Indigenous Peoples and Neoliberal 'Privatization' in Canada: Opportunities, Cautions and Constraints

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Introduction: The Emergence of Neoliberal Aboriginal Governance

The co-existence of a neoliberal political context and the increasing strength of various Indigenous movements provide an interesting point of critical inquiry for those of us interested in Indigenous-state relations in Canada. While some observers have argued correctly that the neoliberal context provides new opportunities or points of entry in the political opportunity structure for 'self-government' initiatives (Slowey 2008), this paper explores the existence of what I call *neoliberal aboriginal governance*. This term refers to specific state-crafted responses to Indigenous demands that are part of a broader governmental strategy of neoliberalism.[1] This strategy is not simply about meeting the demands of Indigenous peoples but also about meeting the requirements of the contemporary governmental shift towards 'privatization' within liberal democratic states. Touted by the state as enhancing Indigenous autonomy, these policies appear to respond to Indigenous demands but serve a neoliberal welfare state agenda and, as a result, their effects often run in opposition to meaningful autonomy for Indigenous peoples.

While on the surface, the shift to neoliberal aboriginal governance appears to meet the demands of Indigenous peoples for progressive change, these practices foster an Indigenous-state dynamic that, in many ways, is regressive. All too often the models of autonomy being crafted by the state hand-off large areas of responsibility to Indigenous peoples without handing off the actual decision-making power necessary to truly transform these policy areas. This is precisely the kind of change many Indigenous scholars and activists have warned against (see for example, Alfred 2005, Monture-Angus 1998). These practices shift social policy away from a holistic, transformative, and capacity building approach to one that makes it more difficult to achieve truly transformative change as both the political and discursive terrain within which change can happen is narrowed.

At its worst, neoliberal Aboriginal governance can result in vulnerable populations facing further domination and exclusion, but in newer and less obvious forms as the traceability of government policy and state accountability are altered in troublesome ways under the 'progressive' auspices of accommodation and recognition. Certain manifestations of Indigenous autonomy or 'self-government' are therefore vulnerable to criticisms launched against practices of privatization. These practices

[1] In this categorization I use the term 'aboriginal' in order to reflect and emphasize the state's role in constructing these responses. As will be discussed, these kinds of neoliberal policy responses are generally far removed from the kinds of state-Indigenous relations many Indigenous scholars advocate (see for example Monture-Angus 1998 Alfred and Corntassel 2005, Coulthard 2007).

include a variety of policies that promote a shifting of contentious issues out of the public sphere and thereby limit public debate and collective (i.e. state) responsibility.

Neoliberal aboriginal governance works because it is broadly consistent with practices of neoliberal governance more generally. The main identifier of neoliberal politics is a 'politics of privatization'. While in its original use the concept of privatization referred to the sale of government assets to the private sector, it is now invoked to reference an overall shift in public policy and political orientation that involves both the contraction and re-regulation of the public as well as the expansion of the private (Cossman and Fudge 2002, Kline 1997, Brodie 1995). The majority of critical work on neoliberalism has highlighted 'the market' and 'the family' as key areas that are currently being (re)defined by the neoliberal context. I argue, however, that 'cultures' (particularly, though by no means exclusively, 'Aboriginal cultures' with strong claims to self-determination/autonomy) are also (re)defined in relation to neoliberal attitudes and practices.

Scholars have recently begun to take up the question of how neoliberalism and Indigenous self-determination overlap (Hale 2002, Slowey 2008, MacDonald 2009). Notable amongst this emergent literature is Gabrielle Slowey's (2008) *Navigating Neoliberalism: Self-Determination and the Mikisew Cree Nation*. What Slowey's work on the Mikisew Cree First Nation shows is that the news on neoliberalism and Indigenous self-determination is not necessarily 'all bad'. In fact, there are significant opportunities available with the right strategy and framing of Indigenous issues. Still, there are reasons to be wary of generalized optimism.[2]

While I agree with Slowey that neoliberalism and Indigenous movements for self-determination can come together and produce unexpected outcomes, I suggest a significant degree of cynicism should accompany these developments. Interrogating the existence of neoliberal aboriginal governance must be central in our analyses of current policies as well as how we construct our arguments regarding just Indigenous-state relations. As I hope to show in the remainder of this paper, those of us who seek to ensure meaningful self-determination for Indigenous peoples must directly engage with the ever shifting economic context, particularly the current neoliberal context. Alongside working to identify any new opportunities this environment may bring we must include the possibility of co-optation of our arguments to meet state objectives and, in response, think through how best to guard against this possibility as well as how best to take advantage of any new opportunities created by our neoliberal environment.

Strange Bedfellows: What do Indigenous Movements and Neoliberalism have in Common?

The concurrent trends of 'neoliberalism', characterized by processes of privatization, and state-sponsored Aboriginal 'self-governance', characterized by enhanced autonomy through policy devolution can appear as contradictory, if not oppositional trends. Aboriginal self-governance is often perceived as part of multicultural accommodation and/or recognition and conventional wisdom holds that neoliberalism saves it strictest criticisms for policies based on multicultural approaches to citizenship (Giddens 1998). While most Indigenous scholars and activists do not identify as part of

[2] For example, as Slowey herself notes, these opportunities may be much more available to those Indigenous peoples in treaty negotiations.

the multiculturalism rubric (nor do they identify as a 'minority group') prominent scholars of multicultural citizenship have nevertheless made the experiences of Indigenous peoples a central part of their scholarship and the prescriptive force of this work should not be underestimated.[3] Recent court decisions on Aboriginal rights have increasingly moved towards a more restrictive notion of Aboriginal rights based on 'culture', a fact demonstrated by the 1996 *Van Der Peet* decision.[4] The dominant characterization of Indigenous self-determination as part of multiculturalism more generally suggests that Indigenous self-determination is just one among many 'multicultural' policies a neoliberal government would reject. However, even if we consider prevailing assumptions regarding Indigenous claims outside of the multiculturalist framework, neoliberalism still appears at odds with many Indigenous demands for political recognition and accommodation. Recent events such as Prime Minister Stephen Harper's nullification of the previous government's *Kelowna Accord* and the inflammatory referendum on First Nations treaty negotiations previously held by BC Premier Gordon Campbell seem to support this thesis.[5] Further, as Slowey (2008) notes:

> [N]eoliberal globalization is generally assumed to be a destructive force. That is, it could ultimately threaten the well-being of First Nations communities through its restructuring of market-state-First Nations relations and its reduction of the welfare state upon which so many First Nations rely. Indeed, most First Nations peoples already live as marginalized peoples. (xiv)

There is, therefore, good reason to view neoliberalism and Aboriginal self-governance as co-existent yet contradictory movements with oppositional goals. Upon close inspection, however, these assumptions prove largely false.

First, the general assumption that multiculturalism and neoliberalism are, by definition, oppositional trends is based on an overly simplified conception of neoliberalism. When assessing its relevance to Indigenous peoples we must recognize

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[3] The most influential of these scholars is Will Kymlicka, particularly his (1995) publication *Multicultural Citizenship.*

[4] For an overview of the articulation of Aboriginal rights by Canadian courts see Michael Murphy's (2001) "Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?".

[5] The Kelowna Accord was a five year five billion dollar plan to "improve the lives of First Nations, Métis, and Inuit peoples" that developed out of the 2005 First Ministers Conference on Aboriginal Affairs. Seventy-two hours after the agreement the Liberal government fell and an election was called. Harper's Conservative's then became the governing party and soon terminated the Accord (CBC News Online.2006. "In Depth: Aboriginal Canadians: Undoing the Kelowna Accord." CBC News November 21 2006. At www.cbc.ca/new/background/aboriginals/undoing-kelowna.html). In 2002 British Columbia held a province-wide referendum on First Nations treaty negotiations. When the results were announced they showed overwhelming support for the BC government. However, the referendum was seen as controversial and inflammatory from the outset. "Critics, including native and church leaders, called the plebiscite 'stupid,' immoral,' 'amateurish' and 'racist'. One of the biggest criticisms was that the questions had been designed to illicit a 'yes' response thus making the results of the referendum a "foregone conclusion" and not the "experiment in direct democracy" the government described. Only about one-third of the mail-in ballots were returned. "Many ballots were burned. Others were turned into paper airplanes, cut into snowflakes, even toilet paper" (CBC News Online. 2004. "In Depth: Aboriginal Canadians: BC Treaty Referendum." CBC News July 2 2004 At www.cbc.ca/new/background/aboriginals/bc_treaty_referedum.html).

that neoliberalism comprises different streams within which alternative kinds of 'self-governance' may fit comfortably. While the main one, the origin of the term 'new right', is socially conservative and is committed to 'traditional' notions of the state and the family, there is also a second stream associated with the free market that, in contrast to the conservative stream, is often libertarian on moral as well as economic issues. Unlike social conservatives, libertarians favour the idea of individual 'autonomy' (Giddens 1998, 6). Put simply, 'self-governance' rooted in notions of autonomy can fit well with the values of a more libertarian stream particularly if it is framed (as Kymlicka does) in terms of liberalism and personal freedom and involves divestment of responsibility by the state in areas of social policy. Even within the conservative stream, limited room exists for claims to multicultural accommodation and recognition as articulated by Charles Taylor, especially where it calls on the preservation of traditional values of community and cohesion that underpin socially conservative thought and where an appeal can be made to such communitarian sensibilities.

While the discourse of autonomy is central to neoliberal ideology and practise, it is also found in various forms in the literature on Indigenous governance including the multiculturalism literature. The discourse of autonomy is again central in the political demands made by various Indigenous organizations that are seeking either greater independence within the state, self-government or self-determination for Indigenous peoples in Canada. This discursive overlap provides the main point of intersection between neoliberalism and Indigenous movements and provides the conceptual foundation for neoliberal aboriginal governance.

In challenging the neutral or "benign" notion of the liberal state, Indigenous social movements (particularly those movements associated with demands for autonomy) also challenge the model of citizenship put forward by welfare liberalism and the various forms of state intervention this model endorses. The welfare liberal view of citizenship – the view that is implicit in much post-war political theory—is defined almost entirely in terms of the possession of universal citizenship-possession of rights which ensure that everyone is treated as a full and equal member of society regardless of race, culture, gender or religion. Notions of commonality, solidarity, and social co-operation all play a key role in this perspective. Indigenous claims for self-determination challenges these principles and, in so doing, claims for Indigenous autonomy also overlap, both temporally and discursively, with the politics of privatization that characterize the current neoliberal context.

While the particular motivations behind neoliberal and Indigenous criticisms of the postwar order may differ, both lines of criticism agree that the paternal nature of the welfare state is severely problematic. Take for example, the following statement from Hayek's *The Constitution of Liberty*:

> If […] government uses its coercive powers to insure that men are given what some expert thinks they need […] people thus can no longer exercise any choice in some of the most important matters of their lives, such as health, employment and provision for old age, but must accept decisions made for them by appointed authority on the basis of its evaluation of their need. (1960, 261)

These general concerns expressed by Hayek bear a striking resemblance to the specific issues raised by Indigenous advocates in relation to a 'colonial' Canadian state that

continues to exercise authority over them through the welfare regime. The history of intense intervention, forced assimilation, and community fragmentation that the Indigenous peoples of Canada have experienced has led to many complexities for Indigenous-state relations. These challenges include an overarching sentiment of deep mistrust and resentment towards various governmental agencies and the Canadian state in general. As Joyce Green (2001) observes, "Aboriginal peoples are likely to understand the state as an oppressor that has been economically and politically strong at the direct expense of Aboriginal nations" (715-716). Given this view of government, it is not surprising that demands for autonomy—whether defined as 'sovereignty', 'self-government' or 'self-determination'—have remained a constant feature of the various Indigenous movements that have developed throughout Canadian history.

While there are many competing notions of what might constitute Indigenous autonomy, one of the most long-standing and common notions circulating in Canadian publics is articulated by Geoffrey York (1989) in his recommendations for more involvement by Indigenous peoples in decision-making processes that affect them. He argues:

> Cultural revival among Indigenous people is just one step toward regaining what has been lost. Self-government is the other key to the future of native people. When they are permitted to gain influence over the central institutions in their communities—the schools, the justice system, the child welfare system—Indian and Métis people have already demonstrated that they can repair the damage caused by centuries of racism and neglect. (269)

This sentiment is echoed even more strongly by Lavina White (Haida nation) and Eva Jacobs (Kwakiutl Nation) in their argument for autonomous Indigenous child welfare provision articulated in a report they submitted to the government of British Columbia. They argue:

> The solutions [for the present problems we face] can only be found by our Nations and communities accepting these problems as theirs, and your government recognizing that the methods of resolving these problems must be ours. Your government must relinquish responsibility for resolving our problems, and support our Nations and communities as they identify and implement their solutions. (1992, v)

Indigenous scholars and activists repeatedly call for a rejection of state intervention and the need to assert their own jurisdiction in terms of controlling community membership, resource access and protection and land rights. In fact, more and more, Indigenous scholars are advocating a 'turning away' from the state and its policies (Alfred 2005, Coulthard 1997). The extent to which this type of turning away is possible is an point of inquiry that I, alongside others, have taken up elsewhere (Williams 2004, MacDonald forthcoming 2010). What I want to point to in this paper, however, are the implications presented by these unexpected but important points of intersection between Indigenous claims to autonomy and neoliberal critiques of state authority. The main point of intersection is the shared emphasis on autonomy, self-sufficiency, and a smaller role for the state.

Competing Concepts: Shared Language But Different Visions?

Having outlined the broad similarities between Indigenous challenges to the state and neoliberal challenges to the post-war order I want now to emphasize that this overlap in discourse around the principle of 'autonomy' does not automatically indicate an overlap in values and/or objectives. In fact, this kind of overlap in language obfuscates significant differences in policy goals and gives the appearance of shared or common ground when in fact, the situation is much more complex and potentially oppositional. This leads to a second reality often overlooked regarding the diversities of neoliberalism—that is, the practical benefit to neoliberal governments of conceding certain forms of cultural accommodation.

Upon Harper's rejection of the *Kelowna Accord,* for example, some of its biggest defenders included not only former Alberta Premier Ralph Klein but also BC Premier Gordon Campbell just a few years after his inflammatory referendum. How do we make sense of Klein and Campbell's positions? Has Campbell had a sudden change in his perception of justice for Indigenous peoples? A more likely explanation is that his own political interests are served by certain kinds of Indigenous-state relations. As Slowey aptly notes, "Since neoliberalism favours a system of policies and processes designed to assist the marketplace, First Nations self-determination becomes more attractive than First Nations dependence on the state" (xiv). *Kelowna* was designed to reduce the gap in well-being between Indigenous and non-Indigenous Canadians. Ultimately the argument for the agreement was based on the idea that government spending on areas like education, housing, water safety and health *in the present* will reduce the need for government support *in the future*. Conversely, without any immediate substantial support from government the problems in these areas will not only remain but, in many cases, will increase due to changing demographics.[6]

The biggest reason for leaders to defend certain notions of Aboriginal self-government, however, comes with the uncertainty that *not* resolving these issues brings. This uncertainty is most considerable in areas with large numbers of unsettled land claims: **"**If globalization requires a stable investment environment to generate economic growth, then the resolution of land claims forms an important part of neoliberal strategy. Settled land claims create an environment conducive to investment" (Slowey 2008, 10). Leaders like Klein and Campbell need to settle outstanding claims in order to attract and maintain investment in their jurisdictions.

Finally, devolution of certain policy areas from Canadian government to Indigenous peoples brings further advantages to the state, particularly in those policy areas which have a less than positive record of state involvement such as education and child welfare. The ability of governments to devolve these complex policy areas, and the colonial legacies they entail, benefits them as they can distance themselves from these problems while appearing to concede to Indigenous demands. This is precisely what I have found to be the case in my analysis of aboriginal child welfare devolution in Manitoba (MacDonald 2009).

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[6] According to Statistics Canada the Indigenous population in many parts of the country are "young, growing and increasingly urbanized." The 2001 Census showed that nearly half of the non-reserve Aboriginal population was under the age of twenty-five compared to thirty-two percent of the non-Aboriginal population (Statistics Canada 2004).

Demands for autonomy in the policy area of child welfare have come from Indigenous peoples (as well as other stakeholders); however, to fully understand Manitoba's child welfare policy initiative it is also necessary to consider the broader context of the neoliberal welfare state in addition to these demands. A welfare regime analysis reveals that the state-constructed jurisdictional autonomy granted in this case is an example of neoliberal aboriginal governance. This is evident by the fact that this model of devolution offered by the state exhibits the key practices of the politics of privatization, namely: re-regulation, re-privatization, co-optation, and de-politicization (MacDonald 2009). As such the 'autonomy' granted works less as a safeguard for Indigenous peoples and more as a vehicle through which the province can pursue its own agenda. In cases such as this one, the particular forms of autonomy granted distances government from the responsibilities of resolving the overrepresentation of Indigenous children in the system, and ideally, curbs some of the costs associated with this growing issue.

These changes also tend to happen in a piecemeal fashion which makes it difficult to develop holistic approaches to the complex issues of social citizenship that are particularly challenging for Indigenous peoples given the colonial history and legacy of intervention they have faced.[7] While my analysis to date has focused primarily on child welfare these same trends of granting Indigenous peoples jurisdiction over particular bounded policy areas (from healthcare to welfare) are traceable throughout Canada as well as more globally.[8]

Rethinking Neoliberal Aboriginal Governance: Some Theoretical Considerations

Having broadly outlined the existence of neoliberal aboriginal governance I want to conclude with a brief discussion of how its existence should inform our theories in the future. The first point I hope to have demonstrated through the above analysis is that we need to bring the ever-shifting welfare state context into our normative assessments and prescriptions regarding Indigenous-state relations in Canada. Failing to do so leaves our arguments vulnerable to co-optation. While a number of Indigenous scholars and activists have included discussion of state interests and motivation in the construction of 'self-determination' (Alfred 2005, Monture-Angus 1998) multicultulturalists have failed to do so in any meaningful way. As Hale has argued in relation to cultural politics in Latin America, treating the state as a neutral arbiter of 'cultural' demands fails to recognize a central paradox of 'multiculturalism' itself—that is, that the state is not just the *arbiter* of cultural conflict but is most often a key *protagonist* in said conflict (2002, 493). Our theories must engage with the unique opportunities the neoliberal context provides for the

[7] Again, the example of child welfare policy in Manitoba is a good example of this practice. Out of all of the recommendations put forward by the *Aboriginal Justice Inquiry Report* in 1991 the only recommendations followed up in any substantial way by government were the recommendations on child welfare. These recommendations made up only a small portion of the recommendations made by the Inquiry but offered significant incentives to the state in terms of devolving a problem-ridden policy area.

[8] A similar analysis in Guatemala by Charles Hale (2002) argues that state bodies that seek a neoliberal restructuring in this region have also adopted cultural rights as a means by which the state can defuse the claims of indigenous movements while retaining a form of colonial rule. Hale also points to the policies of the World Bank which seek to protect 'indigenous rights' but fall short of supporting traditional communal land ownership.

state to meet its own interests. We must critically question 'concessions' from this viewpoint as opposed to assuming state neutrality.

A second, more exploratory point that the above analysis suggests is that in addition to bringing the welfare regime context into our analyses and debates on Indigenous autonomy and 'accommodation', an additional key component may be to focus more on the democratic requirements of 'self-government' initiatives like devolution. If neoliberal co-optation of group autonomy obscures decision-making and accountability then theories of Indigenous autonomy must suggest new forms of holding the autonomy-granting state accountable. The need for new democratic channels of accountability between Indigenous peoples and the Canadian state was explicitly demonstrated recently by the Assembly of First Nations decision to go to the Human Rights Commission regarding the inadequacy of Canadian governments' First Nations child welfare policy and service delivery.[9] Upon filing the complaint, National Chief Phil Fontaine stated:

> There are more than 27,000 First Nations children in state care. This is a national disgrace that requires the immediate and serious attention of all governments to resolve [….] Rational appeals to successive federal governments have been ignored. After years of research that confirm the growing numbers of our children in care, as well as the potential solutions to this crisis, we have no choice but to appeal to the Canadian Human Rights Commission [….] *I have said all along that I would rather negotiate than litigate* [….] Our children must have an equal opportunity to grow-up with their families, in their communities, and in their culture. No First Nations child should have to forgo this opportunity as a result of poverty or an inability to access services (Emphasis added. Assembly of First Nations 2007).

Indigenous political leaders like Fontaine have clearly called for greater government responsibility. Yet, while a significant portion of the existing literature on Indigenous-state relations and an entire sub-stream of the multiculturalism literature have brought important focus to the issue of keeping autonomous nations and/or cultural 'groups' accountable to the state to ensure adherence to the basic rights and freedoms of liberal democracy (Green 2001, Okin 1999, Shachar 2001) we have not devoted enough attention to the accountability of the state to autonomous nations and/or cultural 'groups'. Doing so may mean theorizing democratic procedures that extend well beyond the traditional means of holding governments accountable (such as participation through voting) which have proved ineffective as means of including Indigenous peoples in holding Canadian governments accountable.

A final point I wish to put forth for consideration is the need to continually theorize articulations of Indigenous demands that can guard against neoliberal co-optation. Neoliberalism is, of course, inherently capitalist in ethic and any neoliberal cultural accommodations defend the neoliberal capitalist order itself. This reality points to some serious constraints in the political opportunity structure facing anti-capitalist

[9] On February 23, 2007 a Canadian Human Rights complaint was filed by the Assembly of First Nations and the Family Caring Society of Canada regarding the lack of sufficient funding for First Nations child welfare.

Indigenous movements[10], however, it may also be a useful point on which to challenge the new 'autonomy supporting' order. The neoliberal context brings with it new potential for coalition opportunities for Indigenous movements if overlapping interests and strategies are identified alongside others who are negatively effected by the neoliberal regime. For example, as a number of feminist scholars have shown, the demands of many Canadian women have also been subject to co-optation by governments and they too need to find a way to re-articulate their concerns within the new neoliberal order.

Overall, the existence of neoliberal aboriginal governance reveals new difficulties for Indigenous peoples as it suggests that Indigenous movements must constantly re-position themselves in response to the state's 'concessions' in order to bring their unresolved concerns out of the de-politicized spheres created through devolution and into public political spaces of contest, debate and accountability.[11] While I have attempted to identify some strategies for contesting the negative effects of neoliberal aboriginal governance these suggestions are only a starting point and highlight the need to more fully theorize this complex topic.

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[10] As Hale argues, "Those who might challenge the underlying inequities of neoliberal capitalism as part of their 'cultural rights' activism are designated as 'radicals', defined not as 'anti-capitalist' but as 'culturally intolerant, extremist" (491).

[11] While Indigenous peoples have their own "publics" what I want to underline here is that these issues are, on the surface, being removed from the dominant publics in which governments are structured to be held accountable. The problem with this "privatization" is that the state is still very much an agent on these issues yet there is no channel for groups to hold governments sufficiently accountable for this continued, albeit covert, involvement.

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