
3. Self-determination, sovereignty and policy: how does a focus on Indigenous rights transform policymaking?¹

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INTRODUCTION

Since the 1970s, political and other discourses on Indigenous self-determination have become global due to the transnational Indigenous rights advocacy in the United Nations (UN) framework vis-à-vis international law and human rights mechanisms. However, as this edited volume painstakingly demonstrates through a wide range of cases from around the world, there are persistent and continuing threats to the existence of Indigenous Peoples as a distinct group with their own individual forms of social, economic, legal and cultural organisation. Many of these threats stem from governments' public policy decisions that do not consider Indigenous rights, even in cases where they are constitutionally protected. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is a global standard for Indigenous rights and provides a normative framework for restructuring Indigenous–state relations.

In this chapter, I examine the following key questions from the vantage point of Indigenous self-determination and sovereignty: Why are Indigenous rights so difficult to implement? What are the core requirements and frameworks of policy and governance that respect Indigenous human rights? I will begin with a brief discussion of the emergence of the self-determination discourse starting in the United States (US) in the 1960s and how that has shaped domestic policymaking and vice versa. I then consider the current global Indigenous self-determination and human rights discourse. I examine its relationship first to the international norm of state sovereignty and second to exclusionary gender regimes and gendered violence, both considerable problems in Indigenous communities. I ask whether UNDRIP, notwithstanding its utmost significance as *the* international human rights instrument for the protection of Indigenous rights, stands in the way of implementing Indigenous self-determination and sovereignty in certain regards.

In the second part of this chapter, I examine the question of policy frameworks in advancing and implementing Indigenous self-determination with the help of two cases: the Canadian 'Inherent right to self-government' policy adopted in 1995 and Greenland. The latter achieved extensive self-government and, thus, policymaking

¹ This chapter draws partly on my book *Restructuring relations: Indigenous self-determination, governance and gender* (Kuokkanen, 2019).

authority through a negotiated agreement with Denmark in 2009. The former case clearly demonstrates that when it comes to creating policies for advancing and operationalising Indigenous self-determination, the state is never a disinterested party and, for that reason, ought to stay out of policymaking. However, Greenland is one of the few regions in the world where Indigenous People (the Inuit Greenlanders represent 88 per cent of the country's population) run their own affairs and are in charge of their own policymaking. Greenland is a unique case that allows assessing the success of an Indigenous-majority government in developing policies that respect the human rights of all Indigenous People. The questions I ask in this regard include: does the substance of a policy change when Indigenous People oversee policymaking, and how does this affect the implementation of self-determination? In conclusion, I suggest policy that promotes and protects Indigenous self-determination, as well as the rights of all Indigenous People, is made by placing marginalised groups at the centre of policymaking. I briefly discuss examples of this in traditional Indigenous governance models at the end of the chapter.

DISCOURSES OF INDIGENOUS SELF-DETERMINATION

One of the first times the term 'self-determination' was employed in the Indigenous context was in 1966 by the National Congress of American Indians (NCAI) in response to the planned continuation of the Indian termination policy in the US. 'Self-determination' was used specifically to gain greater control of Native American policymaking, while maintaining the trust relationship with the federal government encoded in historical treaty provisions (Deloria & Lytle, 1984). The employment of explicit self-determination discourse led to the articulation of a new direction for federal Indian policy in 1968 by President Johnson, who presented a new goal 'that ends the old debate about "termination" of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership [and] self-help' (Corntassel & Witmer II, 2008, p. 14). Federal Native American policy frameworks have sought to advance greater space for Indigenous governance, although their successes have been varied and limited (Borrows, 2016, p. 165).

Following NCAI's early invocation of self-determination, Native American grassroots activism and political lobbying by the American Indian Movement and other organisations bore fruit in 1970. President Nixon called for self-determination legislation. Five years later, Congress passed the *Indian Self-Determination and Education Assistance Act 1975* to delegate authority to administer federal funds and control federal services on reservations (McClellan, 1990; Strommer & Osborne, 2014–2015).² The *Tribal Self-Governance Act* augmented this Act in 1994, considered the beginning of the retribalisation of the Native American Government

² For an early critical analysis of the Act, see Barsh and Trosper (1975).

(Johnson & Hamilton, 1995). Under the provisions of the Act, Native American tribes were authorised to ‘redesign programs, activities, functions or services and reallocate funds of such programs, activities or services’ (cited in Johnson & Hamilton, 1995, p. 1268). Although far from perfect, these Acts have enhanced self-governance to a much greater extent than in Canada, for example, where Indigenous policymaking and service delivery are still largely under federal control (Borrows, 2016). However, there has been a simultaneous backlash in recent years as Congress and US Supreme Court decisions have slowly undermined tribal authority and sovereignty (see Corn tassel & Witmer II, 2008; Duthu, 2013). Despite greater control of tribal affairs, the colonial legislative and policy framework that treats Indigenous Nations in the US as ‘domestic dependent nations’ remains firmly in place. The federal oversight of tribal governments continues today.

Besides participation in domestic policymaking, Native Americans have been on the cutting edge in shaping the discourse on Indigenous self-determination in scholarship. Native American scholars, most notably the late Vine Deloria Jr., were the first to theorise Indigenous self-determination and the related concepts of sovereignty, nationhood and self-government (see Deloria, 1979). With Clifford Lytle, Deloria Jr. argued for distinguishing between nationhood and self-government, which for him represented ‘two entirely different positions in the world’ (Deloria & Lytle, 1984, p. 14). While nationhood entailed political autonomy and autonomous decision-making, self-government implied a municipal-level authority with external oversight and recognition of its legitimacy. Deloria was among the first to be concerned about how ‘self-government’ detaches political life from the social and cultural life of the community. He saw how the NCAI’s call for self-determination was soon turned against tribal leaders by the federal government through the appointment of compliant Native Americans to serve in various administrative positions (Deloria & Lytle, 1984). Since Deloria’s early writings, scholarship on tribal sovereignty in the US has contributed extensively to Indigenous self-determination’s political and public policy discourses, including the global human rights framework in international law, debated in arenas such as the UN. This framework has been vital for globally establishing the normative legal and political framework for Indigenous self-determination as we know it today, perhaps best in the form of UNDRIP.

Self-determination is about relations. For Indigenous Peoples, self-determination is about a vision and struggle for restructuring relations of domination for a more just present and future for their societies. Indigenous rights advocates have successfully argued for a more accurate and inclusive interpretation of sovereignty and self-determination not limited to separation and non-interference, views promulgated by the states and settler state-driven international relations and law. I have established that in addition to being a fundamental right, self-determination is a foundational value that guides Indigenous People and their communities in their daily lives and in social, political and economic interactions at both individual and collective levels (Kuokkanen, 2019).

In international human rights instruments, self-determination is typically conceptualised as a collective human right that enables a group to determine their own polit-

ical, social, cultural and economic affairs. However, this right remains against the international legal norms of state sovereignty and territorial integrity (Anaya, 2009, p. 194). Due to the state-centred character of international law, Indigenous rights are always constructed through, and in relation to, that framework. The international Indigenous rights framework, including UNDRIP and the two International Labour Organization (ILO) conventions pertaining to the rights of Indigenous and tribal peoples (107 and 169), do not recognise that Indigenous Peoples possess sovereignty, a right considered to be vested only in states. UNDRIP upholds both the existing sovereignty in international law and the legitimacy of state sovereignty by assuming the existence of the states (Glenn, 2011; Macklem, 2015).³

Although UNDRIP conceptualises Indigenous Peoples as ‘international legal actors’, they do not inhabit the same international legal stage as sovereign states (Macklem, 2015, p. 156). This is most evident in the UNDRIP articles 4 and 5, which confine the application of the right of Indigenous self-determination to internal and local affairs. This limitation disregards the universal right to self-determination belonging to all peoples, codified in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. The doctrine of state sovereignty further restricts Indigenous self-determination by constraining the international system’s ability to get involved in or influence internal or domestic affairs, such as policymaking. A major obstacle to Indigenous policymaking by states is the states’ premise of treating Indigenous Peoples merely as subjects of domestic policy rather than rights-bearing members of sovereign Indigenous Nations (see Strakosch, 2015).

GENDERED HIERARCHIES AND EXCLUSIONS IN INTERNATIONAL LAW

Another major concern with the international Indigenous human rights regime, including the discourse of self-determination, is that it reproduces and perpetuates exclusions and hierarchies towards Indigenous women—like those maintained by international law towards women in general. This is a major factor preventing greater implementation of Indigenous self-determination. As a state-centric right, Davis (2011) highlights (in the context of Australia) that self-determination:

is skewed toward the Indigenous man as ‘Indigenous Peoples’ because it makes mistaken assumptions about the shared experiences of Indigenous men and women and has manifested in distorted policy-making and judicial decisions that impact negatively upon Aboriginal women. (p. 6)

³ For an in-depth discussion of the taken-for-granted nature of settler state sovereignty in Indigenous politics, see Nadasdy (2017) and Tully (2000).

Indigenous feminist analysis has established that Indigenous self-determination is not possible without addressing gender violence and, specifically, violence against Indigenous women. Among the first comparative studies in this area was Eileen Luna's exploration of Native American and Australian Aboriginal family violence programs. Showing how enhanced domestic violence services strengthened the self-determination of Indigenous communities, Luna established a direct link between collective and individual self-determination and the alleviation of violence against women. Luna (1999, pp. 8–9) argued that simultaneously empowering Indigenous women and communities is 'the key to significant legal and policy advances.'

Empowering Indigenous women and eliminating gendered violence is impeded by a notable lack of statistics, detailed reports and disaggregated data on the extent of violence against Indigenous women in most regions worldwide (UNPFII, 2012). Scholars emphasise that the invisibility and lack of statistics pertaining to certain groups are neither accidental nor neutral. Rather than indicating an absence of violence, this lack of statistics attests to the limited importance afforded to the problem in society. The lack of statistics has major social and economic consequences because 'statistics are fundamental to the distribution of funds and the creation of social policy' (Bograd, 1999, p. 279).

Gender violence negatively impacts not only women and girls but entire communities, typically creating cycles of violence and intergenerational individual and collective trauma, as well as contributing to the breakdown of family and kinship relations, including the removal of children to foster care and the child welfare system. This all has an immense impact on the community's cohesion and community capacity, and thus a community's ability to control its collective affairs. The effects of gender violence are felt by women who experience violence and by families and communities in terms of grief and suffering, as well as impacting the community's capacity to function collectively (Giustina, 2008; Helliwell, 2002). My research has further shown that when violence against Indigenous women is not recognised as a public concern with extensive social consequences, it effectively stands in the way of implementing Indigenous self-determination. Considering the heightened levels of gendered violence in many Indigenous communities, gendered violence prevents a substantial percentage of community members from fully participating in self-determination efforts and governance initiatives. Nationhood is not possible in crisis conditions, as one of my research participants put it: 'how can we be nations if we're all beat up and bruised all the time, not just literally the women, but as families and communities?' (Kuokkanen, 2019, p. 182).

With regard to implementing Indigenous self-determination and, more broadly, the Indigenous rights stipulated in UNDRIP, the question of violence against Indigenous women highlights two related issues. First, the invisibility and separation of gendered violence from the self-determination agenda have material and often very negative effects on Indigenous women (who bear the disproportionate brunt) and, more broadly, on Indigenous societies in terms of community capacity. Second, if Indigenous women's rights are not protected and advanced on par with those of Indigenous men, we are not respecting and promoting the human rights of all, but

only certain groups and certain rights. In short, UNDRIP cannot be excluded from scrutiny in assessing its ability to equally protect all Indigenous individuals' rights, including Indigenous women and two-spirit and queer individuals (LGBTQ2S+).

There are several reasons why Indigenous rights are so difficult to implement. For one, it is not in the interest of settler colonial states to advance Indigenous self-determination and land rights because of states' dependence on Indigenous dispossession of their lands and resources. What is less obvious is that the very human rights instruments and Indigenous rights mechanisms established to advance Indigenous self-determination have been constructed without attention given to the built-in gendered hierarchies and exclusions in international law. Next, I consider the relationship between the implementation of self-determination, often framed in terms of self-government and policymaking.

POLICY AND SELF-GOVERNMENT

In Canada, the federal government recognised the inherent right of self-government as a policy (the 'Inherent Right Policy') in 1995 as an existing Aboriginal right under section 35.⁴ Initially, self-government was not entrenched in the *Constitution Act 1982*, which, under section 35, recognises Aboriginal peoples (i.e., Indians, Inuit and Métis) and affirms existing Aboriginal and treaty rights. Regardless of its lofty name, the federal 'Inherent Right Policy' does not recognise Aboriginal self-government as a right pre-existing in the establishment of the Canadian state but instead constructs it in narrow technical terms.⁵ Since the Inherent Right Policy, self-government agreements have often been negotiated as part of comprehensive land claims settlements (also known as modern treaties). A major problem with comprehensive land claims settlements is that they continue the extinguishment policy established in the historical treaties the Crown signed with Indigenous Nations (the

⁴ Notwithstanding the federal government's interpretation of section 35 recognising self-government as part of existing Aboriginal rights, Canadian Courts have not yet explicitly confirmed the constitutional protection of the right to self-government. The Supreme Court of Canada has left the question open, while some lower courts maintain the right does not exist (see Christie, 2007; Imai, 1999). There are exceptions, such as *Campbell v British Columbia (Attorney General)* (2000), providing that Aboriginal self-government rights are constitutionally protected and have not been extinguished (Morellato, 2008). Canadian courts have also recognised the pre-existing sovereignty of Indigenous peoples (Supreme Court of Canada decision in *Haida Nation v British Columbia (Minister of Forests)*, 2004).

⁵ In practice, 'inherent' means 'constitutional': by recognising the 'inherent right' of Aboriginal self-government, the federal government means that Aboriginal people have a right written into section 35 of the *Constitution Act 1982* to govern themselves in relation to matters that are internal to their communities, their 'unique' cultures, identities, traditions, languages and institutions, and with respect to their special relationship to land and their resources. The 1995 'Inherent Right Policy' also amended the previous land claims policy, making it possible to negotiate land claims and self-government simultaneously and be included in the same agreement (see Morse, 1999).

numbered post-Confederation treaties 1 to 11, signed between 1871 and 1921). The extinguishment policy is a process in which undefined Aboriginal and treaty rights are surrendered in exchange for a degree of self-government, minuscule percentages of traditional territory and a financial settlement. Although no longer called ‘extinguishment’ (e.g., Nisga’a Nation, 1998), it has been noted that there is no difference between extinguishment and in so-called ‘release’, for the legal effect is the same (Manuel, 2015; Tully, 2000).⁶

Deloria’s (1979) early critical analysis of self-government policies continues to influence Indigenous scholars and policy analysts beyond the US. In Canada, his theories have informed criticism of the federal government’s Inherent Right Policy for its deliberately ambiguous language, if not double standard. While the right to self-government is recognised as ‘inherent’ in the abstract, the policy requires First Nations to negotiate to give effect to this ‘inherent’ right and limits it to the delegated municipal-style authority (Manuel, 2015; McNeil, 2007). Scholars have also criticised the current self-government framework in Canada not only for its limited authority but, more fundamentally, for allowing colonial structures and policy frameworks to remain unchanged. Meanwhile, self-management of poverty and social problems is delineated to Indigenous communities without supplying them with the resources necessary to tackle them (Coates & Morrison, 2008; Coulthard, 2007; Irlbacher-Fox, 2009; Maaka & Fleras, 2005; Monture Angus, 1998). Others argue that negotiated self-government represents continued dispossession of Indigenous territories to create certainty for the government and extractive industry (Asch, 2014; Coulthard, 2014; Manuel, 2015).

An inherent problem of the Inherent Right Policy is its apparent objective to ‘simply modernize an unjust relationship’ (Irlbacher-Fox, 2009, p. 160). The colonial relationship remains unchanged, as the negotiated self-government agreement must fit within the Canadian constitutional framework and ‘[t]he original and ongoing dispossession of lands, resources, political autonomy and cultural integrity’ is not addressed at all (p. 161). With the inherent right approach, the core question of self-government identified by the Royal Commission of Aboriginal Peoples—the fair redistribution of land and resources—is overlooked. This is to the extent that some characterise the state-led self-government negotiations as ‘termination tables’ to put an end to Indigenous rights and turn First Nations into municipalities (Diabo, 2016).

Indeed, it seems that the policy, specifically established to recognise and realise the ‘inherent’ right of Aboriginal self-government in Canada, has utterly failed to advance Indigenous self-determination. What does this say about the challenges of policymaking and creating policies to assist in implementing self-determination in

⁶ Unlike the Nisga’a, the Tsilhqot’in Nation, also in British Columbia, chose the court system over the modern treaty process. In a historic decision in July 2014, the Tsilhqot’in established Aboriginal title over 40 per cent (approximately 1,900 square kilometres) of their traditional territory and became a first Indigenous people in Canada to win title to their land in courts.

concrete terms? The foundational problem is that, in its dealings with Indigenous Peoples, the state will, first and foremost, always protect its own interests. In Canada, this is evidenced by how the most recent Liberal Government (under Justin Trudeau) has continued to push for an aggressive extractive agenda in Indigenous territories—despite its lofty rhetoric about nation-to-nation relationships mattering most—upon coming to power in 2015.

Even a schematic glance at how the 1995 Inherent Right Policy says one thing (recognising the ‘inherent’ right to self-determination) and does the other (terminating Indigenous rights) leads to the conclusion that the state should simply stay out of making policy for Indigenous Peoples. Thus, the question is not about what kind of public policy the state should be making vis-à-vis Indigenous Peoples but whether the state should be the primary authority or even an actor in Indigenous policymaking. The UNDRIP’s key articles on self-determination support this argument. Articles 4 and 5 specify that Indigenous Peoples have the right to their own political and other institutions and have the right to run their own internal affairs. Although policymaking is not specifically mentioned in these articles, it is obvious that ‘running their own internal affairs’ involves, first and foremost, the right to create policies according to their own needs and priorities.⁷

The Canadian Inherent Right Policy demonstrates that Indigenous self-determination is not a public policy issue. Let us take seriously the fact that Indigenous Peoples are distinct political communities with their own governing institutions and conventions. The state then has no business in drafting policies that prescribe the formula for self-government with pre-existing conditions and constraints. The shape that Indigenous self-determination takes in each circumstance must be left for Indigenous Peoples to deliberate and create according to their own principles and practices. Nevertheless, recognising that Indigenous self-determination also entails a shared rule implies the need for renegotiating Indigenous–state relations. A more viable option would be the legislative route—agreeing on and passing an Act to establish a framework within which Indigenous Peoples could shape their self-governing structures in a way they see fit. It goes without saying that the framework would need to be loose enough to enable broad enough jurisdiction and decision-making authority over internal affairs.

There are several examples of this approach in Nordic countries. Greenland has negotiated and passed extensive self-government legislation with Denmark in 2009, while Norway, Sweden and Finland have passed more limited legislation regarding Sámi ‘cultural autonomy’ between 1988 and 1995. The significant difference between the two sets of legislation is that in Greenland, the Act establishes a public government. In contrast, in the other Nordic countries, the legislation applies only to the Sámi people. While discussing the Sámi legislation and policymaking is beyond this chapter, a brief cautionary note via an example is warranted. Particularly, the

⁷ It is interesting in and of itself that policymaking is not mentioned in UNDRIP except in reference to racist policies of the state in the preamble.

case of the Sámi Parliament in Finland illustrates the need for robust legislation that encompasses the necessary authority and other tools to operationalise and develop self-determination in concrete terms. The national legislation enacted in 1995 in Finland for Sámi cultural autonomy established a general framework within which Sámi cultural autonomy was supposed to be developed. The development of Sámi cultural autonomy stalled after establishing new institutions, becoming a mere formal consultation practice between the government and the established Sámi Parliament. Due to the lack of judicial and public policy avenues, the Sámi Parliament and other key institutions have not been able to give meaning and substance to Sámi cultural autonomy (Guttorm, 2018).

The *Greenland Self-Government Act* of 2009 provides Greenland sole authority for almost all areas of jurisdiction over which a government can exercise legislative and executive authority. Greenland's self-government is commonly considered a leading example of implementing and exercising Indigenous self-determination, even though it is a public government, not a form of Indigenous self-government based on international norms for Indigenous Peoples' rights. As Indigenous People, the Inuit in Greenland are globally at the forefront of running their own affairs and making their own policies virtually in all areas of government.⁸ There are policy areas of specific concern among Greenlanders, such as the development of mineral resources, and social policies, of which I focus here on violence against women. Many observe that the government of Greenland (Naalakkersuisut) is either not doing enough in these areas or has adopted an inappropriate approach (see Kuokkanen, 2019).

Particularly the first four years of Greenland's new self-government (2009–2013) were characterised by an intense push by Naalakkersuisut to develop the country's vast mineral resources. The high commodity prices led to great interest in Greenland by transnational oil and other exploration corporations. Perhaps most pressingly, Naalakkersuisut was pushed to seek new sources of revenue as the annual block grant from Denmark had been frozen per the self-government agreement. Greenlanders saw the importance of diversifying the economy, which was based almost entirely on fishing. At the same time, many felt unease with the aggressive push for rapid exploitation of the country's underground wealth, which was being made more accessible in part by climate change melting the icecap that covers over 80 per cent of Greenland's land mass.

One cause for concern in Greenland relates to the environmental and social standards in place to ensure healthy natural resources that safeguard the Inuit hunting and

⁸ Through the *Self-Government Act*, Greenland has the right to elect its own parliament and government, the latter with executive authority over the areas of jurisdiction included in the Act. The elected assembly or the Parliament of Greenland (Inatsisartut) consists of 31 members, who are elected by the population of Greenland for a four-year period. The elected assembly approves the government, which is responsible for the central administration, headed by a premier with a cabinet. The parliament also appoints the premier, who nominates the ministers for the cabinet. There are currently 10 ministers, the majority of whom are Inuit Greenlanders.

fishing culture. Another growing concern has had to do with the shortcomings in consultation and transparency regarding planned activities. Two well-known examples, lifting the 25-year-old moratorium on uranium mining and awarding a licence for an iron-ore open pit mine known as Isua, illustrate these challenges well. A movement against uranium mining petitioned the government with 1,200 signatures, demanding a referendum on the issue. Many, including leading opposition politicians, were deeply critical of citizen involvement in the decision-making. Some suggested that the government adopted a deeply anti-democratic approach and failed to observe the key norm of UNDRIP: free, prior and informed consent (Olsvig, 2013). Similarly, the Isua project was criticised for inadequate public consultation and considerable environmental, cultural and socioeconomic impacts, including importing several thousand foreign labourers to construct and operate the mine.

Another policy area that needs greater attention from the Greenland self-government is addressing violence against women. In Greenland, violence and homicide rates are high, but statistics on gendered violence in Greenland are next to non-existent. According to one survey, 63 per cent of the adult population perceive family violence as a problem, and 58 per cent perceive sexual abuse as a social problem (Poppel, Kruse, Duhaime & Abryutina, 2007). Moreover, young Greenlandic women report being sexually abused more than other groups in Greenland (Naalakkersuisut, 2013, p. 26). In 2013, the Naalakkersuisut launched its ‘Strategy and Action Plan against Violence, 2014 to 2017’, which remains by and large gender neutral. Beyond making a passing reference to violence being gendered and recognising that, in Greenland, perpetrators of violence are mostly men, the gendered character of violence is not considered. Rather than as a matter of Indigenous self-determination, violence is primarily seen as a social and criminal issue leading to ill health and the socioeconomic marginalisation of individuals.

Although violence negatively impacts entire Indigenous communities, it is inadequate to consider violence in non-gendered terms, such as through the euphemistic terminology of ‘domestic violence’, ‘spousal abuse’ or ‘family violence’. Referring to the problem correctly—violence against women—legitimises it as a serious public social and political concern rather than a personal problem. It also helps identify and create specific and more appropriate policies, programs and laws to address the issue (Naranch, 1997, p. 24). Violence, abuse and aggression in intimate relationships are always gendered, and claims for gender symmetry obscure the facts, the problem and solutions alike (Bergen, 1998; Hamberger & Guse, 2002; Johnson, 1995; Kimmel, 2002; Saunders, 2002; Yllö & Bograd, 1988). Male violence against women and female violence against men are not identical because each takes place within specific contexts of gender shaped by history, culture, economy and politics. These contexts include women’s lower economic status within the family, a greater share of caregiving work and the very construct of the nuclear patriarchal family in which men can yield their privilege, power and control over their wives (Loseke & Kurz, 2005; Yllö & Bograd, 1988).

INDIGENOUS POLICYMAKING

The Greenland policymaking example demonstrates some of the challenges Indigenous governments face regarding policies that respect and uphold Indigenous rights. It points to the fact that Indigenous People gaining control of decision-making and policymaking in their own affairs does not automatically guarantee adherence to Indigenous rights as stipulated in international human rights instruments such as UNDRIP. Put bluntly, self-determination does not automatically mean ‘appropriate’ or ‘good’ policymaking—if ‘good’ policy implies ensuring that the human rights of all segments of society are taken into consideration. This brings us back to the questions asked in this chapter: How do we ensure that human rights apply to all, not only to certain groups, in society? What would be the requirements of such policy and governance?

I suggest that one of the key requirements of policy that respects Indigenous self-determination in its fullest sense and the human rights of all Indigenous People is to place marginalised groups at the centre of policymaking. ‘Marginalised’ implies groups that have not conventionally been actively and/or meaningfully involved in Indigenous decision and policymaking, such as children, two-spirit/queer people and women. I eschew the term ‘special needs’ or ‘vulnerable’ used in UNDRIP in reference to Indigenous elders, women, youth, children and persons with disabilities (Article 22) because it implicitly assumes the male norm. It naturalises ‘special needs’—particularly those of women—instead of paying attention to structures and relations that actively construct and perpetuate them. Women, including Indigenous women, are not ‘special needs’. Their ‘vulnerability’ is socially constructed by patriarchal power relations, resulting in systemic and persistent gender discrimination and subjugation in society (Iorns, 1993; Jaggar, 2009). Gendered power relations in society are sustained by both material factors such as economic inequalities and by ideas and beliefs (Nedelsky, 2011).

Especially concerning children, placing them at the centre of policymaking may first sound unconventional or even far-fetched. It does not mean that children would be actively involved in decision-making—although engaging youth more extensively and meaningfully in political and policy processes is something that many youths want and expect (Kuokkanen, 2019, p. 104). The idea of placing children at the centre of policymaking draws on the suggestion made by Wanda Nanibush, who maintains that, with regard to the survival and future of Indigenous societies, ‘children and their wellbeing is the first and last question’.⁹ Ultimately, Indigenous governance systems ought to be structured in a way that children would be not only at the centre of community life but also at the centre of all political decision-making in a way such that all community decisions would be about children and their wellbeing (Kuokkanen, 2019, p. 223).

⁹ Nanibush on a panel on Idle No More at the International Studies Association Meeting, Toronto, 24 March 2014.

There are critical policy analyses considering the problems of existing child welfare systems in Indigenous communities. However, they do not go as far as to suggest establishing a framework in which all decision-making and policymaking centre around the wellbeing and needs of children (e.g., Sanderson, 2012). A common shortcoming of these analyses is their lack of gender analysis or consideration of the effects of the imposition of colonial institutions (such as child welfare) on gender relations and conceptions of family in Indigenous communities. And Indigenous child welfare policy must address the nuclear family's implicit and explicit patriarchal ideologies and assumptions to amount to a radical but necessary policy and legislative shift. These extend to a number of other areas of legislation and policy, such as matrimonial property laws and housing questions that seriously impact women's ability to protect themselves and their children from abuse and violence and ensure basic safety and security.¹⁰

I suggest that one potential way of addressing the challenge of excluding marginalised groups from policymaking and political participation is to closely consider certain traditional Indigenous governance systems that guarantee the participation of all segments and groups of society. One such example can be found in the Haudenosaunee, specifically, the Seneca governance model discussed in detail by Oneida legal scholar Robert Porter (1999). Very briefly, the traditional Haudenosaunee model of governance was and continues to be based on decision-making along gender-specific political roles, the main ones being the clanmothers and the chiefs (*royaneh*). 'The *royaneh* are all men but are selected by the women from his nation whose family "holds" the particular title' (p. 103). Clanmothers also removed chiefs from their positions if they failed to serve their people. If and when the chiefs neglected to heed the clanmothers' advice, 'both the men and women of the Confederacy would meet in their own separate councils to discuss the matter and give notice and warnings to the *royaneh* to take corrective action' (p. 105).

Porter (1999, p. 135) notes that the Haudenosaunee governance structure based on *Gayanashagowa* (the Great Law of Peace) worked 'for one important reason – it promoted peace by ensuring that all members of Haudenosaunee society had a say in the governmental process.' Porter submits that the idea of equal (i.e., same) rights to political participation does not necessarily square off with the unique historic gender-based decision-making of the Haudenosaunee in which women were politically equal with men but with clearly gender-differentiated political roles.

To consider the traditional gender-differentiated Haudenosaunee governance system is not to propose to imitate or reproduce it, which would not amount to much more than appropriation and distortions. Rather, it is to point to the utmost significance of establishing governance structures that account for all members of a society in its decision and policymaking. Additionally, it shows the possibilities that exist. It may serve as an impetus for not only paying a closer look at existing systems but also taking the feminist argument about the imperative of responding to the needs

¹⁰ See my critique of Sanderson's proposal in Kuokkanen (2019, ch. 6).

and concerns of all citizens and community members seriously. Only by restructuring governance institutions in a way that the participation of every group is guaranteed can we achieve policymaking frameworks and platforms that take everyone's rights into question in a way necessary for implementing Indigenous self-determination in its full sense.

CONCLUSION

The fundamental problem with public policy is that it assumes state jurisdiction over Indigenous Peoples. It does this by creating them as subjects of domestic policy and then treating them as such without heeding the internationally established norm of recognising Indigenous Peoples as right-holders of self-determining Indigenous Nations and societies. Indigenous self-determination is not a public policy issue. Failure to recognise and treat Indigenous Peoples as distinct political communities is a normative problem, not just a matter of states' inadequate respect for and support of Indigenous rights, including the right and foundational value of self-determination.

In this chapter, I have examined the relationship between policymaking and the implementation of Indigenous self-determination, which remains challenging despite UNDRIP's normative framework. I focused on one of the central questions framing this *Handbook*: What are the core requirements and frameworks of policy and governance that respect Indigenous human rights? To answer that question, I first considered why Indigenous rights and the norms specified in UNDRIP are so difficult to implement.

Several interrelated obstacles prevent Indigenous rights in general and Indigenous self-determination specifically from being properly implemented and operationalised. One set of obstacles is the international human rights framework itself, within which UNDRIP is formulated and located. These include the norm of state sovereignty, which delimits and constrains Indigenous self-determination in a number of ways ranging from states' unilateral imposition of authority and jurisdiction to protecting this jurisdiction within state boundaries as 'internal' or 'domestic affairs'. Public policy and policymaking are central issues in this. Related and problematically to some, UNDRIP sustains the status quo of state sovereignty through the existence of the states.

The third challenge is how the international human rights regime, including the legal and political discourse of Indigenous self-determination, marginalises women's rights and concerns. One major concern is gendered violence, which, according to Indigenous women, is a central issue of Indigenous self-determination. When violence against Indigenous women is not identified as a public concern with extensive social consequences, it obstructs the implementation of Indigenous self-determination (Kuokkanen, 2019). First, the invisibility and separation of gendered violence from the self-determination agenda have material and often very negative effects not only on Indigenous women (who obviously bear the disproportionate brunt) but also, more broadly, on Indigenous societies in terms of community capacity.

Second, if Indigenous women's rights are not protected and advanced on par with those of Indigenous men, we are not respecting and promoting the human rights of all, but only certain groups and certain rights. In other words, there is a conspicuous lack of policies and governance frameworks aimed at eliminating violence against Indigenous women, considered a precondition of Indigenous self-determination. Conversely, research has also demonstrated that the concurrent empowerment of Indigenous women and Indigenous communities directly feeds into notable progress in policy.

To answer the second question about requirements for policy that respects and promotes Indigenous rights, I considered two cases: the 1995 Canadian Inherent right to self-government policy and Greenland's 2009 *Self-Government Act*. I maintain that Indigenous self-determination cannot be advanced or put into practice through public policy by the state. Policymaking by a settler colonial state is always informed by its own political and economic interests, which starkly oppose genuine Indigenous self-determination. I suggest that a better avenue is negotiating and passing framework legislation that grants and enables *factual* and *substantial* authority, jurisdiction and policymaking capacity to Indigenous People. As the example of the Sámi cultural autonomy legislation in Finland shows, simple framework legislation is incapable of providing the necessary tools for giving substance to or operationalising self-determination in practice.

UNDRIP's articles 4 and 5 enshrine that Indigenous Peoples have the right to their own political and other institutions and to run their own internal affairs. The Inuit in Greenland have achieved this through their public self-government legislation. I discussed two policy areas in this chapter, the development of the country's mineral resources and the elimination of violence against women in Greenland, and conclude that the Inuit-led government of Greenland, or Naalakkersuisut, has not, however, yet successfully created policies that would equally protect the rights of all Inuit Greenlanders.

Considering the challenges and shortcomings of existing policy decisions and frameworks—including those by Indigenous Peoples themselves—in advancing Indigenous self-determination, I turned in the final section of the chapter to a discussion of what a policy that takes the human rights of all Indigenous People into account would look like. I contend that the fundamental requirement is to position currently marginalised groups as the starting point of policymaking. Only in this way will public policy respect Indigenous self-determination in its entirety and the human rights of all Indigenous People. There are historical examples of Indigenous political communities where governance structures were such that they ensured the effective participation of all groups in society in important deliberations and decision-making. These examples illustrate the possibility of achieving Indigenous self-determination that heeds all Indigenous People's rights and freedoms. At the same time, these examples show that focusing on Indigenous rights profoundly transforms policymaking. Implementing Indigenous self-determination to the fullest requires no less than the comprehensive restructuring of existing governance and policy frameworks.

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