UNIVERZITA KARLOVA V PRAZE

FAKULTA SOCIÁLNÍCH VĚD

Institut mezinárodních studií

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The Harper Government, the Aboriginal Right to Self-Determination, and the Indian Act of 1876

Rigorózní práce

Praha 2016

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Rok obhajoby: 2016

Bibliografický záznam

ONDERKOVÁ, Kristýna. *The Harper Government, the Aboriginal Right to Self-Determination, and the Indian Act of 1876.* Praha, 2016. 89 s. Rigorózní práce (PhDr.) Univerzita Karlova, Fakulta sociálních věd, Institut mezinárodních studií. Katedra severoamerických studií. Vedoucí práce Ing. Mgr. Magdalena Fiřtová, Ph.D.

Abstrakt

Diskuze týkající se často kritizovaného Indiánského zákona z roku 1876 – základního právního předpisu upravujícího práva a povinnosti prvních národů a jejich specifického postavení v rámci Kanady – se zintenzivňuje v důsledku přetrvávajících socioekonomických problémů původních obyvatel. Zatímco předchozí kanadská vláda v čele se Stephenem Harperem zdůrazňovala soběstačnost a finanční odpovědnost, první národy požadují potvrzení jejich ústavního práva na sebeurčení a samosprávu v jakékoliv legislativní změně. Tato práce analyzuje různé reformní návrhy na změnu Indiánského zákona a jejich možný dopad na status prvních národů. Zaměřuje se na politické postoje Harperovy vlády k otázkám týkajícím se původních obyvatel a reakci prvních národů na přístup federální vlády. Zvláště pak analyzuje představy a požadavky hnutí Idle No More, které vzniklo na protest proti některým legislativním návrhům Harperovy vlády. Autorka práce dochází k závěru, že jakákoliv snaha změnit nepříznivou situaci původních obyvatel v Kanadě by byla při nejmenším problematická vzhledem k nesouladu představ konzervativní vlády a prvních národů o tom, jak reformovat Indiánský zákon a jakým způsobem vynutit dodržování práva původních obyvatel na sebeurčení.

Abstract

A debate on the reform of the frequently criticized Indian Act of 1876 – the basic law governing the rights and responsibilities of First Nations and their special status within Canada – has been getting more intense with the ongoing socio-economic problems of Aboriginal peoples. Whereas the previous Canadian government of Stephen Harper emphasized self-sufficiency and financial responsibility, First Nations have required the assertion of their constitutional rights to self-determination and self-government in any reform. This piece of work examines various proposals to reform the Indian Act and

their potential effect on the status of First Nations. It focuses on Aboriginal policy stances of the Harper Government and the First Nations' reaction to the federal government's approach. In particular, it analyzes the ideas and demands of the Idle No More protest movement that emerged in response to some of the legislative proposals of the Harper Government. The author concludes by arguing that any effort to change the unfavorable situation of Aboriginal peoples in Canada would run into problems because of the discrepancy of ideas of the Conservative Government and First Nations on how to implement the reform of the Indian Act and how to enforce the right to self-determination.

Klíčová slova

Kanada, původní obyvatelé, první národy, Indiánský zákon, právo na sebeurčení, právo na samosprávu, Stephen Harper, Idle No More

Keywords

Canada, Aboriginal peoples, First Nations, Indian Act, right to self-determination, right to self-government, Stephen Harper, Idle No More

Rozsah práce: 144 149 znaků

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V Praze dne 6. září 2016 Kristýna Onderková

Poděkování

Na tomto místě bych ráda poděkovala vedoucí práce Mgr. Ing. Magdaleně Fiřtové, Ph.D. za cenné připomínky a rady při vytváření práce.

Content

Introduction

> "Canada's relationship with the Indigenous peoples within its borders is governed by a well-developed legal framework a number of policy initiatives that in many respects are protective of Indigenous peoples' rights. But despite positive steps, daunting challenges remain. The numerous initiatives that have been taken at the federal and provincial/territorial levels to address the problems faced by Indigenous peoples have been insufficient […] and overall there appear to be high levels of distrust among Indigenous peoples toward government at both the federal and provincial levels. […] Concerted measures, based on mutual understanding and real partnership with Aboriginal peoples, through their own representative institutions, are vital to establishing long-term solutions. To that end, it is necessary for Canada to arrive at a common understanding with Indigenous peoples of objectives and goals that are based on full respect for their constitutional, treaty, and internationally-recognized rights."[1]

James Anaya, the Special Rapporteur on the rights of Indigenous peoples appointed by the Commission on Human Rights, summarized in his 2014 *Report* the situation of Indigenous peoples in Canada and outlined what needs to be done to change the unfavorable state of affairs. Anaya particularly emphasized full respect for constitutional, treaty, and internationally-recognized rights of Aboriginal peoples that are the focus of this piece of work. Compatibility of the enforcement of the right to self-determination, which is one of such rights, by Indigenous peoples with the policies of Prime Minister Stephen Harper will be the main subject of the research.

Aboriginal peoples neither dissolved in Canadian non-Indigenous society nor have they died out as predicted in the early years. On the contrary, more and more people claim allegiance to Aboriginal ancestry which oftentimes stems from the benefits and generous social support that Native peoples receive from the federal budget. The debate around the controversial Indian Act of 1876, which – along with the Canadian Constitution of 1982 – provides the basis for the rights of one of the largest groups of Indigenous peoples in Canada, the First Nations, has been going on since its approval. However, resounding calls for the act's amendment or even replacement have been recently issued both by the country's political elites and First Nations' leadership.

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[1] James Anaya, "The Situation of Indigenous Peoples in Canada", *Report of the Special Rapporteur on the rights of Indigenous peoples*, Human Rights Council, General Assembly, United Nations, Geneva, Switzerland, July 4, 2014, http://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.27.52.Add.2-MissionCanada_AUV.pdf (accessed November 7, 2014), 1-2.

Since 1969 when the White Paper, a first major federal attempt to replace the Indian Act, was presented, successive governments have more or less continued to endorse a special status for Aboriginal peoples in Canada. Nevertheless, the substantial difference in living standards of Native and non-Native Canadians has not diminished, and the socio-economic problems of many Aboriginal communities remain.[2] Canadian governments have tried to solve the issue and find new ways to improve the conditions of Aboriginal peoples but they have failed to achieve amelioration of the Indigenous peoples' situation.

The most pressing problems of Aboriginal peoples nowadays are alcoholism, domestic violence, sexual abuse, suicides and parasuicides,[3] unemployment, poverty, drug addiction (especially to cocaine, mescaline, speed, ecstasy, and PCP), dysfunctional families, incest, and aggressive behavior.[4] Canadian statistics indicate that Aboriginal peoples are twice as likely to be unemployed (approximately 14 %) as the rest of the population (around 7 %).[5] Almost one fifth of Indigenous peoples have an income below the minimum wage compared to one tenth of other Canadians.[6] The life expectancy of Native peoples is shorter because they face more illnesses. At the same time, Canada's Indigenous population is growing twice as fast as the rest of the population, which in case of on-reserve Indians results in overcrowded spaces with dreadful social consequences.[7]

In contrast with the previous Liberal governments' approach of "equal negotiation" – an approach towards Native peoples consisting in negotiations and dialogue between the federal government and Aboriginal communities, and a gradual process of sharing important competencies in the areas of education or health in order to enhance Native self-government –, the Conservative legislative framework adopted a neoliberal way of dealing with the issue. The Conservative Government called for

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2 Éric Gourdeau, "Les autochtones et le Québec," in *Le Québec aujourd'hui: Identité, société et culture*, ed. Marie-Christine Weidmann-Koop (Saint-Nicolas: Les Presses de l'Université Laval, 2003), 137–38.

3 Parasuicide is a suicide attempt.

4 Gourdeau, "Les autochtones et le Québec", 137-8.

5 Statistics Canada, "Labour Force Survey, July 2016", Ottawa, Canada, 2016, http://www.statcan.gc.ca/daily-quotidien/160805/dq160805a-eng.htm?HPA=1&indid=3587-2&indgeo=0 (accessed August 20, 2016).

6 Chantal Collin and Hilary Jensen, "A Statistical Profile of Poverty in Canada", Social Affairs Division of the Parliament of Canada, Ottawa, Canada, 2009, http://www.parl.gc.ca/content/lop/researchpublications/prb0917-e.htm#a9 (accessed November 17, 2014).

7 Statistics Canada, "Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census", Ottawa, Canada, 2008, http://www12.statcan.ca/census-recensement/2006/as-sa/97-

responsibility and self-sufficiency for Indigenous peoples. It sought to boost their economic activity and reduce Aboriginal dependence on federal funding and social benefits.

The Idle No More (INM) protest movement founded in 2012 in reaction to some of the federal government's laws pertaining to Indigenous peoples has promoted the Aboriginal rights to self-determination and self-government, sustainable development, and environmental protection that are inextricably linked with Indigenous identity. Both the First Nations communities and the federal government thus appeared to aim for self-governance of Indigenous peoples; however, the ways by which these two groups wanted to accomplish such a goal vary considerably.

The aim of this piece of work is to present the Conservative Government's and First Nations' ideas on how to reform the Indian Act of 1876 in order to enforce the Aboriginal rights to self-determination and self-government, and more precisely, to examine the extent to which the two ways of how to achieve Indigenous self-government differ.

Rights to Self-Determination and Self-Government

It is very complicated to define the concepts of self-determination and self-government. For the purposes of this piece of work, I will use the definitions of the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) because it is an internationally recognized document that is directly relevant to the issue of Aboriginal peoples. On September 13, 2007, the General Assembly of First Nations (AFN)[8] acknowledged that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirmed the importance of the right to self-determination of all peoples "by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development".[9]

558/pdf/97-558-XIE2006001.pdf (accessed November 7, 2014), 14.

[8] The Assembly of First Nations is an official organization of First Nations, in which each band is represented by its chief. The AFN' mission is to protect and promote the Indigenous rights and interests.

[9] General Assembly of the United Nations, "United Nations Declaration on the Rights of Indigenous Peoples", *Resolution adopted by the UN General Assembly,* Geneva, Switzerland, October 2, 2007, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed November 7, 2014), 3.

In its Articles 3 and 4, the UNDRIP further elaborated and specified the argument and stated that Indigenous peoples have the right to self-determination, and in exercising their right to self-determination, Aboriginal peoples were endowed with the "right to autonomy or self-government" in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.[10] In other words, the right to self-determination means therefore that they have the right to determine their own identity, membership, and structures of their institutions in accordance with their customs, procedures and traditions (Article 33).[11] The right to self-government, which is part of the right to self-determination, means that Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions (Article 20).[12]

In political theory there are competing models of determination: state versus self. In the state-centered models, self-determination is defined in ways that reflect and strengthen state interests over those of Aboriginal peoples. In contrast, Native models of self-determining autonomy assert much broader interpretation of self-determination, wherein all other rights stem from it. The federal government tried to curb this discursive framework since it feared that extensive recognition of self-determining autonomy rights might weaken its position and undermine Canadian territorial and political integrity.[13]

In this piece of work, I will focus on the right to self-determination of Indigenous peoples, and I will examine how its assertion was perceived by the Harper Government, the First Nations, as well as the Canadian civic society. Therefore, I will also concentrate on the right to self-government – a crucial self-determining autonomy right – the exercise of which should be the goal of any future legislative and practical steps of the Government of Canada as argued by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples James Anaya:

> "Any existing legal barriers to the effective exercise of Indigenous self-government, including those in the Indian Act, should be removed, and effective measures should be taken to build Indigenous governance capacity. Canada should continue to engage in,

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10 General Assembly of the United Nations, "United Nations Declaration", 4.
11 Ibid., 12.
12 Ibid., 8.
13 Augie Fleras and Roger Maaka, "Mainstreaming Indigeneity by Indigenizing Policymaking: Towards an Indigenous Grounded Analysis Framework as Policy Paradigm", *Indigenous Policy Journal* 20, No. 3 (Fall 2009): 12.

> and adequately fund, meaningful negotiations to transfer governance responsibilities to First Nations, Inuit and Métis governments and to financially support, at adequate levels, the development and operation of Indigenous self-governance institutions."[14]

The inherent right to self-government is recognized as an existing Aboriginal right under Section 35 of the Constitution Act of 1982.[15] It is based on the belief that Indigenous peoples have the right enforceable through the courts to govern themselves in internal matters concerning their communities due to their unique identities, cultures, traditions and institutions.[16] The right to self-government includes jurisdiction over the definition of governance structures, (band) membership in First Nations, family matters, education, health services, and ownership of land. However, in order to exercise such jurisdiction, agreements must be negotiated with the Canadian federal government.[17]

In 1983, Canada's House of Commons set up a parliamentary committee known as the Penner Committee to inquire into matters of Aboriginal self-government. In its report, the Penner Committee acknowledged that the right to self-government was inherent to all First Nations as protected by the Constitution. In 1995, the Liberal Government of Prime Minister Jean Chrétien introduced so called Inherent Right Policy in order to negotiate practical arrangements to implement Native self-government through new self-government agreements (SGA). The Penner Committee also recognized that no single form of government was applicable to all Indigenous communities, because of their great diversity. Thus, the self-government agreements of different forms based upon the particular historical, political, economic, and cultural circumstances of each First Nation can be negotiated with the federal government to enhance greater Aboriginal control and law-making authority.

Despite the recent developments related to the SGA, which will be described in more detail below, the Indian Act remains the prevailing legal regime in Aboriginal affairs. It does not permit the effective exercise of Aboriginal self-government and orders that almost all decisions made by First Nations, such as funding for reserve programs and infrastructure, changes in band by-laws, and the leasing of land, must seek the approval of the federal Minister of Aboriginal Affairs and Northern

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[14] Anaya, "The situation of indigenous peoples", 24.

[15] Although recognition of the right to self-government is not explicitly stated in Section 35, it is interpreted in this manner.

[16] Aboriginal Affairs and Northern Development Canada, "The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government", Ottawa, Canada, 2010, https://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844#esga (accessed November 7, 2014).

Development.[18] In order for Indigenous peoples to exercise their right to self-determination and self-government, which is their main priority, it is thus first necessary to change the current legislative settings. The previous government of Prime Minister Stephen Harper made changes to the legislative framework, however, whether the way how this was done would lead to Aboriginal peoples' exercise of the right to self-determination and self-government will be the subject of this research.

Structure, Methodology, Territorial, and Periodization

This work will be divided into two major parts. The first part will provide a theoretical framework introducing and comparing the main approaches that deal with the status of Native peoples, the second one will be partly an analysis of the Harper Government's legislation, partly a practical case study. Both major parts will be divided into two chapters. In the first chapter I will introduce the legal anchoring framework of Indigenous peoples, more specifically of First Nations, in Canada in historical and political context. The second chapter will introduce and compare the main theoretical approaches dealing with the status of Native peoples – the *Hawthorn Report*'s and Alan Cairn's concept of "differentiated citizenship", in contrast to the *White Paper* and Thomas Flanagan's philosophy of "undifferentiated citizenship" – with regard to the question of the Aboriginal right to self-determination and of self-government.

In the second major part of this piece of work, I will first analyze the former approach of the Canadian Conservative Government of Stephen Harper to the Aboriginal issue, legislative proposals of the Harper Government, and the prospective reform of the Indian Act of 1876 vis-à-vis the theoretical concepts. I will focus on the various Aboriginal calls for self-determination and self-government, and how these coincide with or diverge from the policies and visions of the Harper Government. I will try to determine to what extent and whether the views and demands of Indigenous peoples regarding the self-determination were compatible with the ideas of the Harper Government.

To find answers to these questions, I will elaborate a case study of Idle No More, which emerged in November 2012 as an Indigenous protest movement against government's alleged legislative "abuses" of Indigenous peoples' rights, especially against the proposed omnibus Bill C-45. The mission of the protest movement, which

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17 Anaya, "The Situation of Indigenous Peoples", 6.
18 Ibid., 12.

has been to seek "to assert Indigenous inherent rights to sovereignty and reinstitute traditional laws and Nation to Nation Treaties by protecting the lands and waters from corporate destruction,"[19] serves as a justification of my motivation to include this case study into my research.

A content analysis[20] of the Idle No More movement's statements and stances on the issues of self-determination and self-government on the one hand, and the rhetoric and reform proposals of the Conservative Government on the other hand, will offer suitable comparative basis for qualitative research to study Aboriginal reactions to Harper's policies towards Native peoples. It will show whether the issues dealt with by the two sides were mutually compatible, and whether only general proclamations were being delivered or some specific suggestions as well were being presented by both sides. It will tackle the question whether any possible compromise reform or replacement of the Indian Act might have been possible.

In terms of time framework, this piece of work will mainly deal with the period between 2006, when Stephen Harper assumed the post of the Prime Minister of Canada and the end of 2013. Since both Harper's public policies were deliberately, as I claim, in relatively sharp contrast with the previous Liberal governments' approach to Aboriginal question, this piece of work cannot avoid a brief introduction of the milestones of the federal Aboriginal policy between 1876 and 2006. To establish the context of the recent shape of the Aboriginal question in Canada, I will briefly provide social and historical context of development of Aboriginal policy in Canada between 1876 and 2006. In contrast, I will not address the period prior to the adoption of the Indian Act. Although the Indian question has been an important issue since the beginning of the European colonization of North America, and it was one of the topics of the Royal Proclamation of 1763, the Quebec Act of 1774, and the Constitution Act of 1867, my main research focus is on the First Nations, whose legal status is inextricably linked with the Indian Act of 1876. The end of 2013 was chosen because at that time the Idle No More protest movement's activities started to decline.

Aboriginal peoples do not have the same territorial perception of the world as modern Western civilization for which the boundaries between states are of crucial

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[19] "The Story", official website of Idle No More, http://www.idlenomore.ca/story, (accessed October 10, 2014).

[20] An analysis of the content of documents and speeches covering the methods and rules for determining their main topic. See Marie Balíková, „Obsahová analýza", in Česká terminologická databáze knihovnictví a informační vědy (Prague: Národní knihovna ČR, 2003).

importance. Their mental and physical connection with the land and the environment in which they live reach beyond the Canadian borders and encompass much of the territory of the whole continent. However, since the main focus of the work is the Canadian legislative framework concerning First Nations, and more specifically Harper's public policies, I will concentrate on Canada. Making any claims about the Indian policy of the United States government would necessitate a thorough explanation of that nation state's legislative and administrative system, the Indigenous affairs of which are in some ways similar to Canada's, but differ in others. On the other hand, I will also briefly touch upon the transnational dimensions of Indigenous rights to self-determination and self-government, because it is a worldwide phenomenon and globally operating organizations such as the United Nations have become notably involved in such issues.

Although the main focus of this piece of work will be self-determination, which is primarily a political and legal concept, the economic dimension of the Aboriginal question will also be mentioned because of the economic implications of the government's legislative and practical steps for the Indigenous peoples' self-determining identity elements (such as the right to fish or environmental protection), and more generally for their living conditions.

Methodologically, this piece of work will fall within the field of Political Science with disciplinary overlaps with History and Law. Legal and sociological approaches will help me to explain how federal law and legal proceedings impact upon Aboriginal peoples within this qualitative research framework. The focal point of my qualitative research will be a comparative content analysis of the Harper Government and representatives of Canadian Indigenous peoples. Empirical research will involve Idle No More which will be enabled by a case study of the movement.

Overview of Sources

Content analysis requires both a thorough analysis of major primary documents, such as bills and laws affecting the status and rights of Aboriginal peoples, government reports, reports of the United Nations, statements of politicians, and representatives of Indigenous communities, as well as a qualified understanding of theoretical concepts presented in number of monographs, collections, scholarly articles, and newspaper articles. In the first part of the this work I will mainly use primary sources to explain the basic matters that are the concern of the research, as well as monographs of the main

scholars, which outline the most important concepts. In the second part I will draw both directly from the bills and laws of the Harper Government, and use scholarly articles and newspaper articles covering the Idle No More protest movement because it is a relatively new phenomenon, which is not yet fully described in the literature.

As one of the key primary sources I will use the most fundamental Canadian legislation concerning First Nations, the Indian Act of 1876. The Act has determined the status of First Nations in relatively unchanged form for exactly 140 years. It specifies who "Status Indians" are, it sets out the definitions of reserves and bands, and how they operate, it defines the federal government's authority over Indian communities concerning *inter alia* land ownership, taxation or education. Thus, as I will argue, it is one of the main obstacles for the exercise of the Aboriginal rights to self-determination and self-government, and it stands at the very crux of the matter which is the subject of this piece of work.

In 1966–67, Harry B. Hawthorn and his non-Aboriginal research team published *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies*, also known as the *Hawthorn Report*. This was the first non-governmental impetus for a significant reform of the Indian Act since its adoption in 1876 because it drew attention to the poor conditions of Indigenous peoples in Canada.[21]

The *Hawthorn Report* is another important primary source for this piece of work because it introduced one of the relevant concepts of the Aboriginal status. Hawthorn argued that the disadvantaged situation of Aboriginal communities stemmed from ill-designed government policies. In particular, he criticized the residential school system, which contributed to low levels of education, leading to poor economic chances among First Nations. Additionally, the *Report* supported the idea that since Indigenous peoples had inhabited the American continent before the arrival of Europeans, who subsequently treated them as inferior and subordinate, a positive recognition of Status Indians as so called "citizens plus", would counterbalance their historical mistreatment.[22] The term "citizens plus," which was at the time very positively received by Indian groups (such

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[21] Harry B. Hawthorn, ed., "A Survey of the Contemporary Indians of Canada: A Report on Economic, Political, Educational Needs and Policies", Indian Affairs Branch, Ottawa, Canada, October, 1967, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai-arp-ls-pubs-sci3_1326997109567_eng.pdf (accessed October 10, 2014), 5.

[22] Ibid., 7.

as the Nisga'a Nation),[23] was subsequently adopted into Indigenous affairs scholarship by Canadian political scientist Alan Cairns.

The publication of the *Hawthorn Report*, along with the introduction of the term "citizens plus," launched consultations between the federal government and First Nations' leadership across Canada in order to amend the Indian Act, and the issue of self-determination and self-government of Indigenous peoples came to the foreground. In 1969, the Liberal Government of Pierre Elliott Trudeau proposed the *Statement of the Government of Canada on Indian Policy,* known as the *White Paper*, which is another relevant primary source for this piece of work.

The drafters of the *White Paper* agreed with the *Hawthorn Report*'s conclusion that the system of separate institutions and the special legal status of First Nations created by the Indian Act were ineffective, and contributed to their lagging behind the non-Aboriginal Canadians in well-being. However, the proposed means of reform in the *Hawthorn Report* and the *White Paper* substantially differed.

The Trudeau Government's policy towards Aboriginal peoples based on a Western liberal mindset[24] can be interpreted in the light of the U.S. Civil Rights Movement, especially the emancipation of Afro-Americans in the 1960s, and the rhetoric of the United States Supreme Court ruling in *Brown v. Board of Education of Topeka* of 1954. It is evidenced by the *White Paper's* statement "separate but equal services do not provide equal treatment".[25] The Report suggested, *inter alia*, abolishing the special status of Indigenous peoples in order to fully integrate them in Canadian society. Furthermore, it called for revoking the Indian Act and terminating the Department of Indian Affairs and Northern Development. Simultaneously, Section 91 of the British North America Act was proposed to be amended, so the separate treatment of Aboriginal peoples would be eliminated.[26]

Most First Nations opposed the government's proposal because it would have meant the end of their special legal status and their right to self-determination and self-

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23 Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), 164.

24 Menno Boldt, *Surviving as Indians* (Toronto: University of Toronto Press, 1993), 21.

25 Hamar Foster, Heather Raven and Jeremy Webber, eds., *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights* (Seattle: University of Washington Press, 2008), 101.

26 "Statement of the Government of Canada on Indian Policy, 1969", *Paper presented to the First Session of the Twenty-eighth Parliament by the Honorable Jean Chrétien*, Minister of Indian Affairs and Northern Development, http://www.aadnc-aandc.gc.ca/eng/1100100010189/1100100010191 (accessed October 10, 2014).

government would be suppressed. The rhetoric of the proposal was criticized for being peremptory and unyielding.[27] *Citizens Plus*, an Indian response to the *White Paper*, also called the *Red Paper*, was published in 1970 by the Indian Association of Alberta, with the support of the National Indian Brotherhood (NIB). The *Red Paper* partly adopted the *Hawthorn Report*'s concepts. In particular, it suggested that the constitutional basis of Indian rights and their legal status should be preserved, because only the First Nations themselves can renegotiate them.[28] In the same year Pierre Trudeau withdrew his proposal but this abortive attempt at reforming Indigenous affairs further reinforced First Nations' mistrust of the federal government.[29]

Another important primary source, the *Erasmus-Dussault Report* of the Royal Commission on Aboriginal Peoples (RCAP), was issued in 1996. The RCAP was put together in order to respond to the worsening conditions in Indigenous communities, the growing number of First Nation land claims, rhetorically also to redeem the past wrongdoings committed by non-Aboriginal Canadian society in order, and eventually, to "help restore justice to the relationship between Aboriginal and non-Aboriginal people in Canada, and to propose practical solutions to stubborn problems."[30]. Compared to the team of Harry Hawthorn, the Commission included four Aboriginal persons, who represented a majority, since there were seven members in total.[31]

The five-volume, 4,000-page *Report* with its 440 recommendations covered an extensive range of issues. It proposed to implement radical measures in order to replace the old colonial and paternalistic governmental approach towards Indigenous peoples with an approach based on partnership. It endorsed changes such as the idea of a new Royal Proclamation stating Canada's commitment to a fresh relationship between

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27 Susana Mas, "Trudeau Liberals Woo High-Profile Aboriginal Candidates Ahead of 2015", *CBC News*, September 29, 2014, http://www.cbc.ca/news/politics/trudeau-liberals-woo-high-profile-aboriginal-candidates-ahead-of-2015-1.2764945 (accessed October 10, 2014).

28 Indian Chiefs of Alberta, "Citizens Plus", *A Presentation by the Indian Chiefs of Alberta to Right Honorable P. E.Trudeau, Prime Minister and the Government of Canada*, June 1970, http://ejournals.library.ualberta.ca/index.php/aps/article/download/11690/8926 (accessed October 10, 2014), 189-190.

29 John Leslie, "The Development of Canadian Indian Policy, 1943-1963" (PhD thesis, Department of History, Carleton University, 1999), http://www.collectionscanada.gc.ca/obj/s4/f2/dsk1/tape9/PQDD_0013/NQ42797.pdf (accessed October 10, 2014), 418.

30 "Highlights from the Report of the Royal Commission on Aboriginal Peoples", Aboriginal Affairs and Northern Development Canada, Ottawa, Canada, 2014, http://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637 (accessed October 10, 2014).

31 "Royal Commission Report on Aboriginal Peoples", Government of Canada Web Archive, Library and Archives Canada, Ottawa, Canada, 1996, http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html (accessed October 10, 2014).

Aboriginal peoples and the majority population, the reform of the Department of Indian Affairs and Northern Development, the creation of an Aboriginal parliament, a bank of Indigenous development, an independent tribunal dealing with treaties and territories, an action plan on health and social conditions, a new Native educational system, and last but not least, a system of dual citizenship.[32]

The critics of the RCAP stressed the *Report*'s disproportionate emphasis on self-government and, inversely, its omission of Aboriginal peoples' representation in non-Aboriginal bodies. The recommendations of the *Erasmus-Dussault Report* simply did not fit into mainstream Canadian historical tradition and political context.[33] On the other side, the Assembly of First Nations criticized it for its moderation, but later blamed the Liberal government for failing to put into practice the *Report*'s recommendations.[34]

Furthermore, the RCAP' idea of implementing a trade and economic policy that advocates replacing foreign imports with domestic production[35] in Aboriginal communities was criticized for its backwardness and malfunction. As criticized by Thomas Flanagan, an American-born conservative political scientist and a former advisor to Stephen Harper, the economic vision of the RCAP was almost exclusively based on land and natural resources,[36] and since staple economies have proven to be economically unstable due to the so called "Dutch Disease" or "resource curse",[37] the long-term optimal performance of such models is, as I argue, dubious.

Thomas Flanagan whose major piece of work bears the title *First Nations? Second Thoughts* has been one of the leading critics of the RCAP's way of promoting Aboriginal self-government. According to his critical approach, a greater political autonomy of Indigenous peoples is counterproductive because it places them outside the economic realities of today's world. Flanagan, who had a significant impact on shaping Stephen Harper's policy towards Indigenous peoples, advocates the concept of "undifferentiated citizenship". This contradicts the *Report* of the RCAP, as well as the concept of "citizens plus" promoted by the *Hawthorn Report* and by Alan Cairns.

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32 "Royal Commission Report".
33 Cairns, "Citizens Plus", 141, 157.
34 "Royal Commission Report".
35 "Import Substitution", Encyclopædia Britannica, http://www.britannica.com/EBchecked/topic/284081/import-substitution (accessed October 10, 2014).
36 Thomas Flanagan, *First Nations? Second Thoughts* (Cambridge: Cambridge University Press, 2000), 180-184.
37 Paul Segal, "How to Spend It: Resource Wealth and the Distribution of Resource Rents", *Paper prepared by the Kuwait Programme on Development*, Governance and Globalization in the Gulf States of the LSE's Department of Government, October 2011, http://www.lse.ac.uk/middleEastCentre/kuwait/documents/Segal.pdf (accessed November 10, 2014).

In his book Flanagan develops the controversial idea of the so-called "Aboriginal orthodoxy". He rejects what he sees as its racially-based defense of Aboriginal rights, its obsession with the demand of repairing past wrongdoings done to Indigenous groups, and its precipitous effort to separate the world of Indigenous peoples and non-Indigenous Canadians.[38] Flanagan also disagrees with the division of Aboriginal history with respect to European settlement into periods of "separate worlds", "contact and co-operation", "displacement and assimilation", and "negotiation and renewal",[39] taking issue specifically with the claim that Indigenous peoples were civilized and sovereign before the conquest.[40] He supports his claim of the lack of Indigenous sovereignty with the non-existence of any pre-contact Aboriginal states as understood by the Western world.[41]

In each chapter Flanagan challenges one of the basic tenets advocated by the Aboriginal orthodoxy: an Aboriginal inherent right to self-government, the same level of civilization of Indigenous peoples and Europeans at the time of conquest, the Aboriginal sovereignty possession, Aboriginal nationhood, the power of band councils, the legal endurance of Aboriginal titles and the legitimacy of Native land claims, the need for the modernization of land-surrender treaties, and the Aboriginal need for financial support from the federal government. For the purposes of this piece of work I will focus mainly on Flanagan's chapters concerning the Aboriginal inherent right to self-government and Aboriginal nationhood related to the question of self-determination.

Alan Cairn's 2000 book *Citizens Plus: Aboriginal Peoples and the Canadian State* will be used for outlining the aspects of the *Hawthorn Report*'s concept of "citizens plus", which will then be compared with the idea of "undifferentiated citizenship", promoted by Flanagan. In the book, Cairns presents his basic idea that Indigenous peoples differ from non-Aboriginal Canadians, but not completely, because of their common living space.[42] He dismisses the possibility of secession and argues that the future of Aboriginal peoples lies "inside" the Canadian federation. Unlike Flanagan, however, Cairns suggests that Aboriginal peoples should be understood as "citizens plus" – Canadians with special rights; "by 'plus' it is referred to ongoing entitlements,

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38 Flanagan, "First Nations", 194.
39 "Royal Commission Report".
40 Flanagan, "First Nations", 36.
41 Ibid., 94.
42 Cairns, "Citizens Plus", 5.

some of which flowed from existing treaties while others were to be worked out in the political processes of the future, which would identify the Indian peoples as deserving possessors of an additional category of rights based on historical priority."[43] The concept of "citizens plus" thus combines the recognition of the distinctiveness of Indigenous peoples with their inclusion in Canadian society.

Will Kymlicka, one of the most eminent contemporary Canadian political philosophers, deals with the position of minorities in his 1995 book *Multicultural Citizenship: A Liberal Theory of Minority Rights*. In contrast with both Cairns and Flanagan, Kymlicka views the Canadian First Nations as well as for example Puerto Ricans in the United States, as "national minorities" based on several criteria such as self-government, a common culture and language.[44] Kymlicka's more general approach will be compared to Flanagan's and Cairns' concepts that are in particular dedicated to the situation of the First Nations. His findings will be used to understand the broader context of the problems of multicultural societies.

In the second part I will include the ideas of John Ralston Saul, a prominent Canadian author, essayist and proponent of rights of Indigenous peoples. Saul has been a strong supporter of the Idle No More movement,[45] which influenced his latest book the 2014 *The Comeback: How Aboriginals Are Reclaiming Power and Influence* that was awarded the Writers' Trust 2014 Shaughnessy Cohen Prize for Political Writing. One of the central themes of the Saul's book is treaties. Saul believes non-Native Canadians signed the treaties with Aboriginal peoples but they have not respected them. Furthermore, they have used every possible legal method to shut them down, to minimize them, and to not fulfill the original bargain.[46] I will, however, not address treaties and treaty rights in much detail since the issue is very complex, and I would need to devote a separate chapter to the issue of treaty rights or even an entire piece of work.

To analyze the movement's demands I will also draw from scholarly articles of Marc Woons, a specialist on Indigenous-state relations in Canada, and three co-publishing professors from Free University of Brussels and experts on legal aspects of

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43 Cairns, "Citizens Plus", 12.

44 Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), 79–80.

45 John Ralston Saul, "The Resurgence of Indigenous Power", commentary on The Comeback, *thestar.com*, official website of John Ralston Saul, http://www.johnralstonsaul.com/ (accessed December 20, 2014).

46 Michael Shulman, "John Ralston Saul: Sympathy for Aboriginal Issues Is Not Enough", CTVNews.ca, November 12, 2014, http://www.ctvnews.ca/canada/john-ralston-saul-sympathy-for-

Indigenous peoples Derek Inman, Stefaan Smis, and Dorothée Cambou. But above all, for the purposes of the content analysis, I will use declarations, speeches, statements and other documents released by Idle No More in which I will try to underline the main topics that the movement was most concerned of. And as I will try to argue, these themes were not at all on the list of top priorities of the Harper Government.

PART I: Main Approaches to the Status of Native Peoples

1. Aboriginal Peoples, First Nations and the Indian Act

> "We the Original Peoples of this land know the Creator put us here. The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind. The laws of the Creator defined our rights and responsibilities. The Creator gave us our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provides us with all our needs. We have maintained our freedom, our languages, and our traditions from time immemorial. We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed. The Creator has given us the right to govern ourselves and the right to self-determination. The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation."[47]

This is *A Declaration of First Nations,* which was adopted during a First Nations' gathering in Ottawa in 1980. It is also proudly published on the Assembly of First Nations Internet website. It mentions the most important claims of First Nations' political elites, the right to self-determination and the right to self-government, it is a classic example of their holistic perception of the world, and it mirrors the official rhetoric of the Assembly of First Nations, Indian councils and bands. Holism is the persuasion that all natural systems should be perceived as wholes, not as collections of component parts since the parts are interconnected and cannot exist independently.[48] Aboriginal peoples' way of life is based on the holistic theory, as well as their demands. These demands will be discussed below; however, in order to understand the issue, it is

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aboriginal-issues-is-not-enough-1.2099508 (accessed August 8, 2016).

47 "A Declaration of First Nations", official website of the Assembly of First Nations, http://www.afn.ca/index.php/en/about-afn/a-declaration-of-first-nations (accessed November 10, 2014).

48 "Definition of Holism in English", Oxford Dictionaries Language Matters, http://www.oxforddictionaries.com/definition/english/holism (accessed November 10, 2014).

first necessary to explain who First Nations and Aboriginal peoples are according to History and Law.

The Origin and Composition of Indigenous Peoples in Canada

Regarding the composition of Canadian society from a historical perspective, it was originally formed by three major groups: Aboriginal peoples, the French, and the English. Native peoples' homelands were occupied by French settlers who were later overrun by English settlers. Nowadays, the descendants of English and French colonists constitute a voluntary federation of the Canadian government, which itself has survived two French Canadian attempts to secede.[49] In the case of Indigenous peoples, the question of voluntariness is perhaps even more complex.

"Aboriginal peoples", "Native peoples", and "Indigenous peoples",[50] are all common terms used for the descendants of the first inhabitants of Canada who most probably came to the continent across the Bering Strait about 12,000 years ago.[51] I will mainly focus on one particular group of Aboriginal peoples, the First Nations since the Indian Act only applies to them; but I will also deal with issues which concern Indigenous peoples in general, and which may basically be related to all Aboriginal groups.

Section 35 (1) of the Canadian Constitution Act of 1982 reads that the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are recognized and affirmed. Section 35 (2) explicitly recognizes the rights of three Aboriginal groups: the Indians (First Nations), the Métis (the half-caste descendants of Aboriginal peoples and European settlers) and the Inuit[52] (Eskimos).[53] The terms "Indian" and "Eskimo" are controversial in the Canadian context. The latter is perceived as pejorative because it originally meant "eats something raw".[54] The controversy of the former consists in the fact that it is also used for the inhabitants of India who have the historical right to such a designation. This erroneous designation is generally attributed to Christopher

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49 Kymlicka, "Multicultural Citizenship", 12.

50 Although in the various primary and secondary sources there are different ways of capitalization, the method used in this piece of work is taken from the official website of the Canadian government, see the Translation Bureau official website available at http://www.btb.termiumplus.gc.ca/tcdnstyl-chap?lang=eng&lettr=chapsect4&info0=4.

51 Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earlier Times* (Toronto: University of Oklahoma Press, 1992), 21.

52 Most Inuits live in the northern territory of Nunavut, which was created as a new Canadian political subdivision in 1999.

53 The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), c 11, http://laws-lois.justice.gc.ca/eng/Const/FullText.html (accessed November 10, 2014).

Columbus, who, on arrival to the North American continent, thought he was in India. Both names were created and used during a long history of dispossession of Indigenous peoples by non-Native Canadians, and therefore they are regarded as Eurocentric and prejudiced. "Indian" is, however, a legal term used both in the Constitution Act of 1982 and in the Indian Act of 1876.[55]

Besides the above mentioned Section 35, Canada's Constitution Act of 1982 refers to Indigenous peoples in two other sections. In Section 25, it sets that treaty or other rights and freedoms shall not be construed, abrogated or derogated from any Aboriginal peoples of Canada. It means that the Canadian Charter of Rights and Freedoms, in which Section 25 is included, must be enforced in a way that does not diminish Indigenous rights.[56] Furthermore, Section 37 provides for a conference regarding the constitutional matters that directly affect the Aboriginal peoples of Canada.[57]

This constitutional framework, especially its Section 35, was groundbreaking, since the Constitution Act of 1867, also known as the British North America Act (specifically its Section 91 [24]) had established that the federal government had legislative jurisdiction over Indians and lands reserved for Indians, which had enabled the federal government to unilaterally impose the Indian Act on Aboriginal peoples.[58] The Constitution Act of 1982 thus constitutionally enshrined Indigenous rights for the first time in Canadian history.

In 2011 about 1.4 million people in Canada declared having Indigenous roots, representing roughly 4.3 % of the whole Canadian population, and 851,560 people identified as First Nations, representing 60.8 % of the total Aboriginal population.[59] First Nations live in Ontario, Quebec and the Western provinces as well as in British Columbia, but they make up the largest share of the total population in the Northwest Territories, the Yukon, Saskatchewan, and Manitoba.[60] Registered or "Status" Indians

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54 On the contrary, according to some linguists, it in fact means "she laces a snowshoe".

55 For the purposes of this piece of work, I chose to use the term "First Nations" because it is the name mostly used by the communities themselves.

56 Graham Garton, "Section 25 – Aboriginal Rights and Freedoms Not Affected by Charter", Justice Canada, April 2005, http://www.canlii.org/en/commentary/charterDigest/s-25.html (accessed December 22, 2014).

57 The Constitution Act, 1982.

58 The Constitution Act, 1867, 30 & 31 Vict, c 3, http://canlii.ca/t/ldsw (accessed November 10, 2014).

59 Statistics Canada, "Aboriginal Peoples in Canada: First Nations People, Métis and Inuit", Ottawa, Canada, 2011, http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.cfm (accessed November 10, 2014).

60 Ibid.

representing 74.9 % of all First Nations people are those who are registered as Indians according to the provisions of the Indian Act. "Non-Status" Indians are those who are of Indian ancestry and cultural affiliation, but they are not registered as Indians under the Indian Act, or have lost their right to be registered as Indians under the same legislation.[61]

A "band" is a group living and working together as a single unit, constituted under the Indian Act of 1876.[62] Although bands had existed long before the Indian Act was passed, they were informal when judged from a modern legal perspective. The structure of First Nations is nowadays based on Indian bands and band councils whose chiefs[63] represent each band in the Assembly of First Nations. There are approximately 617 First Nation communities[64] and the First Nation land base is approximately 3.5 million hectares representing 0.35 percent of the total land area of Canada.[65]

The Indian Act of 1876

The Indian Act of 1876 remains the basic legal anchor of First Nations' rights and responsibilities in the current Canadian legal system. It intervenes in the economic, social, and cultural aspects of the lives of First Nations. It covers both private and public questions such as Indian Status and band membership, property rights, housing, inheritance, administration of reserves, political rights and freedoms, elections, taxation, Indian lands and resources, and education.[66]

The original intention of the legislation was to absorb Indians into the rest of Canadian society. Indians were to be "civilized" and Christianized, and their traditional community structures, ceremonies and rituals were to be eliminated. The main purpose was assimilation;[67] however, some provisions of the Indian Act were designed to protect

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61 Tonina Simeone, "Primer on Aboriginal Issues", Social, Health and Cultural Affairs Section of the Information and Research Service of the Parliament of Canada, Ottawa, Canada, 2011, http://carolynbennett.liberal.ca/files/2010/07/Primer-on-Aboriginal-Issues_EN.pdf (accessed November 10, 2014), 1.

62 Indian Act, R.S.C. 1985. c. I-5. http://laws-lois.justice.gc.ca/eng/acts/I-5/page-1.html (accessed October 1, 2014).

63 The term "chief" is commonly used by First Nations.

64 Aboriginal Affairs and Northern Development Canada, "First Nations People in Canada", Ottawa, Canada, 2014, https://www.aadnc-aandc.gc.ca/eng/1303134042666/1303134337338 (accessed October 1, 2014).

65 Aboriginal Affairs and Northern Development Canada, "Land Base Statistics", Ottawa, Canada, 2014, http://www.aadnc-aandc.gc.ca/eng/1359993855530/1359993914323 (accessed December 22, 2014).

66 Indian Act.

67 Carrie Bourassa and Ian Peach, "Reconceiving Notions of Aboriginal Identity", *Research paper for the Institute on Governance*, 2009, http://www.uregina.ca/gspp/marchildon/WRTCfiles/Reading%201%20-%20Dec.%202.pdf (accessed

First Nations, since the government was obliged by treaties to protect Indian interests and lands. Nevertheless, the Indian Act eventually proved to be little more than a colonial instrument for subordination of First Nations[68] since it essentially deprived them of self-governance.

The Indian Act was amended several times. For example, the section that stipulated that First Nation women lost their Status when they married non-Status men was abolished by Bill C-31[69] in the 1980s, due to its discriminatory character and its incompatibility with the Canadian Charter of Rights and Freedoms of 1982.[70] In the 2001 *Speech from the Throne*, the Chrétien Government expressed the view that it was necessary to reform the Indian Act and supported "an initiative of First Nation communities in strengthening governance, including implementing effective and more transparent administrative practices,"[71] however, it did not result in legislative changes. Substantial reform of the Indian Act has not been carried out, which means that this law is currently one of the oldest applicable Canadian legislation. It is also one of the most controversial laws, hated by many for its archaic, assimilatory, manipulative, and even racist character,[72] and cherished by some as necessary especially for the protection of the collective rights of First Nations.

Many First Nations have an ambiguous relationship towards the Indian Act. They denounce its paternalism, but they are reluctant to renounce some of its protections (one of the most advantageous of such protections is Section 87 of the Indian Act, which exempts Status Indians from provincial and federal taxation).[73] Without these protections, the risk that First Nations were assimilated into Canadian non-Native society would increase.

October 1, 2014), 4.

68 Duncan Ivison, *Political Theory and the Rights of Indigenous Peoples* (Cambridge: Cambridge University Press, 2000), 118.

69 Mary C. Hurley and Tonina Simeone, "Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act", Social Affairs Division, March 18, 2010, http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c3&Parl=40&Ses=3&source=library_prb#a21 (accessed October 1, 2014).

70 The Constitution Act, 1982.

71 Adrienne Clarkson, (Speech from the Throne to Open the First Session of the 37th Parliament of Canada, Ottawa, Canada, January 30, 2001), http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=aarchives/sft-ddt/2001-eng.htm (accessed December 20, 2014).

72 Boldt, "Surviving as Indians", 7.

73 Indian Act.

2. Nations, Citizens Plus or "Undifferentiated" Citizens?

As stated in the *Declaration of First Nations*—"The Creator has given us *the right to govern ourselves* and *the right to self-determination*. The rights and responsibilities given to us by the creator cannot be altered or taken away by any *other Nation*."[74]—First Nations determine themselves as nations. As nations, Aboriginal groups demand to be given powers similar to those of local governments, based on the right to self-government others call for recognition of their sovereignty.[75]

In this chapter I will discuss the concepts developed by scholars Thomas Flanagan and Alan Cairns who dedicated their research to establishing a theoretical framework for the status and rights of Indigenous peoples in Canada. I will analyze and compare their theoretical approaches to the Aboriginal question in order to see the issue from very different perspectives. The concept of "undifferentiated citizenship" advocated by Flanagan was partly influenced by the Trudeau Government's *White Paper*, and it partly forms the ideological basis for the policy of the Harper administration.[76] Cairns' concept of "citizens plus" is based on the recommendations of the *Hawthorn Report*. Both concepts are inextricably linked with the questions of the legal anchoring of Aboriginal peoples in Canada, and with their rights to self-determination and self-government.

The Rights to Self-Determination

The term "First *Nations*" is from the theoretical perspective rather problematic itself. It was first officially used to describe Indians in the 1980s by the National Indian Brotherhood (NIB) at the First Nations' Constitutional Conference in Ottawa. The *Declaration of First Nations* was then adopted and the National Indian Brotherhood was transformed into the Assembly of First Nations.[77] The term "Indian" became politically incorrect and ceased to be used in the press and in official communications despite its entrenchment in Canadian legislation. Yet opinions about the aptness of calling First Nations "nations" differ greatly.

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74 "A Declaration of First Nations". Emphasis by the author.

75 Thomas King, *The Inconvenient Indian* (Minneapolis: University of Minnesota Press, 2013), 194.

76 Marci McDonald, "The Man behind Stephen Harper", *The Walrus*, October 2004, http://thewalrus.ca/the-man-behind-stephen-harper/ (accessed December 20, 2014).

77 Menno Boldt and Anthony J. Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians", *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 17, No. 3 (September, 1984): 537.

The Royal Commission on Aboriginal Peoples labelled the relationship between Aboriginal peoples and non-Aboriginal people as a "nation-to-nation" relationship.[78] Alan Cairns criticizes this designation since it suggests the existence of a mini-international system within Canada, and jeopardizes the Canadian political and territorial integrity because it gives the impression that Canada does not constitute a single unified nation. As a replacement, Cairns proposes to interconnect Native identity and Canadian citizenship. Instead of nations, he suggests that Aboriginal peoples should be understood as "citizens plus" – Canadians with special rights. Furthermore, Cairns claims that the terminology of nations does not cover the large number of Indians living off-reserves, most frequently in big cities, and that it favors First Nations living on reserves.[79]

Thomas Flanagan rejects the terminology of nations on the grounds that Aboriginal peoples do not meet the basic criteria for being nations such as civilization, significance, territory and sovereignty.[80] He does not agree with Alain Cairns' idea that the national label disrupts the cohesiveness of Canada, and thus creates a mini-international system within the State because, according to him, First Nations are not really nations and a mere designation cannot cause disruption of the country's integrity as is also evident from Article 46 of the *United Nations Declaration on the Rights of Indigenous Peoples*, which clearly indicates that

> "nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."[81]

In contrast, Will Kymlicka considers Canadian Native peoples as "national minorities". He explains that Canada is both multinational due to its colonial roots and federal organization, and polyethnic because of the substantially large number of immigrants flowing into the country every year.[82] Kymlicka points out that it is necessary to distinguish between national minorities, such as Aboriginal peoples, who represent "distinct societal cultures" and ethnic minorities, such as immigrants, who do

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78 "Royal Commission Report".
79 Cairns, "Citizens Plus", 167.
80 Flanagan, "First Nations", 84.
81 General Assembly of the United Nations, "United Nations Declaration", 14. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed November 7, 2014),
82 Kymlicka, "Multicultural Citizenship", 17.

not. Subsequently, he differentiates between so called internal restrictions and external protections, by which he defends his concept of "group-specific rights".

The term "distinct societal culture" describes a group which has its own language and political institutions that it has been able to preserve despite both internal and external influences. A distinct societal culture should be granted group-differentiated rights such as territorial autonomy, or guaranteed representation in state institutions in order to balance its own minority position.[83] First Nations are thus a typical example of a "national minority" with distinct societal cultures.

External protections represent claims of a minority group against the majority population in order to protect their rights and distinctiveness from the majority society. An example is the promotion of school education in languages of Indigenous peoples. Internal restrictions relate to rights that a minority group claims against its own members. An example is the former Status loss of First Nation women married to non-Status First Nation men. The difference between the two essentially consists in the fact that external protections can be justified to promote equality, whereas internal restrictions limit the autonomy of individuals and are thus inconsistent with Western liberal values.[84]

An example of external protections is the reserve system established by the Indian Act of 1876. Its main purpose is to protect the First Nations' group-specific collective rights, by which it is essentially meant the land base of First Nations which would otherwise be exposed to economic competition by the majority population. The downside of such a system is, however, that common ownership leads to the difficulty for individuals in getting loans because they lack the kind of collateral that banks want. It results in a reduced business potential of First Nations, and eventually to their low competitiveness in Canada's capitalist system.[85] Collective rights are thus paradoxically regarded as one of the causes of First Nations' socio-economic problems.

Canadian national political columnist Michael Den Tandt advances this line of argument when he claims that the lack of individual property rights among First Nations represents one of the fundamental problems, because it prevents the securing of mortgages and the accumulation of wealth. It can be argued that the Indigenous reserve

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83 Kymlicka, "Multicultural Citizenship", 80.
84 Ibid., 42.
85 Ibid., 43-44.

system and collective rights thus produce misery,[86] and this is why many First Nations suffer from "third world conditions in a first world country".[87]

First Nations are not economically self-sufficient and raise relatively little money on their own, therefore they are heavily dependent on financial aid from the federal government. It is a problem of the whole Canadian Aboriginal community – up to 60 % of the income of Indigenous peoples comes from federal funds, and the Canadian government spends billions of dollars of its budget for Aboriginal peoples' support every year.[88]

This issue is further discussed by Flanagan, who assumes that because land and houses on reserves are owned collectively by bands and not by individuals, they are under-invested and badly maintained. Flanagan likens the issue to the situation in the Soviet Union and the Eastern Bloc. That's why he proposes privatization[89] which is, however, currently not possible under the Indian Act. More importantly, private ownership is inconsistent with the traditions of First Nations and it would imply the removal of an element of First Nations' identity. Such collective rights are at the core of the Aboriginal right to self-determination, since they differentiate them from the rest of Canadian society.

The Rights to Self-Government

In the last decade of the twentieth century, an attempt to negotiate a constitutional anchoring of the Indigenous peoples' right to self-government was included in the proposed Charlottetown Accord. The Charlottetown Accord suggested amending the Constitution of 1982 and enacting a law allowing for guaranteed representation of Indigenous peoples in the Canadian House of Commons and Senate. Representatives of Aboriginal peoples were to get a say in the selection of Supreme Court judges and in the debates over the future constitutional amendments. According to the Charlottetown Accord, they were to be consulted when discussing legislation that

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86 Michael Den Tandt, "Indian Act, Racist Relic of 1876, Should Be Abolished – And So Should Reserves", *Canada.com*, January 6, 2013, http://o.canada.com/2013/01/06/0107-col-dentandt/ (accessed October 1, 2014).

87 Joan Holmes, "The Original Intentions of the Indian Act", *Paper prepared by Joan Holmes & Associates Inc. for a conference hosted by Pacific Business and Law Institute*, Ottawa, Canada, April 17-18, 2002, http://www.joanholmes.ca/Indian%20Act%20Paper%20Final.pdf (accessed November 2, 2014), 27.

88 Simeone, "Primer on Aboriginal Issues", 5.

89 Flanagan, "First Nations", 108.

might directly affect them.[90] The proposed agreement, which would also grant a special status to French Canadians, was, however, rejected in a general referendum in October 1992.

Although such audacious proposal remained mere theoretical recommendation, the Royal Commission on Aboriginal Peoples of 1996 further developed the nation-specific special status approach toward Aboriginal peoples. Inspired by the *Report* of the RCAP, the Liberal governments of Jean Chrétien and Paul Martin began the process of power transfer to First Nations in areas such as education, health, and housing through the approach of "equal negotiation". In consequence, the First Nations Land Management Act was adopted in 1999. It was a law allowing First Nation bands to opt out of 34 land-related sections of the Indian Act and assume control over their land and natural resources.[91]

In 2005, the Kelowna Accord was signed between the prime ministers (federal and provincial) and the representatives of Aboriginal peoples. The agreement promised investments of five billion Canadian dollars in education, health and housing for Indigenous peoples in order to reduce socio-economic disparities between them and the non-Aboriginal society.[92] The Kelowna Accord was particularly appreciated by Aboriginal communities for its effort to include representatives of Indigenous peoples in negotiations in the spirit of the suggestions of the Royal Commission on Aboriginal Peoples.[93]

Will Kymlicka believes the logic behind the idea of Aboriginal peoples' right to self-government included in the proposed Charlottetown Accord and supported by the RCAP is the principle of representation and power sharing. According to this liberal perspective, Indigenous peoples should not be obliged to obey a constitution drawn up by their historical "conquerors", which they did not have the chance to influence. They should not be governed by bodies formed of non-Aboriginal peoples only. They should

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90 "Consensus Report on the Constitution", Charlottetown, August 28, 1992, https://www.saic.gouv.qc.ca/publications/Positions/Part3/Document27_en.pdf (accessed October 14, 2014).

91 First Nations Land Management Act, S.C. 1999, c. 24, http://laws.justice.gc.ca/eng/acts/F-11.8/ (accessed October 14, 2014).

92 Lisa L. Patterson, "Aboriginal Roundtable to Kelowna Accord: Aboriginal Policy Negotiations, 2004-2005", Political and Social Affairs Division, May 4, 2006, http://www.parl.gc.ca/Content/LOP/researchpublications/prb0604-e.htm (accessed October 14, 2014).

93 Magdalena Fiřtová, "Kanada a původní obyvatelé: Harperova cesta k ekonomické soběstačnosti", *Mezinárodní politika* 10 (October 2012), http://ustavmezinarodnichvztahu.cz/article/kanada-a-puvodni-obyvatele-harperova-cesta-k-ekonomicke-sobestacnosti (accessed October 1, 2014).

not be expected to obey laws passed by non-Aboriginal legislators and they should not be answerable to courts where Aboriginal peoples are not represented.[94]

First, self-government could, as Alan Cairns claims, serve Native communities as a means of equalization and strengthen their position in relation to the majority population. First Nations could thus decide themselves what to adopt from non-Aboriginal society and what to preserve in their own traditions. Second, the idea that "responsibility begins at home,"[95] which was also emphasized by the Harper Government, means that self-government would transfer the responsibility over First Nations' actions, their advancement or deterioration, to themselves. It would ease the burden of the federal government, which could no longer be blamed for the poor socio-economic situation of First Nations.[96] John Ralston Saul goes even further when he claims that "a serious transfer of responsibility and money" to empower Indigenous peoples and their leadership is needed. [97]

However, specific circumstances must be taken into account when considering the possibility of self-governed First Nations in Canada. First, they form neither a coherent nor a homogenous group. Compared to Québécois or Inuits, they do not live in one particular area, but are dispersed across all Canadian provinces.[98] There are altogether more than 600 Indian bands in Canada.[99] Indian bands vary both in the size of their territory and the number of their members. Moreover, different First Nations have different cultural traditions, historical experience, and ways of life. They even speak different languages and have different positions on some issues. And since First Nations are not themselves homogenous, neither the Assembly of First Nations can be.

Taking into account all these differences, I assume pan-Indian self-government of First Nations would be in practice very difficult. The self-government of individual First Nations would be an option; however, it would mean enormous political and administrative fragmentation of Canada.

One could also argue that there is no need for pan-Indian self-government of First Nations because band councils, larger groupings called tribal and chiefs' councils, and the Assembly of First Nations are able to adequately protect and promote the

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94 Kymlicka, "Multicultural Citizens", 169.
95 Cairns, "Citizens Plus", 111.
96 Ibid.
97 Alexandra Shimo, "John Ralston Saul's The Comeback, Review: A hopeful Vision", *National Post*, November 17, 2014, http://news.nationalpost.com/arts/books/john-ralston-saul-the-comeback (accessed August 8, 2016).
98 Kymlicka, "Multicultural Citizens", 29.

interests of First Nations. Furthermore, some groups such as the Cree, the Sechelt Indian Band, or the Yukon First Nations have already obtained substantial competencies, such as greater control and law-making authority over a comprehensive range of jurisdictions, including health, education or lands,[100] and the corresponding self-government arrangements were signed between the federal government and these groups.

On the other hand, even though band councils have gradually obtained autonomy in spheres like education, health, or collective control over their reserve land, band council resolutions are still only effective when approved by the Department of Aboriginal Affairs and Northern Development under the Articles 20, 24, 45, 49, 50, 54, 83, 86, 117, and 121 of the Indian Act.[101]

The self-government agreements[102] do not fall under the Indian Act and enable First Nations to obtain the power to introduce and enact laws concerning their people, to tax, to provide for municipal planning, and to decide on lands and resources. Each First Nation community has its constitution containing the membership code, establishing governing bodies, and protecting the rights and freedoms of its members. There have been 22 self-government agreements completed so far and other 90 agreements are under negotiation.[103] However, these Indigenous governments have only limited law-making powers under the agreements; areas such as defense, foreign policy, immigration, security or transport remain under federal jurisdiction.[104] In addition, the process of submitting a proposal and negotiating an agreement is complicated and lasts for years or even decades (according to the Department of Indian Affairs and Northern Development, on average, it takes 15 years to reach a final agreement).[105]

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99 Aboriginal Affairs and Northern Development Canada, "First Nations People in Canada".

100 Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18, http://laws-lois.justice.gc.ca/eng/acts/C-45.7/ (accessed October 12, 2014); Sechelt Indian Band Self-Government Act, S.C. 1986, c. 27, http://laws-lois.justice.gc.ca/eng/acts/S-6.6/ (accessed October 12, 2014); Yukon First Nations Self-Government Act, S.C. 1994, c. 35, http://laws-lois.justice.gc.ca/eng/acts/Y-2.6/ (accessed October 12, 2014).

101 Indian Act.

102 Examples of the SGA are for instance the Yale Final Agreement and the Sioux Valley Final Agreement.

103 Aboriginal Affairs and Northern Development Canada, "Fact Sheet: Aboriginal Self-Government", Ottawa, Canada, 2015, http://www.aadnc-aandc.gc.ca/eng/1100100016293/1100100016294 (accessed August 7, 2016).

104 "Aboriginal Self-Government", official website of Newfoundland and Labrador Heritage, http://www.heritage.nf.ca/law/aboriginal_self_gov.html (accessed December 20, 2014).

105 Daniel Schwartz, "7 Questions about First Nations Accountability", *CBC News*, February 20, 2013, http://www.cbc.ca/news/canada/7-questions-about-first-nations-accountability-1.1331320 (accessed December 20, 2014).

Moreover, Martin Papillon, a member of the Department of Political Science at Université de Montréal and a specialist in Canadian Politics, Federalism, and Indigenous Studies, claims that in the spirit of neoliberalism and economy-based agenda, the Conservative Government was moving away from the self-government agreements as they could be considered a practical government recognition of Aboriginal inherent rights to self-determination and self-government, and was increasingly pushing for the terms "governance agreements" and "good governance".[106] These "governance agreements" represented a "[…] form of Aboriginal, federal, and provincial partnership in the financing, development, and delivery of services, toward a common goal – that is, to 'close the gap' between the social and economic conditions of Aboriginal peoples and other Canadians."[107] However, they also diverted attention from the wider debate on the rights of Indigenous peoples, which form an integral part of their narrative of First Nations, to economic sustainability and sector-specific agreements for the management of programs and services.

In order to strengthen the position of First Nations and to materialize their relative autonomy that they have hitherto won into genuine Native self-government, it would first be necessary to amend the Indian Act of 1876, which remains the prevailing legal regime in Aboriginal affairs, and change the balance of power between the Department of Indian Affairs and Northern Development and the councils. For all the above mentioned reasons, I assume, however, that feasibility of such a transformation is complicated.

Thomas Flanagan believes that even if such a power transfer was accomplished, there is a structural problem of factionalism and corruption in the small-sized band councils buttressed by the large "unearned" federal support awarded to First Nations. He questions the very ability of First Nations' self-government on the basis of the problematic defense of large democracies described in *The Federalist Papers*.[108] He also lists other problematic issues linked to the small size of self-governing groups, such as the shortage of financial resources and skilled personnel.[109] In conclusion, Flanagan

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[106] Martin Papillon, "The Rise (and Fall?) of Aboriginal Self-Government", in *Canadian Politics, 6th ed.,* eds. J. Bickerton and G. Gagnon (Toronto: University of Toronto Press, 2014), 127.

[107] Papillon, "The Rise (and Fall?)", 126.

[108] James Madison, "Federalist No. 10: The Same Subject Continued (The Union as a Safeguard Against Domestic Faction and Insurrection)", *New York Daily Advertiser*, November 22, 1787, http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0010 (accessed November 10, 2014).

[109] Flanagan, "First Nations", 95.

assumes that self-government cannot solve the problems of First Nations – on the contrary, it can only give rise to new ones.[110]

Even Alan Cairns is critical of the scope of Aboriginal self-government proposed by the Royal Commission on Aboriginal Peoples. Apart from the aforementioned dispersion of Indigenous peoples, many of whom now live in cities and have little interest in self-government, Cairns is concerned that applying the model of the RCAP would jeopardize common allegiance and belonging to a single polity by Indigenous and non-Indigenous peoples which is, according to him, essential for the harmonious functioning of the country.[111]

The Possible Courses of Action

The different approaches towards questions of self-determination and self-government of Aboriginal peoples in Canada generate different recommendations about practical steps guiding the future public policy. There can be identified different flaws of each concept.

First, dispersion of First Nations across Canada, the internal diversity of various bands together with no state-forming historical tradition of Indigenous peoples in Canada suggests that it is highly unlikely that First Nations will secede and create their own state. Canadian governments refuse the right of Aboriginal peoples to form an independent state as evidenced by the fact that Canada initially opposed the *Draft Declaration on the Rights of Indigenous Peoples* precisely because of concerns over the interpretation of its provisions addressing Native land and resources, and Canadian territorial integrity.[112] However, the possibility of creating an independent state on the basis of Article 3 of the UNDRIP has always been purely hypothetical because Indigenous groups do not have such aspirations.[113] On the other hand, Will Kymlicka believes that granting Aboriginal peoples greater autonomy would lead to increased stability and solidarity within Canadian society, and not the opposite. Furthermore, it can be a threat to liberal democratic principles, adherence to which is of vital

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[110] Flanagan, "First Nations", 104.
[111] Cairns, "Citizens Plus", 28.
[112] "Canada Votes 'no' as UN Native Rights Declaration Passes", *CBC News*, September 13, 2007, http://www.cbc.ca/news/canada/canada-votes-no-as-un-native-rights-declaration-passes-1.632160 (accessed December 20, 2014).
[113] Brenda Gunn, "Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook", Indigenous Bar Association, Winnipeg, Canada, 2011, http://www.indigenousbar.ca/pdf/undrip_handbook.pdf (accessed December 20, 2014), 11.

importance in Canada, if the needs and demands of Indigenous peoples were not accommodated.[114]

Thomas Flanagan has a very different view on how to proceed in Indigenous affairs. According to Flanagan, "in order to become self-supporting and get beyond the social pathologies that are ruining their communities, Aboriginal peoples need to acquire the skills and attitudes that bring success in a liberal society, political democracy, and market based economy. Call it assimilation, call it integration, call it adaptation, call it whatever you want: it has to happen."[115] Instead of the enforcement of rights to self-determination and self-government, Flanagan's concept of "undifferentiated citizenship" suggests a return to the policy of voluntary assimilation of Indigenous peoples with an emphasis on their economic self-sufficiency. This implies that economic development is not possible without the normalization of political rights and without the reform of the Indian Act which effectively keeps Indigenous peoples in economic isolation.

Flanagan proposes three concrete reforms which should be carried out regarding the situation of Native peoples. First is better auditing, the creation of a professional corps of Aboriginal public servants, and, most importantly, self-financing through taxation. He suggests that instead of the current large financial support from the federal government, First Nations should raise money from taxes. This possibility is already entrenched in Section 83 of the Indian Act of 1876,[116] but as yet band councils have only used this power to tax non-Aboriginal people who own property on reserves.[117] Second, the concentrated power of corrupt and inefficient band councils who have control over land, housing, education, employment, and welfare need to be split among multiple actors. Third, collective ownership has to be replaced by individual ownership in order to strengthen the economic activity of Aboriginal peoples.[118]

One of the problems of Flanagan's analyses lies in his categorical statements that sometimes resemble the theory of natural selection and social Darwinism. He has a very uncompromising rhetoric, for example, he rejects a widely accepted dating of the historical presence of Indigenous peoples on Canadian territory. He questions Aboriginal land claims and the extensive federal social support of Native peoples'

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[114] Kymlicka, "Multicultural Citizenship", 192, 195.
[115] Flanagan, "First Nations", 196.
[116] Indian Act.
[117] Flanagan, "First Nations", 103.
[118] Ibid., 197-8.

descendants, and he laments that "Indians did not do anything to achieve their status except to be born."[119]

In order to support his calls for assimilation, he argues that "in the largest context, the policy of civilization has succeeded."[120] He explains that the influence of modern civilization on Aboriginal peoples was inevitable once the European settlers were in North America. First, the invention of cars meant the end of isolation and the beginning of urbanization. Second, the mechanization of agriculture caused by the population growth and increased need for nutrition led to the transformation of farms, which became unsuitable for reserves. In addition, First Nations could not afford the costly equipment necessary for mechanization, and they were thus forced to lease land to outside operators. Third, traditional Indian occupations such as fishing and hunting were progressively in decline. Last but not least, a demographic explosion caused an exodus of First Nations from overcrowded reserves, so their interaction with non-Aboriginal society was inescapable.[121]

I contend that such "success" of Euro-Canadian civilization described by Thomas Flanagan is dubious because its appraisal varies based on different standards of those who carry it out. Flanagan's view is very Eurocentric. Indigenous peoples do not necessarily perceive the influence of Western civilization as a step forward. Moreover, it is uncertain whether the principles of market based economy and private ownership would function for the benefit of First Nation communities if their land was broken up into individual pieces as Flanagan claims in the part of his book on the success of the Euro-Canadian civilization.[122]

Most importantly, Flanagan does not take into account that collective rights are considered by First Nations as their inherent right given to them by the Creator. This rather holistic belief forms an inseparable part of First Nations' very existence. It is therefore unthinkable and practically impossible for First Nations to give it up. In other words, Flanagan's arguments and propositions clearly assume Western superiority while denying the principle of equal rights and self-determination. This puts him in the colonial camp of reasoning – a camp which has been rejected by Aboriginal peoples, the

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[119] Flanagan, "First Nations", 22.
[120] Ibid., 45.
[121] Ibid., 171-4.
[122] A parallel can be seen in what happened after the Native American land was unilaterally allotted to non-Native Americans by the US Government which is considered as an example of Michael Heller's "tragedy of the anticommons".

Royal Commission on Aboriginal Peoples, as well as by the international community through the *United Nations Declaration on the Rights of Indigenous Peoples*.

Alan Cairns refuses both the assimilationist paradigm advocated by Trudeau's *White Paper* and by Flanagan, and the more recent parallelism based on the idea of a completely distinct society of Aboriginal peoples within Canada, so prominent in the *Report* of the RCAP. The problem of Alan Cairns' theory is that while he states that Native peoples should be integrated in Canadian society as "citizens plus," he does not explain how this would work in practice. He asserts that labels matter,[123] which is certainly true, but the feasibility of a theory based almost entirely on the importance of labeling raises questions.

Cairns keeps repeating the same arguments: "they [Aboriginal peoples] are, therefore, […] both in Canada and of Canada. Their relationship to the state is best described as differentiated citizenship rather than partial citizenship. […] They are inextricably caught up in interdependent relations with Canadian society, of which they are an integral part."[124] Moreover, in the final chapter of his work, Cairns emphasizes that "[their] practical task […] is to enhance the compatibility between Aboriginal nationhood and Canadian citizenship"[125]. Regrettably and in contrast to Flanagan, he does not further examine what concrete steps or legislative reforms should be done to achieve this goal in order to deal with actual Aboriginal socio-economic problems.

The analysis of the two opposing concepts of how Aboriginal self-determination and self-government should be addressed reveals problematic aspects that prevent their effective application in practice. Flanagan's suggestions, which influenced policies of the government of Stephen Harper, favor "undifferentiated citizenship" which is incompatible with the gist of Aboriginal peoples' rights to self-determination and self-government. By contrast, Cairns' concept of "citizens plus" does include a special status for Indigenous peoples; however, it only provides a theoretical, not practical way to streamline assimilationist paradigm and parallelism in practice.

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[123] Cairns, "Citizens Plus", 7.
[124] Ibid., 203-4.
[125] Ibid., 213.

PART II: Approach of the Conservative Government of Stephen Harper versus the Views of the Idle No More Protest Movement

3. The Harper Government and the Indian Act

"For the colonized just as for the colonizer, there is no way out other than a complete end to colonization. […] The mere existence of the colonizer creates oppression, and only the complete liquidation of colonization permits the colonized to be freed."[126] This quote from the 1965 book *The Colonizer and the Colonized* of a French writer and essayist Albert Memmi logically implies that the Indian Act of 1876 should be repealed, since this is the only true way to liberate First Nations from Euro-Canadian colonization once and for all. But, as I have already explained in the previous chapters, it is more easily said than done. How can be such a difficult task accomplished without worsening the situation of Aboriginal communities? This chapter will analyze what concrete steps were taken by the former Harper Government.

Most scholars, as well as the general non-Aboriginal public,[127] agree on the inefficiency of pouring money into social support for Aboriginal peoples. Thomas Flanagan as a convinced conservative capitalist even calls this one of the biggest policy disasters in Canadian history, and he argues that those who do not need to work and still earn money, do not try.[128]

Large assistance programs were launched in the early 1950s and have been increased ever since. Spending on Canada's Aboriginal peoples increased from $79 million annually in 1946 to $7.7 billion in 2012. The Department of Indian Affairs and Northern Development gets substantial amounts of money from the federal budget. Indian Affairs spending rose from $922 per Status First Nation individual in 1949 to $9,056 in 2012. This constitutes an 882 % rise in spending per First Nation person over 66 years.[129] In 2012, Aboriginal spending represented 2.78 % of the federal budget.[130]

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[126] Albert Memmi, *The Colonizer and the Colonized* (London: Beacon Press, 1965), 151.

[127] Jill Mahoney, "Canadians' Attitudes Hardening on Aboriginal Issues: New Poll", *The Globe and Mail*, January 16, 2013, http://www.theglobeandmail.com/news/national/canadians-attitudes-hardening-on-aboriginal-issues-new-poll/article7408516/ (accessed November 12, 2014).

[128] Flanagan, "First Nations", 174.

[129] Mark Milke, "Ever Higher Government spending on Canada's Aboriginals since 1947", Centre for Aboriginal Policy Studies, Fraser Institut, December 2013, http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/Aboriginal-spending-2013.pdf.pdf (accessed November 2, 2014), 3.

[130] "Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2012", Tabled in the House of Commons by the Honorable James M. Flaherty, P.C., M.P. Minister of Finance, March 29, 2012,

Critics of social support of Indigenous peoples argue that the governmental support was not even decreased during economic recessions and add that public assistance became Indigenous peoples' very way of life – this can hardly change unless First Nations are educated, skilled, more competitive, and their work opportunities are more attractive than living on social support.[131]

On the other hand, it has been the federal government and more specifically the Department of Aboriginal Affairs and Northern Development that has partially been responsible for the management (or mismanagement) of the money First Nations receive – most First Nations have not concluded self-government agreements and under the Indian Act, the Ministry is still largely involved in decision making about the operation of First Nation communities.

The Harper Government's Legislation

Due to the pressing problems of Indigenous peoples, large fiscal burden that they generate, and the pre-election commitment of the Harper Government to streamline state financing, Stephen Harper and his party entered the 2006 election with a program of gradual amendment of legislation concerning Aboriginal peoples. This included a reform of the Indian Act, maximum financial efficiency of First Nations, and exploitation of natural resources on Indigenous territories.

There were some governmental initiatives, such as Bill C-27 concerning the accountability and transparency of Indigenous communities, or Bill S-2 regarding the property rights of divorced First Nation women that focused on social benefits and unhealthy dependence of Aboriginal communities on federal support.

Bill C-27, which became the First Nations Financial Transparency Act, came into effect on March 27, 2013. It mandated the public disclosure of audited consolidated financial statements and the remuneration of First Nations, inclusive of their expenses and salaries. It obliged First Nations to publish the information on their official websites, as well as on the website of the Department of Aboriginal Affairs and Northern Development. Bill C-27 also allowed the federal government to withhold funds from First Nation bands that did not comply.[132] Bill S-2, which became the

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http://www.budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf (accessed October 29, 2014), 238.

131 Flanagan, "First Nations", 175.

132 Tonina Simeone and Shauna Troniak, "Legislative Summary of Bill C-27: An Act to Enhance the Financial Accountability and Transparency of First Nations", Social Affairs Section of the Parliament of Canada, Ottawa, Canada, 2011, http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c27&Parl=41&Ses=1

Family Homes on Reserves and Matrimonial Interests or Rights Act, was to ensure that after a divorce or separation the family's matrimonial real property assets were distributed evenly.[133]

Although both pieces of legislation were, according to the government, designed to boost actual Aboriginal economic activity, I assume they were mainly used for governmental control of First Nation communities. Moreover, even before the enactment of Bill C-27, each reserve had been required to file 168 reports annually.[134] It was likely that the substantial reporting burden would increase as a consequence of the First Nations Financial Transparency Act. In other words, the accountability laws concerning Aboriginal peoples did not represent a new policy. There had been high reporting requirements even before their enactment. It was just another colonial way to control First Nations known as a "principal-agent accountability relationship," in which the government was the principal and First Nations the agent.[135]

In 2012, the government announced the preparation of a controversial legislation known as the First Nations Property Ownership Act (FNPOA), which would allow private land ownership on Native reserves. The government maintained that, much like the previously mentioned laws, this legislation was crucial for the launch of economic activities on reserves. Critics, however, believe that the law would destroy traditional collective Native ownership, which represents a key element of traditional Indigenous cultures. Chances are that First Nations on reserves would not be able to adapt to individual ownership, and there was a risk that the land would fall into hands of non-Aboriginal population or that it would be used by mining companies[136] that had sufficient financial resources to gain the land and use it for profit.

Later, Bill C-428, which required band councils to publish by-laws and actually repealed certain outdated provisions of the Indian Act, especially all references to residential schools, was introduced in the Parliament of Canada. This legislation also required the Minister of Indian Affairs and Northern Development to report annually to the House of Commons committee responsible for Aboriginal affairs on the work

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(accessed November 4, 2014).

133 Family Homes on Reserves and Matrimonial Interests or Rights Act, S.C. 2013, c. 20, http://laws-lois.justice.gc.ca/eng/acts/F-1.2/ (accessed November 4, 2014).

134 Schwartz, "7 Questions about First Nations".

135 Ibid.

136 Fiřtová, "Kanada a původní obyvatelé".

undertaken by the department in collaboration with First Nations, in order to prepare a new legislation which would eventually replace the Indian Act.[137]

Former Minister of Aboriginal Affairs and Northern Development John Duncan commented on Bill C-428 as being "consistent with our Government's approach of taking concrete, but incremental, steps to create the conditions for healthier, more self-sufficient First Nation communities […]."[138] I assume, however, that the cooperation with First Nations on the preparation of new legislation replacing the Indian Act, which was one of the major points of the bill, would be quite complicated if one takes into account the different ideas of the government and the First Nation representatives about its content and objectives.

Bill C-38, Bill C-45, and the Right to "Free, Prior, and Informed Consent"

The omnibus Bill C-45, passed into law on December 14, 2012, under the title Jobs and Growth Act, 2012, sparked a wave of protests that eventually led to the formation of the Idle No More protest movement. First Nations, such as the Western Cree Tribal Council, opposed this legislation in particular because it affected their rights in the environment such as to access, maintain and control fisheries, waterways, land, and because it unilaterally amended the Indian Act. After the adoption of this law, Canadian First Nations expressed their general dissatisfaction with the Harper Government's policies concerning Aboriginal peoples' rights, and they called for discussions between the federal government and representatives of their communities.[139]

In the following case study, through an analysis of Bill C-38, Bill C-45, and the Idle No More movement that emerged in response to the Harper Government's legislation, I will try to answer the main research question of this piece of work, which is whether the Indigenous right to self-determination, the enforcement of which is a priority for Indigenous peoples, was compatible with the Harper Government's policies. Furthermore, the case study of Idle No More, as a microcosm of the more complex

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[137] House of Commons, "Indian Act Amendment and Replacement Act: An Act to Amend the Indian Act (publication of by-laws) and to Provide for Its Replacement", 2nd Session, 41st Parliament, Ottawa, Canada, http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6257075 (accessed October 11, 2014).

[138] Aboriginal Affairs and Northern Development Canada, "Harper Government Supports Bill C-428, the Indian Act Amendment and Replacement Act", Ottawa, Canada, October 18, 2012, https://www.aadnc-aandc.gc.ca/eng/1350586700997/1350586739766 (accessed November 4, 2014).

[139] Western Cree Tribal Council Press Release to Bill C-45, official website of the Western Cree Tribal Council, http://www.westerncree.ca/pdf/PRESS%20RELEASE%20C-45.pdf (accessed December 2, 2014).

Aboriginal issue, will help me to determine whether the Indian Act as a "guarantor" of Aboriginal rights can be amended in the future to the satisfaction of all parties involved.

Bill C-38, formally known as the Jobs, Growth and Long-Term Prosperity Act, which received Royal Assent on June 29, 2012, replaced earlier environmental assessment procedures with the Canadian Environmental Assessment Act, 2012 (CEAA).[140] Environmental impact assessments (EIAs) had represented a functional way for Aboriginal peoples to protect their lands. The CEAA introduced by the Harper Government imposed time limits of twelve months on EIAs. Thus, major resource development projects had to henceforth be approved or rejected within 2 years at the maximum, compared to 6 years under the old arrangements. In addition, smaller projects did not need EIAs anymore.[141] This change lead to acceleration of the process of authorization of projects proposed by corporations that used Aboriginal environmental resources for profit and devastated Native land with which Native identity is inextricably linked. The reduced decision time helped the corporations and was hurting Native resources.

Omnibus Bill C-45, similarly to Bill C-38, covered a variety of issues ranging from income tax, sales tax, shipping, customs, remuneration, pensions, and immigration, to the construction of a bridge over the Detroit River.[142] On its 400 pages, it changed the earlier legislation contained in 64 acts or regulations.[143] From the Aboriginal point of view, the three most controversial components of the bill were the amendment to the Navigable Waters Protection Act of 1882, the amendment to the Fisheries Act of 1985, and the amendment to the Indian Act of 1876.

Through Division XVIII of Bill C-45, the Navigable Waters Protection Act (NWPA) became the Navigation Protection Act (NPA), which removed a substantial number of lakes and streams from federal protection under the law. In total, only 3 oceans, 62 rivers, and 97 lakes listed under the so-called "Schedule 2" have remained protected.[144] However, Canada has some 32,000 lakes and 2.25 million rivers. While

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[140] Jobs, Growth and Long-term Prosperity Act, S.C. 2012, c. 19, http://laws-lois.justice.gc.ca/eng/acts/J-0.8/ (accessed December 2, 2014).

[141] Dorothée Cambou, Derek Inman and Stefaan Smis, "We Will Remain Idle No More: The Shortcomings of Canada's 'Duty to Consult' Indigenous Peoples", *Goettingen Journal of International Law* 5, No. 1 (2013): 254-5.

[142] House of Commons, "A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures", 1st Session, 41st Parliament, December 14, 2012, http://laws-lois.justice.gc.ca/PDF/2012_31.pdf (accessed December 2, 2014), 206.

[143] "9 Questions about Idle No More", *CBC News,* January 5, 2013, http://www.cbc.ca/news/canada/9-questions-about-idle-no-more-1.1301843 (accessed December 2, 2014).

[144] Hassan Arif, "How Harper's Neglect Suffocates Native Potential", *The Huffington Post Canada*,

previously the NWPA had protected virtually 100 % of the country's water bodies,[145] the NPA no longer protected 99.7 % of Canada's lakes and 99.9 % of Canada's rivers.[146]

The federal government justified the amendment as being necessary to "facilitate trade and commerce by balancing the efficient movement of maritime traffic with the need to construct works (e.g. bridges) that might obstruct navigation, in order to encourage economic development."[147] First Nation communities, environmentalist and members of the Green Party of Canada, as well as for instance the former Canadian Prime Minister Paul Martin criticized this particular part of the legislation for easing the environmental controls over numerous Canadian precious lakes and rivers, which represent an important source of Aboriginal identity and pride,[148] and had been formerly protected from resource development and other industrial uses.[149]

I argue that this legislation, which had not been discussed with First Nations, enabled the Harper Government to more easily carry out projects that threatened the environment, such as the Enbridge Northern Gateway Pipelines Project – a construction of a twin pipeline carrying tar sand carbon-intensive oil from western provinces to the Pacific Coast for overseas markets,[150] and other future pipelines. Moreover, the implementation of these projects represented an intervention in the environment in which First Nations live. These water bodies and the nature that surrounds them form part of First Nations' identity and participation in decision making about them falls under their right to self-determination. The Harper Government's priority was commerce and economic development despite the consequences for the environment.

The other two controversial parts of this legislation were Division IV and VIII. One of the divisions amended the Fisheries Act so that fisheries, which had always been a traditional activity and privilege of Indigenous peoples, not captured within the definition of "Aboriginal", "commercial" or "recreational" fisheries, was no longer protected under the Fisheries Act. The problem was that the definition of "Aboriginal"

December 31, 2012, http://www.huffingtonpost.ca/hassan-arif/idle-no-more-environment_b_2387782.html (accessed December 2, 2014).

145 Naomi Klein, *This Changes Everything: Capitalism vs. The Climate* (New York: Simon & Schuster, 2014), 381.

146 Inman, Smis and Cambou, "We Will Remain Idle No More", 256.

147 Department of Finance Canada, "Bill C-45 – 'Jobs and Growth Act, 2012' – Part 4", Ottawa, Canada, 2012, http://www.fin.gc.ca/pub/c45/4-eng.asp (accessed December 2, 2014).

148 Arif, "How Harper's Neglect".

149 Inman, Smis and Cambou, "We Will Remain Idle No More", 255-6.

150 From Bruderheim in Alberta, to Kitimat in British Columbia.

fisheries had not included all First Nations fisheries.[151] In other words, this meant a reduction of the number of persons who had the right to fish based on "peace and friendship treaties", a stricter definition of the circumstances under which this right might be exercised, and a restriction of Indigenous fishing rights, a pillar of First Nations' self-definition. Since fishing forms part of First Nations' identity, they should at least have been able to influence decisions on relevant legislation in order to uphold their right to self-determination, which had not been the case of this legislation's drafting.

The other division unilaterally amended the Indian Act in that it modified the voting and approval procedures in relation to the proposed land designations. First Nations did no longer need a majority of eligible voters, but only a majority of voters gathered at a meeting or referendum, in order to decide whether reserve lands would be leased. Furthermore, the Minister of Aboriginal Affairs and Northern Development could call a meeting or referendum to consider land surrender from the band's territory.[152] This took control over land sales away from First Nations and might have resulted in a loss of Native land.

The Indian Act is the basic source of law for First Nations in Canada; thus, its amendment without proper consultation with their representatives highlights the Harper Government's little regard of Indigenous Canadians' right to self-determination and different perspective on the way of functioning of the Indigenous peoples' self-government. Moreover, the simplification of the voting procedure might have facilitated access to land on reserves for non-Aboriginal outside operators. This could have resulted in the land belonging to First Nations communities getting into the hands of non-Native entities, along with the profit from it, and thus actually worsen the economic situation of First Nations. Last but not least, it would also allow for ministerial interference in band decision making, which was a clear infringement of the First Nations' right to self-determination.

In *R. v. Sparrow (1990)*, which was later confirmed by *Delgamuukw v. British Columbia (1997),*[153] the Supreme Court of Canada (SCC) ruled on the constitutionality of federal fishing permits, and the banning of some methods of fishing. Fishing for

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[151] "Assembly of First Nations States Concerns on Bill C-45 to Senate Standing Committee", official website of the Assembly of First Nations, November 27, 2012, http://www.afn.ca/index.php/en/news-media/latest-news/assembly-of-first-nations-states-concerns-on-bill-c-45-to-senate-stand (accessed December 3, 2014).

[152] House of Commons, "A Second Act to Implement Certain Provisions", 203–206, 226–228.

salmon, which was affected by the regulations, has always played a key role in the cultural identity of the Musqueam First Nation of British Columbia. In the landmark decision, the SCC ruled in favor of the Musqueam First Nation. It argued that Section 35 (1) of the Constitution of Canada, 1982, protected practices that were integral to an Aboriginal community's distinctive culture.[154] Furthermore, it laid out that policies and legislation, implemented by the federal government, restricting the exercise of a recognized and affirmed Aboriginal right, were required to be adequately consulted about in advance with the involved Aboriginal community.[155] The government was now obligated to consult with First Nations about policies and legislation that directly affect them. This right to "free, prior, and informed consent" (FPIC)[156] forms a part of the Aboriginal rights to self-determination and self-government.

The concept of FPIC derives from the SCC's interpretation of the complex "fiduciary" relationship between the Crown and Canada's Aboriginal peoples, originating already with the Royal Proclamation of 1763. According to the *Sparrow* interpretation of the Section 35 (1), the Government is responsible for acting *in a fiduciary way* with respect to Indigenous peoples. "Fiduciary" is a person who holds a position of trust or confidence with respect to someone else.[157] Trust must be the first consideration in determining whether a governmental legislation or action can be justified. And it can be justified, *inter alia,* on the condition that the affected Aboriginal groups had been consulted.[158]

Based on these premises, in 2012, the Confederacy of Treaty No. 6 First Nations announced they did not recognize the legality of any laws passed by the Parliament of Canada, including but not being limited to, Bill C-45. They argued that such laws did not protect their constitutionally recognized Aboriginal rights and they did not fulfill the obligation of the Crown to consult with First Nations about Indigenous policy.[159] In a similar vein, Assembly of First Nations Ontario Regional Chief Stan Beardy pointed out

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153 *Delgamuukw v. British Columbia*, 1997, 3 S.C.R. 1010.
154 *R v. Sparrow*, Supreme Court of Canada, 1990, 1 S.C.R. 1075.
155 Sonia Lawrence and Patrick Macklem, "From Consultation to Reconciliation: Aboriginal Rights and the Crown's Duty to Consult", *Canadian Bar Review* 79 (2000): 255.
156 Inman, Smis and Cambou, "We Will Remain Idle No More", 266.
157 Mary C. Hurley, "The Crown's Fiduciary Relationship with Aboriginal Peoples", Law and Government Division of the Parliament of Canada, Ottawa, Canada, December 18, 2002, http://www.parl.gc.ca/content/LOP/ResearchPublications/prb0009-e.htm (accessed December 3, 2014).
158 *R v. Sparrow*.
159 "Canada's Senate Passes Bill C-45 as Aboriginals Vow Not to Honor It", *Indian Country Today Media Network.com*, December 14, 2012, http://indiancountrytodaymedianetwork.com/2012/12/14/canadas-

that "at no time in the nine months that Bill C-45 was being considered did the Government of Canada discuss any matters related to it with First Nations—this bill breaches Canada's own laws on *the fiduciary legal duty to consult* and accommodate First Nations. The Canadian government just gave birth to a monster."[160]

A similar position towards the legislation was assumed by the Assembly of First Nations as an officially recognized organization composed of chiefs of First Nation bands with a mandate to speak for First Nations. As a reaction to Bill C-45, these chiefs gathered under the theme of "The Unfulfilled Promise of Section 35"[161] and unanimously adopted the *Statement of Unity* at the Assembly of First Nations' conference in December 2012.

> "We, the original peoples […] are also bestowed with the responsibility by the Creator to defend our territories, including traditional and Treaty lands, We have maintained these principles despite the imposition of illegal government legislation and policies against our citizens, In solidarity, we categorically reject the assimilation and termination policies used by the government of Canada against our nations and our citizens and, We support the participation of all First Nations peoples in decision-making processes that impact our inherent and treaty rights, We unconditionally reject any Canadian or provincial legislation, policies, or processes that impact our lands, air, waters and resources which have not obtained our *free, prior, and informed consent* […]"[162]

Likewise, the *United Nations Declaration on the Rights of Indigenous Peoples* and other internationally recognized sources of authority, along with common sense, lead to a general rule that extraction should not be carried out on Indigenous peoples' land without their "free, prior and informed consent". This includes lands titled or reserved to Aboriginal peoples by the State, lands that they traditionally possess or own under customary tenure, or areas that are important to them for cultural or religious reasons. In all instances of planned extractive projects, consultations with Native

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senate-passes-bill-c-45-aboriginals-vow-not-honor-it-146328 (accessed December 3, 2014).

[160] "Bill C-45, Jobs and Growth Act Not to Be Recognized or Enforced by First Nations in Ontario", official website of the Chiefs of Ontario, December 14, 2012, http://www.chiefs-of-ontario.org/node/453 (accessed December 3, 2014). Emphasis by the author.

[161] Shawn Atleo, "Communiqué from National Chief Shawn Atleo, December 2012" (Communiqué presented at the AFN Special Chiefs Assembly in Gatineau, Quebec, December 4-6, 2012), http://www.afn.ca/uploads/files/12-12-07_nc_bulletin_fe2.pdf (accessed December 2, 2014).

[162] Chiefs of the Assembly of First Nations, "Statement of Unity: In Honour of our Peoples and Our Land" (Statement adopted by Chiefs at the AFN Special Chiefs Assembly in Gatineau, Quebec, December 6, 2012), http://www.afn.ca/uploads/files/12-12-07_nc_bulletin_fe2.pdf (accessed December 2, 2014). Emphasis by the author.

peoples should take place and consent should minimally be sought if not strictly required. [163]

Clearly, nothing can be without exception. The general rule of Indigenous "free, prior and informed consent" concerning extractive activities within their territories may be subject to some exceptions, in particular, when limitations on Indigenous rights meet standards of necessity and proportionality in connection with a valid public purpose while at the same time respecting human rights. As the Special Rapporteur on the rights of Indigenous peoples James Anaya aptly remarks, when the State proceeds with extractive activities affecting Aboriginal peoples without their "free, prior and informed consent", such decision should be subject to independent judicial review.[164]

But in any case, the State should at least ensure good faith consultations with Native peoples regarding extractive activities affecting their land, and should make effort to come to agreement with them. Furthermore, the State should secure that certain measures are implemented to minimize impacts on Aboriginal rights through impact assessments, benefit sharing and compensations. As far as extractive companies are concerned, the State should have means to pressure their management to adopt practices and policies in accordance with international standards to respect Indigenous rights at all aspects of their operations.[165]

In conclusion, I argue that the provisions of Bill C-38, Bill C-45, and other above mentioned Harper's bills and laws were not congruent with Indigenous peoples' right to self-determination. Likewise, any recent and future extractive projects should seek the consent of Aboriginal peoples and thus be consistent with their right of to self-determination. As Michael Den Tandt aptly remarks, "No fundamental change in governance can or should happen without the consent of the governed."[166] Hence, any prospective legislation replacing the Indian Act of 1876 ought to be written with the consent of and in consultation with First Nations if not by First Nations themselves.[167] Clearly, this was not the Conservative Government's course of action.

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[163] James Anaya, "Extractive Industries and Indigenous Peoples", *Report of the Special Rapporteur on the rights of Indigenous peoples*, Human Rights Council, General Assembly, United Nations, Geneva, Switzerland, July 1, 2013, http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples (accessed August 17, 2016), 20.

[164] Ibid.

[165] Ibid., 21.

[166] Den Tandt, "Indian Act, Racist Relic of 1876".

[167] One of the latest examples of Harper's ignorance to consult with Aboriginal peoples was the government's approval of the construction of the Enbridge Northern Gateway Pipelines to the Pacific coast.

The Government of Stephen Harper, whose former advisor on Aboriginal peoples was Thomas Flanagan, rejected the concept of equal negotiations with representatives of First Nations, and returned to traditional hierarchical negotiations in which the federal Minister of Aboriginal Affairs plays a key role. It did so despite the Conservative Party's previous promises to work with First Nation leaders on replacing the Indian Act with a modern legislative framework, which would entrust First Nations with legal responsibility for their own affairs within the confines of the Constitution.[168] Moreover, the Harper Government rejected all the financial obligations set by the Kelowna Accord. Demands of Indigenous peoples were not taken into account in the legislative proposals which proves the government's neglect of equal negotiations.

At the 2010 annual meeting of the Assembly of First Nations, Shawn Atleo (at the time National Chief of the Assembly of First Nations) called for the abolition of the Indian Act in the next five years. He proposed replacing the legislation with a new one that would resolve the most pressing issues such as land claims and resource sharing.[169] Yet through the Harper Government's time in office it seemed unlikely that his ambitious plan could have been accomplished. Moreover, in 2012, Prime Minister Stephen Harper said at the Crown – First Nations Gathering: "To be sure, our Government has no grand scheme to repeal or to unilaterally re-write the Indian Act: After 136 years, that tree has deep roots, blowing up the stump would just leave a big hole."[170] In consequence, representatives of First Nations called the gathering just another example of how the Harper Government evades its responsibilities.[171]

The lack of consultation with First Nations, which was confirmed as a government's obligation by the Supreme Court of Canada based on the interpretation of the "fiduciary relationship" between the Crown and Aboriginal peoples, and the lack of regard for identity elements of First Nations, such as environmental protection or the right to fish, that was reflected in policies and legislation of the Harper Government

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[168] Conservative Party of Canada, "Stand up for Canada", *Conservative Party of Canada Federal Election Platform*, Ottawa, Canada, 2006, http://www.cbc.ca/canadavotes2006/leadersparties/pdf/conservative_platform20060113.pdf (accessed October 21, 2014), 38.

[169] Isabelle Montpetit, "Background: The Indian Act", *CBC News*, May 30, 2012, http://www.cbc.ca/news/canada/background-the-indian-act-1.1056988 (accessed October 1, 2014).

[170] Stephen Harper, "Statement by the Prime Minister of Canada at the Crown-First Nations Gathering", official website of Prime Minister of Canada Stephen Harper, http://pm.gc.ca/eng/node/24908 (accessed November 2, 2014).

[171] Christian Quequish, "Walking to Abolish the Indian Act", *Wawatay News*, July 19, 2012, http://www.wawataynews.ca/archive/all/2012/7/19/walking-abolish-indian-act_23154 (accessed October 28, 2014).

show how problematic, even impossible, any negotiations on the further reform of laws concerning First Nations, especially the Indian Act, would be.

4. Idle No More

INM's Characteristics in Context

"Beginning as political action against specific federal legislation, Idle No More added fuel to the ever-burning fires of Indigenous nationalism and its more fundamental demands for equal self-determination and the re-establishment of a nation-to-nation relationship with non-Indigenous Canadians."[172] As Marc Woons outlined in his journal article *The "Idle No More" Movement and Global Indifference to Indigenous Nationalism*, Idle No More has as its main objective to enforce right to self-determination of Aboriginal peoples, which is the reason why I chose the movement for this case study. In the following chapter, by analyzing the visions, statements, documents, speeches and demands of Idle No More, I will try to find out to what extent the ideas of Indigenous peoples on reforms and future legislation that are necessary to improve the plight of Native peoples have been compatible with the priorities of the Conservative Government.

The Idle No More protest movement has been the most pronounced resurgence of Indigenous nationalism since the Oka Crisis in 1990.[173] It was launched in response to the enactment of the Jobs and Growth Act of 2012, to the 43-day hunger strike of Chief Theresa Spence of the Attawapiskat First Nation, who had declared a state of emergency in the Attawapiskat community in northern Ontario in 2011 because of a housing crisis, and because its founders were concerned that the Harper Government's legislation would erode treaty and Indigenous rights.[174]

The movement's founders – three First Nation women and one non-Aboriginal woman, Sylvia McAdams, Nina Wilson, Jessica Gordon, and Sheelah McLean – held a conference in Saskatoon at the end of 2012 which they titled "Idle No More", encouraging both members of Aboriginal groups – First Nations, Métis and Inuits – and non-Aboriginal Canadians, to take action against the federal government's abuses of

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[172] Marc Woons, "The 'Idle No More' Movement and Global Indifference to Indigenous Nationalism", *AlterNative* 9, No. 2 (2013): 173.
[173] Ibid., 172.

Native peoples. In order to express their discontent, they coordinated teach-ins, marches, rallies, demonstrations, railroad blockades, flash mobs at malls, and round dances through Facebook and Twitter. The movement's strategy was to go after different points of interest that might call immediate attention such as shutting down one Via Rail line.[175] Protests also spread to the United States, Australia, New Zealand, and several European cities in solidarity with Idle No More.

Idle No More is a grassroots non-profit movement that has no political affiliation. The founders of the movement have not had the same mandate or identical goals as Indian band councils or the Assembly of First Nations. There is no formal connection between the AFN and the movement, even though Shawn Atleo expressed support for INM, which had generated a "tremendous outpouring of energy, pride and determination by our peoples,"[176] according to him. Thus, Idle No More has neither represented an official Aboriginal body, nor has it spoken for all Native peoples. On the other hand, at its peak the movement had over 6,000 followers on Twitter,[177] it obtained more than 135,000 "likes" on Facebook,[178] and it is estimated that at a certain period its Facebook page had about million readers a week.[179]

Idle No More used Facebook to organize its first protest in Saskatoon on November 10, 2012. A week later, events in Regina, Prince Albert and North Battleford and Winnipeg took place and by the beginning of January 2013, the Idle No More Facebook group already had more than 45,000 members.[180] Toronto activists advertised the first Idle No More protest in that city through existing networks of anticapitalistic and environmental activists' social media groups. Non-Indigenous Aboriginal solidarity

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174 "Timeline: Idle No More's rise Movement created out of opposition to measures in federal budget", *CBC News*, October 4, 2013, http://www.cbc.ca/news2/interactives/timeline-idle-no-more/ (accessed December 4, 2014).

175 Mark Gollom, "Is Idle No More the New Occupy Wall Street?", *CBC News*, January 8, 2013, http://www.cbc.ca/news/canada/is-idle-no-more-the-new-occupy-wall-street-1.1397642 (accessed August 8, 2016).

176 Andrea Nicoll, "Idle No More Movement Sweeping the Nation", *The Oxbow Herald*, January 26, 2013, http://www.oxbowherald.sk.ca/News/Regional/2013-01-26/article-3164612/Idle-No-More-movement-sweeping-the-nation/1 (accessed December 4, 2014).

177 "Idle No More", Twitter profile of Idle No More, https://twitter.com/idlenomore (accessed December 4, 2014).

178 "Idle No More", Facebook profile of Idle No More, https://www.facebook.com/IdleNoMoreCommunity (accessed December 4, 2014).

179 Joe Friesen, "What's behind the Explosion of Native Activism? Young People", *The Globe and Mail*, January 18, 2013, http://www.theglobeandmail.com/news/national/whats-behind-the-explosion-of-native-activism-young-people/article7552791/ (accessed December 20, 2014).

180 Lesley Wood, "Occupy, Idle No More and Red Squares – Waves of Protest, Diffusion and Facebook ECPR Panel - The Heterogeneity of Diffusion Processes in Contemporary Social Movements" (paper presented within the ECPR General Conference on the Heterogeneity of Diffusion Processes in Contemporary Social Movements, Sciences Po, Bordeaux, France, 4 - 7 September, 2013), 7.

activists started a new Facebook group on December 23, 2012, discussing how to support the movement. These online activities continued on different posts within Facebook groups and associated people as new events were organized. The intensity of such online conversations varied in time, online space and in the number of participants but it also substantially influenced offline conversations.[181]

The #IdleNoMore hashtag was being used to spread information about the movement and to organize its actions. The first tweet with the #IdleNoMore hashtag was sent on November 4, 2012, by co-founder of the movement Jessica Gordon. The text of her tweet read "@shawnatleo wuts being done w #billc45 evry1 wasting time talking about Gwen stefani wth!? #indianact #wheresthedemocracy #IdleNoMore". Within weeks #IdleNoMore was getting more and more attention on Twitter.[182]

The Idle No More's basis has been made up of active young people that substantially rely on social media. For Non-Indigenous solidarity activists it is evident that their pattern of participation in the Idle No More movement is linked to the way that social media work. Provided that Native communities have embraced social media technologies such as Twitter or Facebook, the interaction between these media and diffusion is important.[183] As Jean LaRose, Aboriginal People's Television Network's chief executive, explains, social media "is new and it's pushing change in the community […] it's coming up from the bottom. I'm not talking about an Indian spring here or anything, but it's an interesting shift in the way our politics are happening."[184]

The Idle No More's official website (idlenomore.ca and idlenomore.com), with a contact database of more than 100,000 volunteers, has allowed people to get involved in the movement's activities more easily and has provided a rapid way for the movement to share information and news.[185] The movement's website and other communication platforms were designed to engage hundreds of thousands of people via the web, social media, e-mail, and text, and to enable coordination of events and actions. Furthermore, one of the Idle No More's activists and organizers Jessica Gordon stated that they would use the most effective web-based tools to engage and expand their political base in order

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[181] Wood, "Occupy, Idle No More and Red Squares", 13.
[182] "9 Questions about Idle No More".
[183] Wood, "Occupy, Idle No More and Red Squares", 9.
[184] "Aboriginal Social Media Shapes Race for National Chief", *The Canadian Press*, July 11, 2012, http://www.cbc.ca/news/politics/aboriginal-social-media-shapes-race-for-national-chief-1.1282129 (accessed August 10, 2016).
[185] Lizzie Gunggoll, "Idle No More Calls for Day of Action, Oct. 7th, 2013", First Peoples World Wide website, http://firstpeoples.org/wp/tag/sovereignty-summer/ (accessed August 8, 2016).

"to build the biggest social movement for systemic change that Canada has ever seen".[186]

The joint declaration of Idle No More and Defenders of the Land – a network of Indigenous activists based in the traditional Anishinaabe Territory in Ontario that was formed in 2008 – called to

> "(i) repeal provisions of Bill C-45 (including changes to the Indian Act and Navigable Waters Act, which infringe on environmental protections, Aboriginal and Treaty rights) and abandon all pending legislation which does the same; (ii) deepen democracy in Canada through practices such as proportional representation and consultation on all legislation concerning collective rights and environmental protections, and include legislation which restricts corporate interests; (iii) in accordance with the United Nations Declaration on the Rights of Indigenous Peoples' principle of free, prior, and informed consent, respect the right of Indigenous peoples to say no to development on their territory; (iv) cease its policy of extinguishment of Aboriginal Title and recognize and affirm Aboriginal Title and Rights, as set out in section 35 of Canada's constitution and recommended by the Royal Commission on Aboriginal Peoples; (v) honor the spirit and intent of the historic Treaties. Officially repudiate the racist Doctrine of Discovery and the Doctrine of Terra Nullius, and abandon their use to justify the seizure of Indigenous Nations' lands and wealth; (vi) actively resist violence against women and hold a national inquiry into missing and murdered Indigenous women and girls, and involve Indigenous women in the design, decision-making, process and implementation of this inquiry, as a step toward initiating a comprehensive and coordinated national action plan."[187]

The topics covered by the joint declaration including collective rights, environmental protection, and "free, prior, and informed consent" represent the main points of interest of Idle No More which has strived to educate both Native and non-Native people on these issues. These points form the main axis of this content analysis since they can be found in all documents and declarations of the protest movement. They constitute the main pillars of efforts and the basic demands of Indigenous peoples within their right to self-determination.

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[186] "Sovereignty Summer: Idle No More Launches New Website to Amplify Impact of the Movement", *rabble.ca*, June 28, 2013, http://rabble.ca/news/2013/06/sovereignty-summer-idle-no-more-launches-new-website-to-amplify-impact-movement (accessed August 8, 2016).

[187] "Idle No More Solidarity Spring: A Call to Action from Idle No More & Defenders of the Land", Idle No More and Defenders of the Land Joint Press Release, March 18, 2013, http://www.defendersoftheland.org/sites/www.defendersoftheland.org/files/INM-Defenders%20Final.pdf (accessed August 8, 2016).

INM's Environmental Protection versus Conservative Neoliberalism

"We know it will take a lot more to defeat [Harper Government] and the corporate agenda. But against the power of their money and weapons, we have the power of our bodies and spirits,"[188] read the joint declaration of Idle No More and Defenders of the Land. These Indigenous movements have stressed the resource-oriented approach to land and environment of the Conservative Government. They have argued that the legislative changes of the Harper Government pursued predominantly priorities set out by the Conservatives such as the maximum financial efficiency, and that the principles of preserving biodiversity, promoting sustainable development, and protecting nature and landscape, not only in relation to Native peoples' territories, stood below economic interests on the list of priorities.[189]

INM and Defenders of the Land have also contended, that "There is nothing that can match the power of peaceful, collective action in defense of the people and Mother Earth."[190] Bondage with nature is another aspect that has been inseparable from Idle No More, and by extension from all Indigenous peoples in Canada, maybe even in the world. Nature is perceived by them not as a tool for maximum satisfaction of people's needs, but as something elusive, uncontrollable and superior to men. As Leanne Simpson, a Mississauga Nishnaabeg writer of poetry, essays, and academic papers and a prominent supporter of the Idle No More movement, remarked:

> "Extraction and assimilation go together. Colonialism and capitalism are based on extracting and assimilating. My land is seen as a resource. My relatives in the plant and animal worlds are seen as resources. My culture and knowledge is a resource. My body is a resource and my children are a resource because they are the potential to grow, maintain, and uphold the extraction-assimilation system. The act of extraction removes all of the relationships that give whatever is being extracted meaning."[191]

The traditional territories of the Aboriginal communities and natural resources that can be found there constitute an integral part of the lives of the Indigenous peoples, their beliefs and their philosophy of life. The approach of Native peoples to nature

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[188] "Idle No More Solidarity Spring: A Call to Action".

[189] Russel Diabo, "Harper Launches Major First Nations Termination Plan: As Negotiating Tables Legitimize Canada's Colonialism", official website of Idle No More, June 16, 2013, www.idlenomore.ca/harper_launches_major_first_nations_termination_plan_as_negotiating_tables_legitimize_canada_s_colonialism (accessed December 20, 2014).

[190] "Idle No More Solidarity Spring: A Call to Action".

[191] Naomi Klein, "Dancing the World into Being: A Conversation with Idle No More's Leanne Simpson", *Yes! Magazine*, March 5, 2013, http://www.yesmagazine.org/peace-justice/dancing-the-world-into-being-a-conversation-with-idle-no-more-leanne-simpson (accessed September 2, 2016).

transcends the common environmental conception and the preservationist paradigm of nature protection, which is characteristic of modern society and which builds on the idea that land, soil, flora, fauna and minerals are the objects of human activities, regardless of whether it concerns nature's exploitation or protection. Aboriginal peoples are connected to their traditional territories by deep spiritual bond. It represents a unique symbiosis where lives of Native peoples, their traditions, customs, rituals, life events and views are connected with nature surrounding them. Although such approach may seem naive and outdated, the strength and support of Idle No More have indisputably proven that such approach has increasingly been gaining power, and that not only First Nations, but also non-Native people endorse it.

As regards the protection of nature, the year 2013 brought some partial practical achievements of Idle No More. The protesters helped shut down five wind power plants in order to save the eagles nesting in areas near the power plants. An isolated community from northern Ontario called Fort Severn informed the Ontario provincial government that no further aerial and ground surveys of the resources in their traditional territories will be enabled until the government holds an official meeting with the community. And an environmental review panel in Yellowknife, Northwest Territories, was organized where approval of mines, the availability of caribou hunting, and other important environment-related topics were discussed.[192] These and other similar initiatives were either directly organized by Idle No More or referred to its ideas and views on the necessity of nature conservation, which at the time, and also thanks to the movement, represented a widely discussed topic despite the unconcern of the federal government.

Last but not least, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, visited Canada in October 2013 to examine the human rights situation of Indigenous peoples. His request to visit Canada had been ignored by the Conservative Government for over a year.[193] Following this visit, he issued a report on extractive industries and Indigenous peoples.

Anaya pointed out that the global efforts to extract and develop subsurface resources such as minerals, oil, gas and coal that are often situated on the lands of

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[192] Laura Westra and Mirian Vilela, eds., *The Earth Charter, Ecological Integrity and Social Movements* (New York: Routledge, 2014), 154.

[193] "Idle No More Calls for Mass Action on October 7th!", official website of Idle No More, http://www.idlenomore.ca/idle_no_more_calls_for_mass_action_on_oct_7th (accessed August 10, 2016).

Aboriginal peoples, resulted in increasing effects on their lives and Indigenous peoples not only in Canada suffered negative, or even devastating, consequences from extractive industry. Such claim has often echoed in declarations of Aboriginal initiatives organized by Idle No More. For example, the #ShutDownCanada Facebook event page read, that "This [Conservative] government blatantly oppresses Indigenous peoples in a calculated effort to create dysfunction within communities to maintain control of the land and exploitation of natural resources."[194]

Anaya highlighted, however, that what was rarely spoken of was that many Native peoples were actually open to discuss extraction of natural resources from their own territories in ways beneficial to their communities and respectful of their rights. Furthermore, some Aboriginal groups have given consent to or have even themselves taken initiatives for mining and development of fossil fuels within their territories.[195] These include land agreements, such as the Nisga'a settlement of 2000 in British Colombia, which granted control over resources to First Nations. Still, there are many outstanding, unsettled land claims in Canada.

Idle No More has not explicitly commented on the issue of natural resources exploitation directly operated by First Nations. However, the dialogue centered on Canada's Aboriginal peoples sparked by Idle No More included suggestions that if nothing else Native peoples should have say in *how* natural resources are extracted, and that they should share the profit generated by the extraction. Concerning the Assembly of First Nations, in October 2013 National Chief Shawn Atleo indicated First Nations' willingness to work with the federal government on major resource development projects and even called it a time of "convergence or collision" with the government.[196]

There are several examples of other countries around the world, such as for example Australia,[197] where Native peoples themselves, usually in cooperation with

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[194] Emily Sanders, "First Nations #ShutDownCanada Demanding Justice", Cultural Survival website, February 18, 2013, https://www.culturalsurvival.org/news/first-nations-shutdowncanada-demanding-justice (accessed August 31, 2016).

[195] James Anaya, "Extractive Industries and Indigenous Peoples", *Report of the Special Rapporteur on the rights of Indigenous peoples*, Human Rights Council, General Assembly, United Nations, Geneva, Switzerland, July 1, 2013, http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples (accessed August 17, 2016), 3.

[196] Shery Noik, "Return of the Native: Idle No More reminds Canada of unresolved issues with First Nations", *The London Free Press*, December 22, 2013, http://www.lfpress.com/2013/12/19/return-of-the-native-idle-no-more-reminds-canada-of-unresolved-issues-with-first-nations (accessed August 31, 2016).

[197] Emma Gilberthorpe and Gavin Hilson, eds., *Natural Resource Extraction and Indigenous Livelihoods: Development Challenges in an Era of Globalization* (Surrey: Ashgate Publishing Limited, 2014), 38.

non-Aboriginal parties, control resource extraction in their own territories according to their own development strategies and where they develop appropriate technical and business capacities in order to manage electric power assets, invest in alternative energy and extract fossil fuels.[198] Such alternative to resource extraction primarily for the benefit of others would enable Native peoples in Canada to exercise their rights to self-determination, development, lands and natural resources in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*.

Even though it is no exception that states claim ownership of natural resources under law, as part of their right to self-determination Aboriginal peoples have the right to determine strategies and priorities for the development and utilization of their lands and territories. Such right necessarily contains a right to pursue their own impetus for resource extraction on their land if they so decide.[199] And this is all the more true in the context of their holistic idea of the land belonging to everyone. This approach of Indigenous peoples has clearly been stated by the movement in its "Manifesto" published on the Idle No More's official website:

> "The spirit and intent of the Treaty agreements meant that First Nations peoples would share the land, but *retain their inherent rights to lands and resources*. Instead, First Nations have experienced a history of colonization which has resulted in outstanding land claims, lack of resources and unequal funding for services such as education and housing. The state of Canada has become one of the wealthiest countries in the world by using the land and resources. Canadian mining, logging, oil and fishing companies are the most powerful in the world due to land and resources. Some of the poorest First Nations communities (such as Attawapiskat) have mines or other developments on their land but do not get a share of the profit. The taking of resources has left many lands and waters poisoned – the animals and plants are dying in many areas in Canada. We cannot live without the land and water. We have laws older than this colonial government about how to live with the land."[200]

On March 21, 2013, which is the International Day for the Elimination of Racial Discrimination, Idle No More called upon both Native and non-Native people to make decentralized actions across the country. Another happening of the so called "Solidarity

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[198] James Anaya, "Extractive Industries". 5.

[199] "Indigenous Peoples - Lands, Territories and Natural Resources" (document published within Sixth Session of the United Nations Permanent Forum on Indigenous Issues: Territories, Lands and Natural Resources, New York, May 14 - 25, 2007), http://www.un.org/en/events/indigenousday/pdf/Backgrounder_LTNR_FINAL.pdf (accessed August 17, 2016), 3.

[200] "Manifesto", official website of Idle No More, www.idlenomore.ca/manifesto (accessed August 31,

Spring" was planned for March 30 when Idle No More lead actions against the development and financing of the so called Pacific Trail Pipelines Day of Solidarity with the Unist'ot'en.[201] Their Facebook event page read: "No consent? No fracking pipelines, no climate crimes! We encourage creative direct action against Chevron and any others involved in the development and financing of Pacific Trail Pipeline. Occupy offices, drop banners, demonstrate in city centres, lock-on at the pumps, subvert the Chevron brand, hand out leaflets… the choice is yours!"[202]

Moreover, on the Earth Day on April 22 nationwide local protests and a non-violent direct action in Ottawa carried out by Idle No More tried to stress out the importance of Aboriginal rights in combating the Conservative Government and corporate agenda, and messaging on Native and Treaty rights.[203] All these events were designed to draw attention to the environmental problems associated in particular with oil exploitation, one-sidedness of the Harper Government's approach to issues that concerned Aboriginal peoples and its corporate agenda.

As Gabrielle Slowey explained, "Neoliberalism's ideal citizen is the individual who competes in the marketplace, is self-reliant, and does not act as a drain on the state. Thus, from a neoliberal perspective, the ideal First Nation is an independent First Nation that competes in the marketplace and is independent of the state. And from a Canadian neoliberal perspective, an ideal First Nation would be one that does not impede resource development activity."[204] The Idle No More protest movement has endorsed environmental protection and opposition to extensive natural resource exploitation in all their declarations. It has been the subject to their slogans and posters. On the contrary, protection of nature was far down on the list of neoliberal priorities of the Conservative Government. Resource development was its major priority.

Slowey's argument also implies that the demands of the Idle No More movement to enforce their right to self-determination and self-government and the reforms of the Harper Government essentially pursued the same aim of having self-

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2016). Emphasis by the author.

[201] The Unist'ot'en Camp is a resistance community in Northern BC whose purpose is to protect sovereign Wet'suwet'en territory from several proposed pipelines. See Unist'ot'en Camp's official website, http://unistoten.camp/ (accessed August 31, 2016).

[202] "Global Day of Action against Chevron and the Pacific Trail Pipeline", Facebook event page of the Solidarity with the Unist'ot'en, https://www.facebook.com/events/137069669801177/ (accessed August 31, 2016).

[203] "Idle No More Solidarity Spring: A Call to Action".

[204] Gabrielle A. Slowey, *Navigating Neoliberalism: Self-Determination and the Mikisew Cree First Nation* (Vancouver: UBC Press, 2008), 15.

sufficient First Nations. Still, the way of how the two groups wanted to achieve it was rather different. Although it is certain that even resource extraction done by Native peoples themselves causes damage to natural environment and harms other members of their own communities, the extent of negative externalities and negative impacts is much smaller than in the case of mining companies that do not have any ties to the lands and their main motivation is profit.

Idle No More, Collective Rights and "Free, Prior, and Informed Consent"

The Idle No More movement has promoted collective rights that flow from Indigenous peoples continued use and occupation of certain areas. It has also called for regular triangular meetings between First Nation leaders, the Government of Canada, and industrial companies in order to involve Aboriginal peoples in negotiations and decision making concerning legislation affecting their communities.[205] More specifically, they have called for

> "Canada, the provinces and the territories to repeal provisions of Bill C-45 (including changes to the Indian Act and Navigable Waters Act, which infringe on environmental protections, Aboriginal and Treaty rights), abandon all pending legislation which does the same, deepen democracy in Canada through […] *consultation* on all legislation concerning *collective rights* and environmental protections […], affirm Aboriginal Title and *Rights*, as set out in Section 35 of Canada's constitution, […] and honor the spirit and intent of historic Treaties."[206]

First, it calls for consultations with Indigenous peoples on legislation that concerns them. This demand is based on the right to "free, prior, and informed consent" that Idle No More derives from the *United Nations Declaration on the Rights of Indigenous Peoples*, and, as I argued, also from the Canadian Supreme Court's rulings, such as *R v. Sparrow* or *Delgamuukw v. British Columbia*.

On December 28, 2012, in reaction to all heated events connected to the emergence of Idle No More and mainly as a response to an ongoing hunger strike by Chief Theresa Spence, Amnesty International sent an open letter to Stephen Harper. This international non-governmental organization fighting for human rights called on the Canadian Prime Minister to meet with Mrs. Spence and discuss how to improve the

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[205] Benjamin Shingler, "Idle No More: First Nations Activist Movement In Canada Revs Up For Week Of Rallies", *The Canadian Press*, December 16, 2012, http://www.huffingtonpost.ca/2012/12/16/idle-no-more_n_2312001.html (accessed December 10, 2014).

[206] "Calls for Change", official website of Idle No More, www.idlenomore.ca/calls_for_change (accessed December 10, 2014). Emphasis by the author.

situation on reserves, which was the condition for the termination of her voluntary starvation. In the letter, it *inter alia* argued that Bill C-45 "should only have been brought forward after good faith consultation with Indigenous peoples and only if their rights had been appropriately considered and protected,"[207] which, in its opinion, did not happen.

Amnesty International concluded the letter by calling the Harper Government's attention to the *United Nations Declaration on the Rights of Indigenous Peoples* requiring the protection of Aboriginal peoples' right to self-determination, while it pointed out that policy affecting the rights of Native peoples are to be made only with their full and effective participation in decision making.[208]

On January 11, 2013, then Aboriginal Affairs Minister John Duncan and several other government officials invited a delegation of roughly 100 First Nation chiefs, including Chief Theresa Spence, to Ottawa to discuss the demands raised by Idle No More. The meeting was coordinated by the Assembly of First Nations. While Governor General David Johnston participated only in the ceremonial part of the meeting, Stephen Harper eventually attended the whole meeting, despite his original intention to attend only a part of it. The day of the meeting, promoters of the Idle No More movement organized happenings on Parliament Hill, and elsewhere in Canada, in order to express their support of the chiefs.[209]

Despite the promises that the meeting was only the beginning and would be followed by similar events, it remained the only official meeting of such scale between the representatives of Canada's First Nations and Prime Minister Stephen Harper. This evidences that the right to "free, prior, and informed consent" emphasized in all demands and declarations of Idle No More was substantially disregarded at the time when Stephen Harper was in office.

The "Calls for Change" issued by Idle No More and Defenders of the Land in order to express dissatisfaction with the Harper Government's policies and to invite both Aboriginal and non-Aboriginal Canadians to take action action also mentions collective rights. These form part of Indigenous peoples' identity with their holistic

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[207] Alex Neve and Béatrice Vaugrante, "Open Letter Urging a Meeting with Chief Theresa Spence" (An open letter of Amnesty International to Prime Minister Stephen Harper, December 28, 2012), http://www.amnesty.ca/news/open-letters/open-letter-urging-a-meeting-with-chief-theresa-spence (accessed December 1, 2014).

[208] Ibid.

[209] Chris Hall, "Stephen Harper, First Nations and an Opportunity Lost", *CBC News*, January 11, 2013, http://www.cbc.ca/m/touch/news/story/1.1308543 (accessed December 10, 2014).

approach. As I have already tried to explain in the previous chapters, Indigenous peoples perceive all natural systems as intertwined and not as collections of parts. Hence they see individual ownership as something unnatural. It therefore seems unlikely that First Nations would yield these rights, and would embrace private property, as suggested in the First Nations Property Ownership Act (FNPOA), which was discussed in chapter three, and favored by conservative scholars like Thomas Flanagan. Third, the Idle No More's "Calls for Change" invokes rights protected by Section 35 (1) of the Constitution of Canada, 1982, which include the right to self-determination.

In 2013 the alliance between Idle No More and Defenders of the Land announced to launch "escalating action" throughout the whole year.[210] Their campaign called "Sovereignty Summer" was a series of coordinated non-violent actions that began on June 21, 2013, which is the Aboriginal Day in Canada, to promote Aboriginal rights and environmental protection in cooperation with non-Indigenous supporters. They challenged particularly the Conservative Government's bills C-45, C-428, S-2, S-6, S-8, S-212, C-27, and the First Nation Education Act.[211] In the joint declaration of Idle No More and Defenders of the Land it was stated, that

> "Alternatives will only come to life if we escalate our actions, taking bold non-violent direct action that challenges the *illegitimate power of corporations* who dictate government police […] The Harper government's agenda is clear: to weaken all *collective rights* and environmental protections, in order to turn Canada into an extraction state that gives corporations *unchecked power* to destroy our communities and environment for profit".[212]

Besides that, here again, Idle No More stressed environmental protection and corporate agenda of the Harper Government as discussed above, it also emphasized collective rights. It is such a strong element through which Native peoples define themselves that it is mentioned in almost all the declarations and repeated during the public appearances of Indigenous leaders. Second, the reference to illegitimate power of corporations was clearly meant to evoke Aboriginal peoples' disagreement with the corporate agenda and neoliberalism of the Harper Government that favored interests of

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[210] Jorge Barrera, "Idle No More, Defenders of the Land Form Alliance, Call for 'Sovereignty Summer'", *APTN National News*, March 18, 2013, http://aptn.ca/news/2013/03/18/idle-no-more-defenders-of-the-land-form-alliance-call-for-sovereignty-summer/ (accessed August 7, 2016).

[211] "Sovereignty Summer Overview", official website of Idle No More, June 27, 2013, http://www.idlenomore.ca/sovereignty_summer_overview (accessed August 8, 2016).

[212] "Idle No More Solidarity Spring: A Call to Action". Emphasis by the author.

business companies. Third, the mention of unchecked power undoubtedly referred to the Conservative Government's disregard of the Aboriginal peoples' right to "free, prior, and informed consent".

The Idle No More's activities did not end with "Sovereignty Summer" 2013 but they also continued in autumn and were not only limited to Canadian territory. Annual Families of Sisters in Spirit Vigil 2013 was held on October 3 - 4, 2013. Its Facebook event page read, that "FSIS believes that no decisions can be made on behalf of Indigenous women, families, communities and Nations without our *free, prior, informed consent*. This demands our DIRECT leadership in any/all processes. Help FSIS bring as many families as we can to Ottawa to have our voices heard!! In our own words! In our own ways!."[213] Families of Sisters in Spirit Vigil believe that no decisions can be made on behalf of Indigenous women, families and communities without consulting them beforehand and that the Conservative Government did not act accordingly.

The so called Day of Action took place on the 250th Anniversary of the British Royal Proclamation that lead to the founding of Canada with "no prior consultation" with the large Aboriginal population living on the territory at the time.[214] The event's organizers stated, that

> "Today marks the global day of action of Idle No More, the Indigenous Peoples social movement. On October 7, 1763, King George III of England signed the British Royal Proclamation, an historic document that legally mandated Canada to recognize Indigenous land rights. Today, two hundred and fifty years later, at over 55 actions and events taking place across Canada, the United States, and in countries across the planet, thousands of Indigenous Peoples and our supporters are taking direct action to assert sovereignty and self-determination over Our Land -- Our Water -- Our Bodies -- Our Stories -- Our Future -- and to proclaim our Indigenous Sovereignty!"[215]

The Day of Action initiative, which originated in a late summer conference organized by Idle No More and Defenders of the Land, thus aimed to highlight the parallel between the treatment of Indigenous peoples in 1763 and 2013 concerning the lack of consultations.

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[213] "3rd Annual Families of Sisters in Spirit Vigil 2013," Facebook event page of the Families of Sisters in Spirit Vigil, https://www.facebook.com/events/434834703290763/ (accessed August 31, 2016). Emphasis by the author.

[214] Gunggoll, "Idle No More Calls for Day of Action".

[215] "Idle No More Global Day of Action, #Oct7Proclaim 55 Actions in Canada, United States, United Kingdom, and across the Planet", official website of Idle No More, http://www.idlenomore.ca/idlenomore_global_day_of_action_oct7proclaim (accessed August 31, 2016).

Last but not least, according to Idle No More, the Harper Government's way of negotiating with Indigenous peoples did not reflect the vision of nation-to-nation, but it was rather "colonial".[216] For this reason, members of Idle No More have called on all people

> "to join in a peaceful revolution, to honor Indigenous sovereignty, and to protect the land and water. INM has continued and will continue to help build sovereignty & resurgence of *nationhood*. INM will continue to pressure government and industry to protect the environment. INM will continue to build allies in order to reframe *the nation to nation relationship*, this will be done by including grassroots perspectives, issues, and concern."[217]

The Idle No More movement has also claimed its main purpose is "to support and encourage grassroots to create their own forums to learn more about Indigenous rights and our responsibilities to our *Nationhood* via teach-ins, rallies and social media."[218]

One could therefore argue that the movement has endorsed the belief that Indigenous peoples are *nations*,[219] which is advocated by Kymlicka, and mainly by the RCAP, but is rejected by both Flanagan and Cairns. Such terminology indicates that the rights to self-determination and self-government have been of paramount importance for Idle No More.

Political Responses and Resonance

After its most substantial achievement in the form of the official meeting between Prime Minister Harper and the delegation of First Nation leaders in January 2013, and after a series of nonviolent actions in support of the dissatisfied Aboriginal peoples that followed the meeting throughout 2013, Idle No More lost its momentum. The round dances stopped, the rallies were disbanded and the media moved on to other topics.[220] However, some representatives of Indigenous peoples like Federation of Saskatchewan Indian Nations Chief Jonathan Kimberly,[221] scholars like John Ralston

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[216] Diabo, "Harper Launches Major First Nations Termination".
[217] "Vision", official website of Idle No More, http://www.idlenomore.ca/vision (accessed December 10, 2014). Emphasis by the author.
[218] "9 Questions about Idle No More". Emphasis by author.
[219] See also the INM's Manifesto available at http://www.idlenomore.ca/manifesto.
[220] Joe Friesen, "John Ralston Saul Calls for All Canadians to Be Idle No More", *The Globe and Mail*, October 31, 2014, http://www.theglobeandmail.com/news/national/john-ralstan-saul-calls-for-all-canadians-to-be-idle-no-more/article21415062/ (accessed December 20, 2014).
[221] Tyler Clarke, "Idle No More Was Only the Beginning", *West Coast Native News*, December 16, 2014, http://westcoastnativenews.com/idle-no-more-was-only-the-beginning/ (accessed December 20, 2014).

Saul, and even some federal officials[222] believe that similar projects may follow Idle No More in the future.

Furthermore, foreign newspapers described the movement as "unprecedented mobilization"[223] of Indigenous peoples. Idle No More's activities got the Aboriginal question to the forefront, and thus strengthened the bargaining position of Indigenous peoples in negotiations with Ottawa. It increased public and media pressure on the federal government, and even forced the official meeting between representatives of the federal government and the delegation of First Nation chiefs.[224] All these indicators suggest that the movement has represented a powerful political voice of Indigenous peoples.

Following the official meeting, Stephen Harper was asked at a press conference in Oakville, Ontario, regarding the Idle No More movement, if he was worried that it will cause a domino effect similar to the Occupy Wall Street. He replied, that "people have the right in our country to demonstrate and express their points of view peacefully as long as they obey the law, but I think the Canadian population expects everyone will obey the law in holding such protests."[225] Harper's statement gives the impression that the Aboriginal resistance expressed in Idle No More and the Indigenous resentment toward his policies did not significantly put him out of countenance. This implies that Aboriginal issues were not in the limelight of the Conservative Government despite the massiveness of the movement.

When taking into account that Indigenous youth population is the fastest growing demographic group in Canada,[226] the participation of young people with Aboriginal ancestry in the economy in the future will be of critical importance for the well-being of the Canadian population in general. In addition, the Idle No More movement's base consists mainly of young people and these will form the thoughts of the community in the upcoming years. Thus, Ottawa should have been more concerned

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[222] Benjamin Shingler, "Emails Show Federal Officials Worried About Second Idle No More Movement", *The Canadian Press*, August 17, 2014, http://www.ctvnews.ca/politics/emails-show-federal-officials-worried-about-second-idle-no-more-movement-1.1963194 (accessed December 20, 2014).

[223] Martin Lukacs, "Indigenous rights Are the Best Defence against Canada's Resource Rush", *The Guardian*, April 26, 2013, http://www.theguardian.com/environment/true-north/2013/apr/26/indigenous-rights-defence-canadas-resource-rush (accessed December 4, 2014).

[224] Hall, "Stephen Harper, First Nations".

[225] "9 Questions about Idle No More".

[226] Laura Westra and Mirian Vilela, eds., *The Earth Charter, Ecological Integrity and Social Movements* (New York: Routledge, 2014), 154.

about the situation of young Native peoples and should have listened to what they have to say.

Saul is confident that the formation of the Idle No More movement proves that there is a new elite of Indigenous peoples with college diplomas that has been gaining strength and increasing its influence, and that they will continue to do so in the future. Most of the INM's activities such as flash mobs and teach-ins were peaceful. However, Saul argues that without a change in stances of non-Aboriginal Canadians, who have prevented Indigenous peoples from regaining their rights and returning to power, this elite might instigate riots which could have worse consequences than those of the railroad blockades and demonstrations of Idle No More.[227] Furthermore, he believes that Aboriginal issues are the "most important" and "unresolved" in Canada and that thanks to Idle No More, even non-Native Canadians, who had felt guilt and sympathy which was, however, not desirable since it did not come up with real answers, have become more aware of the Aboriginal issues and some of them even joint the movement.[228]

According to an internal Royal Canadian Mounted Police (RCMP) document written and shared by senior officers, the Idle No More movement was like "'bacteria' that spread across the country carrying with it the potential for an outbreak of violence".[229] The document was primarily written as a report from Attawapiskat Chief Theresa Spence's camp at the peak of the Idle No More movement's activities between December 2012 and January 2013. The document predicted that the movement would gain strength and would not limit its activities to round dances and teach-ins in the future but they would shift to more intense protests.[230]

Despite its uncomplimentary nature, the label given to Idle No More by RCMP indicated the potential of the movement during the most intense period of its activity that was in contrast to Prime Minister's intentional disregard recognized even by state police forces. Saul argues that the often called "Aboriginal issues" are in fact political battles that matter to both Native and non-Native Canadians. Idle No More's disapproval of the Conservative Government's legislation was a stand against a corporatist agenda and almost authoritarian way of governance of the Harper Government. He suggests Idle No More and other Aboriginal initiatives should not be

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[227] Saul, "The Resurgence of Indigenous Power".
[228] Shulman, "John Ralston Saul".
[229] Jorge Barrera, "Idle No More Movement Was Like 'Bacteria,' Says Internal RCMP Document", *APTN National News*, May 7, 2015, http://aptn.ca/news/2015/05/07/idle-movement-like-bacteria-says-internal-rcmp-document/ (accessed August 7, 2016).

perceived as a "national headache" or "bacteria", but a public good, because they balance corporatist managerialism represented by the Conservative Government.[231]

The RCMP later apologized for the "bacteria comparison" and denied it to be the opinion of the entire institution. NDP's Aboriginal affairs critic Niki Ashton also demanded that the then Public Safety Minister Stephen Blaney apologized for the comparison. Conservative MP and parliamentary secretary for Public Safety Roxanne James, however, sent a clear message that nobody should and will apologize. Moreover, she called such a demand "abhorrent".[232] This was a unifying element of the Conservative perspective; an apology to Indigenous peoples would mean to admit that the Aboriginal issue is an important one that needs to be addressed. Yet it was not in the line with the focus of the Harper Government that concentrated on other priorities such as the expansion of extraction activities and downsizing of social spending.

Critics of Idle No More, such as Sadeq Rahimi and Mark Milke, liken the movement to the Arab Spring. They argue that the movement has never had a strong and qualified leader who would be able to discuss legislative changes with the government. More importantly, they deplore that supporters of Idle No More have not had a uniform opinion on how to reform the Indian Act and improve the plight of Aboriginal peoples.[233] Some even suggest that they misinterpreted the relevant parts of the Harper Government's legislation. They claim for example that the amendment to the Navigable Waters Protection Act did not represent a threat to Aboriginal resources, whereas they believe that leaving minor streams and other water surfaces to be handled by provinces and municipalities would lead to better local control over projects while eliminating the bureaucratic burden.[234]

Furthermore, these critics of Idle No More defend the Harper Government's legislation, asserting that it would not allow for reserve land to be sold off to non-Aboriginal buyers, but on the contrary – it would allow for First Nations to lease more land in order to create housing subdivisions and commercial complexes. Thus, Indian

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[230] Barrera, "Idle No More Movement Was Like 'Bacteria,' Says Internal RCMP Document".
[231] Shimo, "John Ralston Saul's The Comeback".
[232] Jorge Barrera, "RCMP Apologizes for Idle No More 'Bacteria' Comparison", *APTN National News*, May 11, 2015, http://aptn.ca/news/2015/05/11/rcmp-apologizes-idle-bacteria-comparison/ (accessed August 7, 2016).
[233] Sadeq Rahimi, "Canada Heading for Bloodshed, Warns Aboriginal Leader", *The World Post*, January 15, 2013, http://www.huffingtonpost.com/sadeq-rahimi/canada-heading-for-bloods_b_2474733.html (accessed December 10, 2014).
[234] Mark Milke, "What Idle No More Should Really Be Protesting", *The Huffington Post Canada*, January 9, 2013, http://www.huffingtonpost.ca/mark-milke/idlenomore_b_2428048.html (accessed December 11, 2014).

reserves and their residents would be able to benefit from the cash flow. They also criticize the corrupt governance of First Nation communities, where chiefs earn higher (and tax-free) salaries than politicians in similar municipalities.[235]

Idle No More has sometimes been compared to the grassroots Occupy Wall Street movements that emerged in 2011 and fueled public discourse on economic inequality. "The Occupy and Idle No More movements share two characteristics," says Robert Brym, a sociology professor at the University of Toronto. "They both have relatively diffused demands and decentralized leadership." But, according to Brym, they also differ at least in one respect, "The Occupy movement's demand for greater economic equality seems to have resonated with a large part of the Canadian population, which has experienced growing income disparity and slow growth in real income for decades […] In contrast, I believe the public has more mixed feelings about the Idle No More movement."[236]

Brym further elaborates on his claim in the sense that an average Canadian taxpayer is willing to admit past wrongdoings committed against Indigenous peoples and compensate for past and current injustices but he is reluctant to support – as he calls it – "disruptive demonstrations" which demand more governmental support and public funding with little accountability attached on the part of Aboriginal peoples.[237] To some extent and similarly to Thomas Flanagan, Brym views the Indigenous movement rather from an economic perspective. For him there are two groups and both are dissatisfied – impoverished Aboriginal peoples demonstrating in the streets and the non-Native Canadian population that always pays.

The rhetoric of all these critics of Idle No More is strikingly reminiscent of Flanagan's as they identify the rural nature of Aboriginal communities living on collectively owned land in the twenty-first century like a major problem. This view is rather distorted, Eurocentric and urban. Arguing that Harper's legislation enabled First Nations to lease land, part of nature much prized for its purity not only by Aboriginal peoples but also by environmentalists and many non-Native Canadians, for the construction of modern industrial complexes and shopping centers, points to the one-sidedness of such line of reasoning as it addresses only the narrowly defined economic aspects of the Conservative Government's legislation.

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[235] Milke, "What Idle No More Should Really Be Protesting".
[236] Gollom, "Is Idle No More the New Occupy Wall Street".
[237] Ibid.

Flanagan and the federal government also often used the corruption argument of First Nation communities and band councils outlined by these critics. For example, in response to the Attawapiskat crisis, Stephen Harper said that widespread corruption in band councils was to blame.[238] This is an evidence of how the Harper Government denied its own share of responsibility for the plight of First Nation communities, put the blame on Aboriginal peoples, and justified the need for carrying out its legislation. The Assembly of First Nations has not denied that corruption exists within First Nation communities but it has argued that it does not represent a more serious problem there than in other sectors of society and government.[239]

John Ralston Saul takes a completely different view than the critics of Idle No More. When he talks in his book about "a comeback", he refers to Idle No More and similar movements that, in his opinion, need to be seen as a sign of new self-confidence of Native peoples and their willingness to take the lead. He believes that the Aboriginal peoples are now waking up from "lethargy" and are ready to fight again for their right to self-determination and self-government.[240]

Saul emphasizes that many Canadians who are not normally engaged in Aboriginal issues got involved with Idle No More, and this is even intensified by the fact that the movement reached fever pitch during the winter because, according to Saul, when Canadians go into the streets in the winter and stay there, it means something significant. He remarks, that

> "When I talked at the time with young First Nations leaders across the country -- professors, businesspeople, professionals, writers, politicians -- they were excited about Idle No More. Not necessarily by the organization itself, which might morph into something else or into many new things. And not necessarily because they believed it had the answers or could succeed in some dramatic way. But because it showed the breadth and depth of commitment in their communities. A grassroots commitment to the public good. And it showed a widespread determination by a new generation to be heard, to be part of a serious discussion of the future."[241]

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[238] James Mackay and James Sinclair, "Canada's First Nations: A Scandal Where the Victims Are Blamed", *The Guardian*, December 11, 2011, http://www.theguardian.com/commentisfree/2011/dec/11/canada-third-world-first-nation-attawapiskat (accessed December 20, 2014).

[239] Schwartz, "7 Questions about First Nations".

[240] John Ralston Saul, "The Comeback: How Aboriginals Are Reclaiming Power and Influence", *The Huffington Post*, March 9, 2015, http://www.huffingtonpost.ca/john-ralston-saul/john-ralston-saul-book_b_6830356.html (accessed August 8, 2016).

[241] Ibid.

Saul's words, however, imply exaggerated optimism. His warm relationship with Indigenous peoples and the belief that their activities have a chance of success overshadow more practical view on, for example, how the question of self-government of First Nations should be carried out or how chronic problems of Aboriginal communities should be solved.

Conclusion

First Nations live on the margins of Canadian society. The socio-economic conditions of their communities are, despite the extensive financial support that they receive from the State, still very poor. Sociopathological phenomena such as poverty, high unemployment rates, alcoholism, drug addiction or high suicide rates afflict their communities. The Indian Act of 1876 along with the Constitution of Canada, 1982, is the basic legal codification of the rights of First Nations in Canada. In its relatively unchanged form, it has provided for a special status of First Nations within Canada and guaranteed the preservation of their distinctiveness, in particular through their collective rights, for exactly 140 years. On the other hand, it has effectively isolated First Nations in a vicious circle of the dysfunctional system of reserves and a detrimental dependence on social welfare. Thus, to a certain extent, there has been a consensus that reform and an eventual replacement of the Indian Act of 1876 are needed. However, the Harper Government and First Nations had very different ideas of what direction this legislative change should take.

Woons' claim that "Canada clearly has a long way to go in restoring a just relationship with Indigenous peoples and carry out their justifiable claims for greater self-determination"[242] indicate the complexity of modifying the legal status of First Nations in Canada. As is evident from the demands of the Idle No More protest movement, and from the official statements of the Assembly of First Nations, First Nations communities believe that the government has to introduce new legislation in which the Aboriginal rights to self-determination will be guaranteed *before* the Indian Act can be replaced. However, there are very different conceptual approaches of how to treat the question of self-determination and self-government of Indigenous peoples.

First Nations base their right to self-determination, defined as the right to freely determine one's political status and pursue one's social, economic, and cultural

[242] Woons, "The 'Idle No More' movement", 176.

development, on several assumptions. First, they believe it is one of the rights that are legally guaranteed to Aboriginal peoples by Section 35 (1) of the Constitution of Canada, 1982, and by the *United Nations Declaration on the Rights of Indigenous Peoples* endorsed by Canada in 2010.

Second, First Nations consider themselves to be nations, and the right of nations to self-determination is one of the key principles enshrined in the Charter of the United Nations' *jus cogens*.[243] It should be noted that although First Nations are generally referred to as "nations", as the name suggests, opinions differ in this respect. The Assembly of First Nations and Idle No More declare that Indigenous peoples are nations in all statements and manifestos. The Royal Commission on Aboriginal Peoples also supported the idea of Aboriginal nationhood. Similarly, Will Kymlicka sees Indigenous peoples as "national minorities" based on criteria such as common culture, language, traditions, etc. On the other side, conservative scholars like Thomas Flanagan reject the nationhood of Native peoples, and rather follow on the idea of "undifferentiated citizenship" articulated in the *White Paper* while Alan Cairns rather uses the designation "citizens plus" from the *Hawthorn Report*.

Considering themselves to be nations, First Nations claim their right to self-government, which represents an integral part of self-determination. One of the possible ways in which this can be put into practice is through the self-government agreements. More than twenty self-government agreements have already been concluded between First Nations bands and the federal government.

The long-term effectiveness of these agreements is, however, impossible to know. The problem is that the process of submission and negotiation of the SGA is lengthy and complex. Furthermore, important policy areas remain under federal jurisdiction exclusively. Nevertheless, both have potential. They both meet the First Nations' claim for self-government and they also transfer responsibility for the functioning of these Native communities into the hands of their own members, and thus ease the burden of the federal government.

The catch lies in the fact that the Conservative Government was moving away from the term "self-government" to "governance" which implied that it had been replacing negotiations of self-government agreements, understood despite all their shortcomings as a practical assertion of Aboriginal inherent rights with "sector-specific

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[243] *Jus cogens* is a peremptory norm accepted by the international community, from which derogation is not permitted.

agreements".[244] This shows how different the perspectives of the Harper Government and Canadian Aboriginal peoples on the transformation of Indigenous-state relations, and the ways to enforce Aboriginal self-government, were.

Third, First Nations base their right to self-determination on the interpretation of the "fiduciary" relationship between the Crown and Aboriginal peoples and the doctrine of "free, prior, and informed consent". According to recent rulings of the Supreme Court of Canada, the fiduciary relationship is enshrined in Section 35 (1) of the Constitution of Canada, 1982. Such an interpretation, which implies the Aboriginal right to "free, prior, and informed consent" of Aboriginal peoples about their own affairs, should in practice ensure participation of First Nations in the preparation of legislative changes that directly affect them. However, the Harper Government simply disregarded this legal doctrine – in effect violating the law of the land that they had sworn to uphold.

In contrast to the previous approach of the Liberal governments of equal negotiations, since 2006, when the Conservative Party came to power, Prime Minister Stephen Harper personally met with representatives of Indigenous peoples only a few times. Moreover, concerning most of the legislative proposals, representatives of Indigenous peoples were not consulted. Bill C-38 and Bill C-45 were the most visible examples of the Conservative Government's circumvention of First Nations' consent when creating policies regarding their communities. Furthermore, the emergence of the Idle No More protest movement in response to the enactment of Bill C-45 showed how much Harper's policy differed from Aboriginal peoples' perspective.

In contrast to the Aboriginal community, the Harper Government preferred reforms of the Indian Act in order to achieve economic sustainability of the First Nations communities, and the capability of managing their own affairs. The Conservative Government's policies were based on a similar approach to the one proposed by Thomas Flanagan, who was in the past Harper's advisor on Aboriginal issues. They believed that, instead of living on state aid, which annually forms a considerable part of the government's budget, Indigenous peoples should adopt a market based economy with all its aspects. In their opinion, it was necessary to eliminate collective ownership on reserves and introduce private ownership. Indigenous communities should also be financed from taxes collected from their own people. Finally, Aboriginal land, which is so valued and protected by First Nations, should be

[244] Papillon, "The Rise (and Fall?)", 126.

opened up for industrial companies, especially for the extraction and transportation of oil, which has been on the rise in Canada.

The Idle No More protest movement emerged mainly as a backlash against the Conservative Government's legislation affecting the rights of Indigenous peoples, which it had passed without previous consultation with Aboriginal peoples. Idle No More was able to mobilize thousands of people for action.[245] Despite Harper's seemingly little interest in these events, the movement also contributed greatly to the realization of an official meeting between representatives of Native peoples and the government. Still, the movement did not accomplish big goals as Bills C-45 and C-38 are still applicable. It lost momentum in a relatively short period of time; however, the fact that Aboriginal issues got into the forefront of public and media interest was a success on which Indigenous peoples can built in the future.

The analysis of the documents and declarations of INM and the federal government showed great discrepancies between the two. While representatives of Aboriginal peoples have been calling for environmental protection, the enforcement of their collective rights, their right to free, prior, and informed consent, and more generally of their right to self-determination and self-government, the Harper Government has been assuming greater control over the Indigenous communities and lands, and has been promoting their economic development within the neoliberal world on non-Native terms.

In conclusion, the visions that the Canadian First Nations and the Conservative Government have for the legislative anchoring of First Nations, and more generally for all Aboriginal peoples in Canada, did not share enough elements to find common ground. Although there was a consensus that the reform of the Indian Act was needed, and that Native peoples should be responsible for their own affairs, views on the way of achieving this differed significantly. While one side spoke about environmental protection, collective rights, the right to self-determination, the right to self-government, the right to "free, prior, and informed consent", and the distinctiveness of Indigenous peoples, the other side stressed the importance of economic principles of market based economy focusing on self-sufficiency, private ownership, and further natural resources exploitation requiring a substantial decrease in government protection. The Harper

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[245] "Cree Walkers Meet Minister at End of Idle No More Trek", *CBC News*, March 25, 2014, http://www.cbc.ca/news/canada/ottawa/cree-walkers-meet-minister-at-end-of-idle-no-more-trek-1.1392239 (accessed December 20, 2014.).

Government promoted the integration of Indigenous peoples into non-Aboriginal society.

The reform of the Indian Act of 1876 and the improvement of the dismal situation of First Nations in Canada could have been successfully carried out only under the condition that the two sides cooperated. Such cooperation, however, seemed difficult to carry out due to their conflicting views on the matter. In addition, for such cooperation it would be necessary for the Conservative Government to show signs of efforts to involve First Nations in negotiations on policies that affect them – which it did not show. This basic problem of the status of First Nations in Canada in relation to the former Canadian government was perfectly expressed by Derek Inman, Stefaan Smis, and Dorothée Cambou:

> "[…] in an effort to accommodate Aboriginal peoples, to reconcile past injustices, and to respect the honor of the Crown, the Canadian government should have at least consulted with the Aboriginal peoples prior to rushing through Bill C-38 and Bill C-45. Maybe this is why the Aboriginal peoples of Canada stood up and refused to be *Idle No More*."[246]

[246] Inman, Smis and Cambou, "We Will Remain Idle No More", 285.

Souhrn

Zvláštní postavení kanadských prvních národů zaručuje Indiánský zákon z roku 1876, který však tuto skupinu původních obyvatel zároveň izoluje v bludném kruhu generujícím socio-ekonomické problémy. V posledních letech se začíná stále častěji hovořit o nutnosti změnit nejen Indiánský zákon, ale obecně přenastavit status původních obyvatel v rámci kanadské společnosti. Cílem této práce je představit jednotlivé pohledy na to, jakým způsobem lze tuto změnu provést. Zároveň si autorka vytyčila za cíl zjistit míru kompatibility mezi reformami předchozí kanadské vlády v čele se Stephenem Harperem a požadavky původních obyvatel na uplatnění jejich práva na sebeurčení.

V první části byli nejprve stručně představeni původní obyvatelé Kanady, přičemž hlavní důraz byl kladen na první národy a jejich organizaci, protože právě na ně se vztahuje Indiánský zákon z roku 1876. Dále byl analyzován tento zákon, který je základním předpisem určujícím vztah mezi komunitami prvních národů a státem. Na jednu stranu představuje nenáviděný koloniální nástroj pro ovládání prvních národů federální vládou, na druhou stranu ale zaručuje ochranu jejich zvláštního postavení v rámci kanadské společnosti a brání tak jejich asimilaci.

Ve druhé kapitole byly rozebrány jednotlivé přístupy k tomu, jak by měl být řešen status původních obyvatel v Kanadě. Ve vztahu k uplatňování práva na sebeurčení původních obyvatel byly porovnány dva základní koncepty. První předkládá bývalý blízký poradce Stephena Harpera Thomas Flanagan inspirovaný Trudeauovým Bílým dokumentem (*White Paper*), druhý navrhuje Alan Cairns ovlivněný Hawthornovým reportem (*Hawthorn Report*). Flanagan podporuje tzv. nediferencované občanství (*undifferentiated citizenship*), což by prakticky znamenalo zrušení zvláštního postavení původních obyvatel a jejich začlenění do většinové společnosti. Cairns preferuje jejich označení za tzv. občany plus (*citizens plus*), tedy kanadské občany mající určitá specifická práva.

Druhá část práce byla věnována obsahové analýze prohlášení původních obyvatel vyjádřených představiteli hnutí Idle No More na jedné straně a rétoriky a návrhů vlády Stephena Harpera na straně druhé. Třetí kapitola načrtla významné legislativní kroky Harperovy vlády týkající se původních obyvatel a jejich praktické dopady na jejich komunity. Nejdůležitějšími vládními iniciativami v tomto smyslu byly zákon o vlastnictví nemovitostí prvních národů (*FNPOA*), zákon o finanční

transparentnosti prvních národů (*C-27*), zákon o pracovních místech, růstu a dlouhodobé prosperitě (*C-38*) či zákon o pracovních místech a růstu (*C-45*). Poslední dva jmenované vyvolaly silnou vlnu nevole původních obyvatel, jež vedla až ke vzniku protestního hnutí Idle No More.

Ve čtvrté kapitole byly rozebrány prohlášení a výroky zástupců hnutí Idle No More ostře kritizující vládu Stephena Harpera a její legislativní kroky. Představitelé hnutí se domnívají, že vláda nerespektovala právo původních obyvatel na sebeurčení, jejich zvláštní identitu a ochranu přírody, a místo toho sledovala pouze vlastní cíle založené na principech tržní ekonomiky. V neposlední řadě kritizují to, že vláda nekonzultovala své kroky týkající se těchto komunit s jejich členy.

Z analýzy jednotlivých představ o tom, jak by měla být řešena otázka sebeurčení a samosprávy původních obyvatel a celkové zakotvení původních obyvatel v rámci kanadské společnosti autorka práce vyvozuje, že se obě strany shodovaly, že stav, v jakém se otázka původních obyvatel nacházela, byl nevyhovující a že v případě prvních národů je třeba změnit Indiánský zákon. Nicméně názory Harperovy vlády a původních obyvatel na způsob provedení takových změn byly vzájemně prakticky neslučitelné.

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