allowed for some basic, limited forms of self-government, the overall effect of the official, national Indian Act was extremely negative on the cultures, languages, and rights of Aboriginal peoples and led to some forms of gender discrimination.

The Indian Act continued to provide the basic framework of governance for Indigenous peoples well into the twentieth century in Canada. Although Canada was a separate country, Canada was still linked closely to the United Kingdom with regards to constitutional matters. In 1969, some senior members of the Canadian government considered the elimination of special rights for Indigenous peoples in a new, future, repatriated Canadian Constitution (Ryser, 2024). Eventually, the rights of Aboriginal peoples and their distinct identities were officially recognized in the new Canadian Constitution. Indigenous leaders have often been suspicious of the attitudes and intentions of central government authorities.

The local control of traditional lands is a key element of Indigenous self-government. The Canadian government started negotiations with Indigenous peoples in 1973 to address land that was claimed by Indigenous peoples but not covered in existing treaties (Alcantara & Davidson, 2015). The willingness of the Canadian federal government in the 1970s to actively settle outstanding Indigenous land claims across the country made the process of self-government negotiations possible.

In the 1980s, many Indigenous leaders feared that a new Canadian Constitution might cancel existing Indigenous treaty rights and not recognize the distinct identities of Indigenous peoples. In 1980, two years before the repatriation of the Canadian Constitution, hundreds of Indigenous leaders and activists travelled across the country demanding that the existing Indigenous treaties, some originally signed with the United Kingdom in the colonial period, be honored and protected in any constitutional changes in Canada (Ryser, 2024). After lengthy negotiations, significant changes were made to the Canadian Constitution. The 1982 Constitution Act made Canada completely sovereign from the United Kingdom and allowed Canada to make amendments to the Constitution without British approval (Leeson, 2023). The numerous rights of Indigenous peoples were protected in the new Constitution. In the 1982 Constitution Act of Canada, Section 35 formally recognized the existing treaties and rights of Indigenous peoples, which include such areas as land and hunting rights (Nichols & Swiffen, 2023). Section 35 was

an important step in the reconciliation process. The new 1982 Canadian Constitution contains a wide range of changes and guarantees the rights and current treaties with Indigenous peoples, including diverse Indian tribes across Canada, the Métis, and the Inuit (Leeson, 2023). Aboriginal peoples had their rights safeguarded in the new Canadian Constitution.

The rights of Indigenous peoples were also protected in the Canadian Charter of Rights and Freedoms. Section 25 of the Canadian Charter of Rights and Freedoms states that the rights in the Charter cannot cancel or nullify the rights of Indigenous peoples and their rights in existing treaties (Swiffen, 2019). Some Indigenous peoples would like to have more legal powers in the process of self-government. Some Indigenous leaders interpret the Charter of Rights and Freedoms in a way that allows for the creation and administration of a separate Indigenous legal system, although constitutional reform may be necessary to give Indigenous self-governments the ability to create and administer their own laws (Swiffen, 2019). Indigenous self-governments often have the power to pass by-laws, but they do not have a fully independent legal system.

Autonomy can be greatly enhanced by law-making powers. Self-government agreements have increased the influence of Indigenous peoples on legal procedures but do not yet give Indigenous peoples the power to create laws (Michel, 2023). Self-governments operate within the context of the Canadian legal system. Court cases play an important role in confirming the rights of Indigenous peoples and the pre-existence of Indigenous sovereignty (Nichols & Swiffen, 2023). Indigenous leaders and lawyers have often used the Canadian legal system to protect their rights. A change to the Canadian Constitution could allow Indigenous peoples to create and manage their own culturally appropriate and effective legal systems which could exist in harmony with the current Canadian legal system (Michel, 2023). Some Indigenous self-governments are interested in acquiring the power to pass some Indigenous laws.

Despite the changes to the Canadian Constitution, the 1876 Indian Act continued to exist. The 1876 Indian Act was significantly changed with many new amendments in 1985 (Painter, 2025). These amendments attempted to improve Indigenous rights. One of the 1985 changes to the Indian Act allowed Indian women to retain their status as Indians if they married men who were not Indians, but there are still charges of sex discrimination due to legal problems faced by people who try to claim Indian status through female relatives (Painter, 2025). Some negative effects of the Indian Act have not been fully addressed.

The Canadian government demonstrated a strong willingness to support the creation of Indigenous self-governments in the 1990s. In 1995, The Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government policy was initiated by the Canadian government to promote self-government for indigenous groups (Crown-Indigenous Relations and Northern Affairs Canada, n.d.). This was a comprehensive, nation-wide approach to actively promote local Aboriginal self-government.

The Evolution of Self-Government for Indigenous Peoples in Different Regions

The pace of change of some complex government policies can be slow. The nineteenth century Indian Act, which does not account for regional cultural differences, still applies to all Canadian Indigenous groups who have not yet negotiated a self-government agreement, and essentially the Act allows Indigenous groups to choose council members and leaders, and to create some types of local by-laws (Crown-Indigenous Relations and Northern Affairs Canada, n.d.). The Indian Act only allows for a limited form of basic self-government.

Public attitudes and government objectives have evolved significantly since the nineteenth century. The Canadian government is now engaged in an ongoing process of reconciliation with Indigenous peoples for past injustices, and self-government agreements are an important part of this complex process of reconciliation (Spadotto, 2024). In the ongoing process of employing various forms and degrees of self-government, Indigenous peoples are creating new democratic institutions and administrative structures that are designed to accommodate their specific cultural and social needs. Canada, a country which values diversity and its complex, multicultural society, recognizes the value and rights of diverse cultural groups which together form the nation and tolerant Canadian identity (Wilkinson, 2021). Increased local control can improve the lives of Aboriginal peoples and strengthen democracy.

Indigenous leaders have skillfully cooperated with provincial and federal governments to protect their rights. Self-government agreements may sometimes require many years of negotiation, but power can sometimes be shared and transferred more quickly to Indigenous peoples in certain areas through legislation passed by governments at the provincial and federal levels (Spadotto, 2024). Some Indigenous leaders are seeking more autonomy for their respective regions and communities by negotiating for various forms of self-government while simultaneously trying to participate more in existing Canadian federal and provincial governments and institutions (Hawkes, 2001). Different regions and communities have different needs. Self-government for Indigenous peoples can take many forms depending on the specific needs and resources of various Indigenous groups and communities, and Indigenous self-government may be viewed as an integral component of Canadian federalism (Abele & Prince, 2006). The process of increasing autonomy requires a combination of approaches. The combined approach of Indigenous leaders of seeking more political autonomy while also cooperating more closely with existing federal and provincial governments in many areas is essentially the same approach employed by the Canadian provinces in the context of Canadian federalism (Hawkes, 2001). It is a paradox that increasingly autonomous Indigenous communities are also striving to work more closely with provincial and federal governments in a mutually beneficial relationship.

The Métis, the Inuit, and the First Nations constitute the major groups of Indigenous peoples in Canada. The Métis, a unique cultural group of European and Cree ancestry, are now recognized in the Canadian Constitution as a distinct group of Indigenous peoples but faced systematic discrimination in the past (Boyer & Andersen, 2024). Due to their mixed ancestry, the Métis were not always recognized as a distinct Indigenous people. Starting in the 1870s, the Métis were given certificates that represented cash payments or the rights to plots of land by the government, but the certificate system was poorly managed and resulted in widespread fraud and land dispossession (Boyer & Andersen, 2024). Land dispossession by various means has been a common problem in the history of Aboriginal peoples. In 1885, the Métis in Alberta and Saskatchewan rebelled against the central Canadian government in an attempt to create an independent Métis Nation, but the resistance movement was defeated militarily and the Métis leader Louis Riel was executed (Dubois & Saunders, 2017). Although the Métis were defeated militarily by overwhelming force, their unique culture and desire for some form of political independence survived. Métis political leaders, strong supporters of democracy, have been in the process of writing a distinct Métis Constitution in their efforts to secure democratic self-government within Canada for the Métis people (Dubois & Saunders, 2017). The Métis sometimes refer to their region and people as the Métis Nation.

The four semi-autonomous regions of Nunavut, Nunavik, Nunatsiavut, and Inuvialuit cover most of the Canadian Arctic islands and the vast territory inhabited by the Inuit. Nunavut, founded in 1999, is the largest and is designated as a federal territory within Canada. The Nunavut Government bases its Constitution and goals on traditional Inuit values and culture, placing an emphasis on the knowledge of community elders and on the importance of living in harmony with the natural environment and animals (Government of Nunavut, n.d.). Nunavik is another vast, semi-autonomous region. The large Inuit region of Nunavik, which includes both Inuit and non-Inuit residents, is still officially part of the province of Quebec and was made possible by a major 1975 land claims agreement (Makivvik, n.d.). Nunavut is a federal territory, while Nunavik exists as a semi-autonomous region of one existing Canadian province.

There are two more, smaller semi-autonomous Inuit regions, Nunatsiavut and Inuvialuit. Nunatsiavut, an Inuit region in Labrador in the Canadian Northwest, started the Nunatsiavut Government in 2005 after concluding negotiations for land claim settlements and has its own detailed Constitution which covers the structure and operation of the regional government and cultural matters (White, 2021). The local government is influenced strongly by local culture and traditions. There are no separate political parties in the traditional, consensus-based Nunatsiavut Government, and the opinions of elders are deeply respected (White, 2021). Land claim settlements were an important stage before the negotiation of self-government. A large group of Inuit people called the Inuvialuit in the western region of the Canadian Arctic began to negotiate for self-government with the federal Canadian government in 1996 following successful and substantial land claim settlements (Alcantara & Davidson, 2015). A final agreement for Inuvialuit self-government has not yet been signed, although an agreement in principle now exists with the federal Canadian government.

First Nations Indigenous peoples exist across the country and represent many different cultures and languages. First Nations in the Yukon territory of Canada worked closely together to create a common policy for the implementation of self-government agreements with the Canadian government and the Yukon government, and more than eleven Indigenous self-government agreements have been signed in the Yukon (Yukon First Nation Self-Government, n.d.). The desire for self-government is strong and growing, and Indigenous groups sometimes work together to achieve common objectives.

Aboriginal peoples are not always treated fairly in the Canadian legal system. Indigenous peoples in Canada have faced numerous challenges and forms of discrimination in the legal system, although new government policies have attempted to improve the situation in recent years (Michel, 2023). For example, in a unanimous decision, a court of appeal in the province of Quebec ruled in 2022 that Section 35 of the 1982 Constitution Act gave all Indigenous peoples the right to control and administer their own services for their children and families (Leclair, 2023). Such legal precedents help Indigenous peoples to assert their rights. Major court rulings assist Indigenous communities in building and strengthening the necessary legal frameworks for effective self-government in many key areas (Leclair, 2023). The Canadian legal system can be used effectively to protect existing rights and to set new precedents.

Taxation is a key element of government that needs to be addressed in matters of Indigenous self-government in any country. The colonial government in New Zealand used taxation as a means of asserting sovereignty and control over the Indigenous Maori people, and reforms to the taxation system may be necessary to enable more autonomy for the Maori people (Scobie et al., 2023). Indigenous self-governments need comprehensive taxation agreements with the central government and adequate sources of revenue. The Canadian government is also actively

exploring new taxation and spending arrangements to support and adequately finance Indigenous self-governments in a fair and equitable manner (Crown-Indigenous Relations and Northern Affairs Canada, n.d.). Self-government requires close cooperation with the federal government.

Increased levels of local control and decision-making power can improve communities. Government social welfare programs may have caused many unintended negative effects, and Indigenous communities should be given more autonomy to assess and to meet their own specific needs, particularly in the area of housing (Pugsley et al., 2025). Housing, health care, education, social services, infrastructure development, job creation, environmental protection, and culture and language preservation are key areas of many types of Indigenous self-government. Major projects involving the development of renewable energy on Indigenous lands require a close partnership between Indigenous groups, companies, and government agencies to effectively protect the environment and to develop local communities (Yalamala, et al., 2023). Indigenous peoples can be valuable partners for companies in resource development. The average income level of Indigenous communities can be significantly increased by the successful conclusion of major land claim settlements (Pendakur & Pendakur, 2021). Traditional lands are central to Indigenous cultures and to economic development. Indigenous groups are important stakeholders in many energy projects and should be given some ownership of such projects and tangible economic and social benefits (Yalamala et al., 2023). Profits from energy projects can help to finance Indigenous self-governments and to pay for community development.

The legitimate concerns of Canadian Indigenous peoples are being addressed by provincial and federal governments. Various forms and levels of self-government have already been negotiated with over forty Indigenous communities across Canada, close to fifty more self-government agreements are under negotiation, and special agreements for education have been signed with more than thirty indigenous communities (Crown-Indigenous Relations and Northern Affairs Canada, n.d.). Some small Indigenous communities may not have the necessary resources and personnel for high levels of self-government and may desire only an increase in local control of specific areas such as education.

Decentralization and increased local autonomy are becoming features of Indigenous communities across Canada in vastly different regions. Numerous Indigenous groups, for example in the Yukon, are cooperating together in their campaign for increased autonomy and cooperating closely with each other and all levels of Canadian government to more effectively manage their communities. Intergovernmental relations are improving as various levels of government work with pro-active and empowered Indigenous self-governments to provide better local services and management. Increased autonomy is accompanied by an increase in responsibility, and power sharing arrangements are tailored to meet the needs and resources of different communities. Large Indigenous communities are being given more power, and the scope of their power is gradually increasing. The Inuit self-governments in particular, representing relatively large populations spread over vast areas, have developed advanced, comprehensive administrative structures which are fundamentally democratic and based solidly on local values. Large Indigenous self-governments are developing their own constitutions to reflect their core values and aspirations within the Canadian federal system. The Métis Nation is peacefully becoming a political reality within the Canadian federal system and existing provinces. Increasing Indigenous self-government is now an important policy of the federal government, and provincial and local governments are becoming involved in the

process. More local control and Indigenous self-government can help to more effectively manage local social, economic, and environmental problems.

Implications and Conclusion

After enduring a steady erosion of their rights during the centuries-long colonial period and systematic forms of overt and covert discrimination in the post-colonial period, Indigenous peoples are currently in the process of gaining increasing levels of political and cultural autonomy in a new era of official reconciliation between the Canadian government and distinct Indigenous groups across Canada. The historical development of the governance structure of Indigenous peoples, starting at the beginning of the colonial period, spanned centuries and was marked by many injustices including the loss of traditional lands and a steady increase in control by central authorities of the lives of Indigenous peoples. In the past few decades, within the context of official reconciliation, a large and increasing number of Indigenous self-government agreements have been successfully and peacefully negotiated with the Canadian government. Indigenous groups are not seeking full political independence from the nation of Canada, but rather more political and cultural autonomy within Canada while increasing levels of cooperation in many areas with federal and provincial governments (Hawkes, 2001). Indigenous self-government, designed to meet specific local needs, currently exists in many different forms and continues to evolve.

Asserting more local control over such essential areas as education, culture, housing, social services, environmental protection, and other areas, allows Indigenous peoples to implement needed local changes more quickly and effectively than in the past. The detailed constitutions that have been written by some relatively large Indigenous groups are examples of the continuing evolution of Indigenous self-governments within Canada, existing in harmony with the provinces and territories, the central federal government, the Canadian Constitution, and the Canadian legal system. The Canadian experience demonstrates that increased levels of local autonomy using new, local, culturally appropriate, democratic institutions for Indigenous peoples within a national federal system can have numerous positive and direct impacts on the lives of Indigenous peoples. Based on current trends, the number of self-government agreements for Indigenous peoples in Canada will continue to grow significantly, and Indigenous democratic institutions will continue to evolve peacefully within the context of Canadian federalism.

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