

Cattedra

---

RELATORE

---

CANDIDATO

Anno Accademico

# Sociocultural Relations of Aboriginal Communities in Canada From the Past to the Present.

# SUMMARY

<b>SUMMARY</b>	<b>2</b>
<b>1 INTRODUCTION</b>	<b>1</b>
<b>2 HISTORY OF ABORIGINAL COMMUNITIES IN CANADA</b>	<b>3</b>
2.1 History of Canada	3
2.2 Identification of Aboriginal communities (origin, first settlements, missionaries...)	7
2.3 Evolution of Aboriginal communities in Canada (migration from European and American peoples, and even from Africa)	11
2.4 Youth in Aboriginal Communities Facing Globalization	13
□ Youth in turmoil	14
<b>3 LEGISLATION</b>	<b>16</b>
3.1 History of Aboriginal Peoples' and Human Rights Law in Canada	16
3.1.1 History of Peoples' Law	16
3.1.2 Overview of the source of Aboriginal rights in Quebec	19
3.2 Law governing the life of Aboriginal people in Canada	20
<b>4 ABORIGINAL SOCIO-CULTURAL ISSUES IN CANADA</b>	<b>24</b>
4.1 Aboriginal Peoples and Policy Issues	24
4.1.1 Objective I : Assimilation	25
4.1.2 Objective II : Opening up the land	26
4.2 The changing relationship between Aboriginal peoples and the powers that be	29
4.3 The Status of Aboriginal People in Canada	33
4.4 Aboriginal-State relations in the contemporary period or the search for a new relationship	35
<b>5 CONCLUSION</b>	<b>40</b>

# 1 INTRODUCTION

"The transcendence of the ugly religious and traditional ancient indigenous energy is the good education of the youth" according to Claude-May Waia. It has been argued that the youth or any individual from a country is inevitably a victim of the mores that have formed the basis of his descent. Indeed, the sociocultural life of a people is very frequently in perfect harmony with the developments that its environment undergoes. It is therefore impossible for a generation to think of doing without its history, which is obviously the original element of its culture. Whatever the environment, the life of the natives is an important source for locating the origin of the inhabitants. Even though migration or changes in communities have become more prevalent recently because of the constant change in the world in terms of migration, it is crucial to locate the history and understand the foundations that have helped to create a people. Today's world affects its environment, but the latter is obliged to remember its genesis.

It is essential to understand that Canada was not created in one day. It is the result of the communities that have contributed to this outcome. And, it is also important to note that the settlement of these different cities by today's inhabitants is the fruit of the lives of the indigenous people, who have been knitting together in a chameleon-like fashion since its genesis. But is it possible to be an 'Aboriginal' in the city? According to « Le Regroupement des Centres d'Amitié d'Autochtones du Québec, 2006 », "the city is a choice for some ; for others, an obligation. Urban Aboriginals, by virtue of their very condition, live in such a precarious situation today that it forces them to ask themselves fundamental questions, not only about their own fate but also about the future of their brothers and sisters living in communities. By moving away from their community and living in the city, urban Aboriginal people not only lose the natural protection of their community of origin, but also come face to face with a non-Aboriginal environment which, while not necessarily hostile to them, nonetheless defends customs and values that are far removed from those that define them personally. Thus, to ensure the preservation of their culture and identity in the city, urban Aboriginal people have not sat back and waited for solutions to be suggested to them. On the contrary, they have come together and created meeting places that contribute to their identity, cultural, social, economic and political strengthening. In this sense, for example, the Native Friendship Center Movement is an effective and accessible network that promotes the development of an emerging community : the urban Aboriginal community. In this context, youth are victims of their history despite the current challenges of globalization that they must face while keeping in mind their origins.

In this paper, it is important to focus on the sociocultural relations of Aboriginal communities in Canada from the past to the present. Here, the primary objective is to present Aboriginal communities in Canada in terms of their histories through the particular legislation to which they are subject. Also, the basis of their stories while describing the inappropriate conditions they faced by the Catholic residential schools and the links they had to see with citizens of other origins like Americans or Europeans.

To present this work, I have divided it into three parts :

In the first part, I will present the history of the Aboriginal communities in Canada, from the history of Canada to the history of the Aboriginal people and back to the evolution observed in the face of globalization and finally the youth community of today.

The second part will help us to understand the history of the legislation to which the Canadian community is subject today.

The last and third part will allow us to assimilate the sociocultural issues of the Aboriginal peoples in Canada.

## **2 HISTORY OF ABORIGINAL COMMUNITIES IN CANADA**

### **2.1 History of Canada**

Canada, as far back as history allows, stretched from the Pacific to the Atlantic and was essentially made up of Indian tribes scattered throughout a huge and long unconquered area. From 1534 to 1542, Jacques Cartier crossed the Atlantic three times claiming land for the French king François I. Indeed, under the order of François I, by letter dated 12 March 1533, Jacques Cartier, a skillful navigator from Brittany, was ordered to travel to the islands and countries of a kingdom of new lands considered containing great wealth including gold (Garneau, 1944). In a letter dated 12 March 1534, the king granted Cartier a subsidy of 6,000 livres and the authorization to arm ships for this conquest and, above all, to find the North-West Passage, the Cathay Passage. Cartier left Saint-Malo on 20 April 1534 for an expedition that would bring him back on 5 September 1534. During this expedition, he discovered New France and set up a cross at Saint-Servan and the Gaspé Peninsula. This first expedition helped him to discover the St. Lawrence later on, thanks to the two sons of the Huron Indian chief (Donnacona) who had followed him from the Gaspé Peninsula on his return and told him about the existence of the great river. The name "Canada" probably comes from the Huron word *kanata* and means "village" or "town". In fact, it appears that the two sons of the chief wished to show Jacques Cartier the way to Kanata, referring to the village of Stadacona, the present-day location of Quebec. The latter used this word to designate all the territory governed by their father, the Huron chief Donnacona, as well as all the territory of the St. Lawrence River, which he had nicknamed "the river of Canada". It is important to note that what shaped the relationship between the French and the Natives was, above all, trade, the fur trade. This activity required collaboration and good neighborliness with the Aboriginal trappers and traders (LEPAGE, 2019). The second expedition, a little longer than the previous one, which lasted from 1535 to 1536, enabled him to travel up the St. Lawrence to Québec and Montréal (Garneau, 1944). He did not find precious metals or other riches, but strengthened his relationship with the Huron. Even the third expedition from 1541 to 1542, undertaken under the orders of Roberval, did not allow him to find the sea route to China (the Cathay Passage), nor did the attempt at colonization work. It should be remembered that no one before Jacques Cartier had dared to enter and stay in the heart of the New World in the dense winter climate of Canada.

French colonization began in earnest in 1603, during the last years of King Henry IV. The effectiveness of this colonization arrives in 1608 with Champlain on Quebec. The word Québec, according to Champlain, was the way the natives referred to the place where he had landed, and it meant "straight", the narrowing of the St. Lawrence at Cap-Rouge where the river is no more than 500 yards wide (Garneau, 1944). Taken by the British in 1763, Quebec returned to France in 1763 under the Treaty of Saint-Germain-en-Laye. New France contained present-day Canada and was established on both sides of the St. Lawrence, from Quebec to Montreal, with a hinterland extending from Labrador to Mexico. It was hotly contested between France, Spain and England because of the boundaries. By the Treaty of Saint-Germain-en-Laye, signed on 29 March 1632, England renounced all its rights over the provinces that made up New France : Acadia and Canada. It should be noted that "Canada sits on a bed of granite, which forms the framework of its highest mountains and shows itself bare on Lake Superior, Lake Huron, at Kingston, in several other places in Ontario ; on the Saint-Maurice River, at Beauport, at Tadoussac, at Kamouraska, in Labrador. This granite is covered by different kinds of rocks, the most abundant of which are sales, limestones and sandstones".

It was in 1791, when Quebec was subdivided into the two colonies of Upper and Lower Canada, that the name "Canada" was first officially used, although the two colonies were reunited in 1841 as Canada. The provinces of Canada, Nova Scotia and New Brunswick became a single confederation called Canada on July 1<sup>er</sup>, 1867, and form a country in North America bordered by the United States of America to the south and northwest, the North Atlantic to the east, the Arctic to the north and the North Pacific to the west with Ottawa as its capital. During the Second World War, to defeat Nazism and Fascism, the Allies invaded Nazi-occupied Europe. Canadians participated in the liberation of Italy in 1943-44. On June 6, 1944, a date of great renown as "D-Day", taking part in the epic Normandy invasion in northern France, 15,000 Canadian soldiers stormed Juno Beach and wrested it from the German army, a great national achievement depicted in this painting by Orville Fisher. On that day, about one in ten Allied soldiers was Canadian. The Royal Canadian Navy also had its moment of glory in the Battle of the Atlantic, when it protected convoys of merchant ships from German submarines. Canada's Merchant Navy helps feed, clothe and resupply Britain. The Canadian Army liberated the Netherlands in 1944-45 and was partly responsible for the German surrender on May 8, 1945, ending six years of war in Europe. By the end of the Second World War, Canada had the third-largest navy in the world. In the years following the war, French Canadians flourished both socially and culturally. Post-war Canada experienced record prosperity and significant

progress. Treaties such as the General Agreement on Tariffs and Trade (GATT), now the World Trade Organization (WTO), eased the restrictive trade policies applied around the world during the Great Depression. The discovery of oil deposits in Alberta in 1947 launched Canada's modern energy industry. In 1951, for the first time, many Canadians can afford adequate food, shelter and clothing. From 1945 to 1970, Canada moved closer to the United States and other trading partners, and the Canadian economy became one of the most successful of the industrialized nations. Today, the standard of living of Canadians-maintained through hard work and trade with other countries, especially the United States-is one of the highest in the world. As Canada's prosperity grows, so does its ability to support its social assistance programs. The Canada Health Act was passed, guaranteeing common elements and an original standard of protection; the federal government created Unemployment Insurance (now called "EI") in 1940; the Old Age Security Program was introduced in 1927; the Canada Pension Plan and the Quebec Pension Plan were introduced in 1965. In addition, the provinces and territories provide publicly funded education.

Like Australia, New Zealand and other countries, Canada gradually became more and more self-sufficient and was now able to make significant contributions internationally. The Cold War began when several liberated Eastern European countries became members of a communist bloc controlled by the Soviet Union under the dictatorship of Joseph Stalin. Canada joins with other Western democratic countries to form the North Atlantic Treaty Organization (NATO), a military alliance, and with the United States to create the North American Aerospace Defence Command (NORAD). Canada becomes a member of international organizations such as the United Nations (UN). It participated in the UN operation to defend South Korea in the Korean War (1950-1953), with a death toll of 500 and 1,000 casualties. He also took part in numerous UN peacekeeping missions in countries as diverse as Egypt, Cyprus and Haiti, as well as other international security operations, notably in the former Yugoslavia and Afghanistan. The 1960s were a time of rapid change in Quebec, known as the "Quiet Revolution". Many Quebecers sought to separate from Canada. In 1963, Parliament established the Royal Commission on Bilingualism and Biculturalism, which led to the adoption of the Official Languages Act (1969), guaranteeing services in English and French by the federal government across Canada. In 1980, the movement for Quebec sovereignty gained momentum, but was defeated in a referendum held in the province. After much negotiation, in 1982 the Constitution was amended without Quebec's consent. Although the sovereignty movement was



defeated again in a second referendum in 1995, Quebec's autonomy within Canada is still debated today and is part of the dynamic that continues to shape our country.

## 2.2 Identification of Aboriginal communities (origin, first settlements, missionaries...)

The term "Aboriginal" refers to the first peoples of North America and their descendants who came from Siberia and entered Canada thousands of years ago. They would have crossed the Bering Strait, dried up several times during the last great ice age, and then populated the American continent. These Aboriginal peoples can be divided into three main groups initially<sup>1</sup> :

- *The First Nations* (the first inhabitants of the country) represent about 65% of the Aboriginal people, still called Indians, and include all the Aboriginal peoples except the Inuit and the Métis. Today, about half of the First Nations people live in about 600 on-reserve communities, and the other half live off-reserve, mostly in urban centers ;
- *Inuit* (the Indians of the Far North), which means "man, human being" in the Inuktitut language, represent about 4% of the Aboriginal population. They are small communities spread across the Arctic, from the Bering Strait to Greenland. Their knowledge of the land, sea and wildlife has enabled them to adapt to one of the most arid environments on the planet ;
- *Métis* (children born of the marriage of early "French and English" traders to First Nations women) are a distinct people who are only made up of people born of the union of Aboriginal and European people. Most live in the Prairie provinces. They come from both French and English-speaking backgrounds and speak their own dialect, Michif. They make up 30% of Aboriginal peoples.

However, it is important to note that these indigenous peoples are essentially grouped into two broad categories : Inuit and Amerindian. In the past, some nations were sedentary and relied primarily on agriculture and hunting for their livelihoods, but the majority led a nomadic life. The Inuit, whose ancestral homeland between Hudson Bay and Labrador is called Nunavik (meaning "the great place where we live"), moved mainly from camp to camp, living in igloos or temporary camps, searching for game and fish to ensure their survival. The Amerindians, on the other hand, gathered in specific places during the summer. As soon as autumn came, they dispersed, in groups of two or three families, over hundreds of kilometers of forest<sup>2</sup>. Thanks to their knowledge of the territory, the natives helped the Europeans to adapt to the harsh climate and to take advantage of the flora and fauna. Exchanges allowed for the sharing of each other's

---

<sup>1</sup> Excerpt from the Study Guide "Discover Canada, The Rights and Responsibilities of Citizenship

<sup>2</sup> Excerpt from "Amerindians and Inuit PORTRAIT OF THE ABORIGINAL NATIONS OF QUEBEC", 2nd edition, available at [www.autochtones.gouv.qc.ca](http://www.autochtones.gouv.qc.ca) under the heading "Publications and documentation".

know-how, thus contributing to the creation of a new society, made up of multiple influences. A study has indicated that there is a common gene between the bones of hunters from the Russian region of Lake Baikal and those of the first Amerindians. It is estimated that at the time of contact with Europeans, the Amerindian population scattered over the territory of Quebec numbered about 25,000 individuals<sup>3</sup>. It should also be noted that the Amerindians actually include a definite number of ethnic groups that it is important to discover :

- *The Algonquins*, that is to say, according to the translation, "the real men" have their territory that extended from the Lake of Two Mountains, in the region of Montreal to Abitibi-Témiscamingue and Ontario allowing them to control the Ottawa River, the main fur route. Even today, like the of their ancestors, some families spend the entire winter in their hunting grounds.
- *The Mi'kmaq* were settled at the mouth of the St. Lawrence and were the first to encounter European newcomers in the 16<sup>e</sup> century, mainly because of their fishing and navigational skills. Today they live mainly in Gaspé, Nova Scotia and Prince Edward Island.
- *The Atikamekw*, otherwise known as "white fish", had to find a place for themselves between the territories of the Algonquins, the Crees and the Innu by playing an important role in the fur trade. Today, the majority of them live in Quebec and are much more focused on education of youth, economic development and tourism while respecting traditions and the environment.
- *The Abenaki* were previously in New England before settling irrevocably in Quebec, where they founded two communities on the south shore of the St. Lawrence, near Tree rivers : Odanak, which means "welcome" and Wôlinak, which means "the bay". Wabanaki basketry made of ash and pungent-smelling hay is very famous. They opened the first Amerindian museum in Quebec, which contains an impressive collection of artefacts and artists' works.
- *The Innu (Montagnais)* had many exchanges with Europeans and lived in small mountains on the North Shore, hence the name Montagnais, although they prefer to be called Innu, meaning "real men". They are nomadic people who hunt, fish, and gather, traditionally migrating in the fall from their summer camps on the north shore of the St. Lawrence River in the heart of Quebec.
- *The Cree* are nomadic hunters, trappers, and fishers whose territories are located in the James Bay basin, between the boreal forest and the Taiga. They were major players in the fur trade

---

<sup>3</sup> Extract from "Regard sur les communautés autochtones et métisses du Bas-Saint-Laurent dans un contexte de certification forestière", prepared by CertificAction BSL

and are fierce protectors of the environment. Today, they live in Quebec and comprise about ten communities.

- *The Huron-Wendat* are originally from the Great Lakes, more specifically from Georgian Bay, and settled in the Quebec region in 1950. They have always identified themselves as Wendat, which means "people of the island". Many died as a result of disease and international warfare, and today only one community lives in all of Canada.
- *The Mohawks* were a powerful nation whose territories extended over much of New England. Today they are located between Quebec, Ontario and New York State. Their legendary ability to work at great heights on large bridges and skyscrapers is a reality today.
- *The Maliseet* were traditionally nomadic people who moved according to their needs and the availability of sources of subsistence. The territory of the Maliseet extended from Matane to the Bay of Fundy. At the beginning of the XIX century, the occupied area also included the vicinity of Île Verte and Cacouna. Maliseet families used to gather in large numbers in summer villages and, during the winter, disperse into smaller villages to hunt. Agriculture was an important part of the Maliseet diet, which explains why in 1827 the colonial government granted this nation a 1,214 hectare territory consisting of some thirty lots located near Rivière-du-Loup.

In the Lower St. Lawrence, archaeological discoveries indicate that Amerindian occupation dates back to 8,000 years ago. At the time of Samuel de Champlain's voyages, the shores of St. Lawrence were frequented by the Montagnais and their territory extended from Rivière-du-Loup to Matane. During this same period, the presence of the Maliseet and Micmac peoples is reported elsewhere in the Lower St. Lawrence. The natives were animists who considered any living being or object as inhabited by a spirit that they honored, and even further, they feared those of the dead. The missionaries who came from New France tried to revise this Indian faith, which consisted of dream interpretation and orgiastic feasts. However, one of the most important facts remains the evil committed in the management of residential schools for Amerindian children by the Church, for which the Pope asked for forgiveness during his visit to Canada (Moran, 2022).

The residential school experience of several generations of Aboriginal people across Canada was marked by illness, abuse, and the uprooting of many children from their families and cultures. A true cultural genocide during which children suffered physical and verbal abuse as well as psychological and spiritual abuse. This is also illustrated by Gilles Bibeau (2004), who states that: "the residential school episode is neither more nor less than the 'forcing' of

traditional Aboriginal societies into modernity. It has created a breach in the very passageway that he believed to be marked out between indigenous tradition and Western modernity. Two generations of children, who are now parents and grandparents, have remained, if not prisoners, at least very wounded by this passage. The boarding school was more intended to produce strength, to grow, and to order it. However, it dedicated itself, through the intermediary of the religious and political authorities, to blocking them, to bending or destroying them. It was in the disciplinary context of modernity that the establishment of the Indian Residential Schools set in motion the processes of individualization and sedentarisation that characterize the families belonging to the societies of the modern subject. However, the cement of a group's culture always remains the family: the family framework allows for the organization of care, the provision of the essential security that the youngest children need, and the construction of the privileged place of a climate of trust and the promise of life. It must also allow for the circulation of values and prohibitions, i.e. the exercise of authority is devolved to one or other of the members of the family or group, to the person whose word will be recognized to signify the limit between good and evil, the limit between health and illness.

During the years from 1867 to 1996, the Canadian government placed over 150,000 Aboriginal children in 139 residential schools for the exclusive use of Aboriginal children across Canada (Josianne, 2019). These residential schools, located in almost every province and territory, were federally funded and administered by various religious congregations with the goal of civilizing the Indians. But in reality, the residential school system was a means of colonization and forced assimilation of Aboriginal peoples and territories into European languages and ways of life through the mass conversion of poor, Aboriginal children to Catholicism or Protestantism. If every indigenous person had been integrated into society, there would be no more reserves, treaties, and indigenous rights. Nicholas Flood Davin state in his Report on Industrial Schools for Indians and Mixed Bloods: "I want to get rid of the Indian problem. The truth is, I do not believe that the country should continue to protect a class of people who are capable of being self-supporting... We wish to continue until there is not a single Indian in Canada who has not been absorbed into society until there are no more Indian issues and no more Indian Affairs departments. That is the purpose of this bill" (Moran, 2022). These residential schools were characterized by poor education, and unsanitary buildings with Aboriginal youth poorly housed and fed as they were underfunded and poorly managed. Remains of 215 children, some as young as 3 years old, have been discovered (François, 2021).

According to the testimony of survivors and staff, the buildings were often dilapidated, sometimes to the point of being dangerous.

### **2.3 Evolution of Aboriginal communities in Canada (migration from European and American peoples, and even from Africa)**

Over the past sixty years, about Aboriginal people have often changed. Their sedentarisation has accelerated, causing multiple social and economic changes. Today, communities located near large centres are integrated into urban and regional life. The urban nature of certain communities has encouraged them to develop new relationships with Quebec society and has favoured their participation in collective projects<sup>4</sup>. It should be remembered that the first companies in Canada, formed under the French and British regimes, competed for the fur trade, which they developed thanks in particular to the Aboriginal people. The Hudson's Bay Company, whose employees were French, British and Aboriginal, came to dominate the trade in the Northwest, from Fort Garry (Winnipeg) and Fort Edmonton to Fort Langley (near Vancouver) and Fort Victoria - trading posts that later became cities. It is worth noting that three distinct historical periods emerge in the relationship of Aboriginal peoples to authority over the territory of Canada : the period of alliances, the period of submission, and the period of renegotiation of the place of Aboriginal peoples within Canada. In terms of the evolution of relations between Aboriginal people and government authorities, three dates or treaties mark the history : 1763 with the Royal Proclamation, 1867 with the Canadian Confederation and 1982 with the patriation of the Constitution and the Charter of Rights and Freedoms (Sophie, 2021)

As social values have evolved over the past fifty years, Canada has become a more flexible and open society. Many are taking advantage of the expansion of secondary and post-secondary educational opportunities, and more and more women are becoming professional workers. Most Asian Canadians had been denied the right to vote in federal and provincial elections in the past. However, the last of them to be denied this right, Japanese Canadians, were finally granted it in 1948<sup>5</sup>. Aboriginal people gained the right to vote in 1960. Today, all citizens aged

---

<sup>4</sup> Excerpt from "Amérindiens et Inuits PORTRAIT DES NATIONS AUTOCHTONES DU QUÉBEC", 2nd edition, available

<sup>5</sup> Excerpt from the Study Guide "Discover Canada, The Rights and Responsibilities of Citizenship

18 and over can vote. Canada welcomed thousands of refugees fleeing communist oppression, including about 37,000 who escaped Soviet tyranny in Hungary in 1956. With the 1975 communist victory at the end of the Vietnam War, many Vietnamese fled and over 50,000 sought asylum in Canada.

The idea of multiculturalism, the result of nineteenth and twentieth century immigration, is gaining momentum. By the 1960s, one-third of Canadians were of non-British or non-French origin and were proud to retain their distinct culture in the Canadian mosaic. Today, diversity enriches the lives of Canadians, especially in our cities. Canadian artists have a long history of achievement that makes their fellow citizens proud. From all regions, they reflect and define our culture and forms of creative expression and achieve fame both at home and abroad. Canadians make important contributions to English and French literature. Novelists, poets, historians, educators and musicians have a considerable influence on culture. With its network of regional theatres and internationally renowned artistic troupes, Canada is building a strong and lasting reputation in the world of performing arts. Canada's scientific and technological discoveries are internationally renowned and are changing the way the world communicates and does business. Marshall McLuhan and Harold Innis are pioneering thinkers<sup>6</sup>. Canada is recognized by other countries for its excellence in science and research, and world-class students, researchers and entrepreneurs come here to conduct research in medicine, telecommunications and other fields. Since 1989, the Canadian Space Agency and Canadian astronauts have participated in space exploration, often using the Canadian-designed and built robotic arm. Canadian scientists Gerhard Herzberg (a refugee from Nazi Germany), John Polanyi, Sidney Altman, Richard E. Taylor, Michael Smith and Bertram Brockhouse win the Nobel Prize.

In 1968, the National Indian Brotherhood was created. This organization, founded to represent the interests of Status Indians to the federal government, became the Assembly of First Nations. Self-government is at the heart of discussions between Aboriginal people and governments. Quebec has indicated that it is prepared to support any constitutional amendment to this effect, provided that agreements to this end are negotiated with the governments involved<sup>7</sup>. For example, the Inuit have presented a proposal for a regional government. In December 2007,

---

<sup>6</sup> Ibid

<sup>7</sup> Extract from "Amérindiens et Inuits PORTRAIT DES NATIONS AUTOCHTONES DU QUÉBEC", 2nd edition, available at [www.autochtones.gouv.qc.ca](http://www.autochtones.gouv.qc.ca)2.2 Identification of the Aboriginal communities (origin, first occupied areas, missionaries...) under the heading "Publications and documentation".

the Government of Québec, the Government of Canada and the Inuit reached an agreement-in-principle on the amalgamation of certain public institutions and the creation of a regional government in Nunavik, a first in Québec and Canada. The final draft agreement, as subsequently negotiated, was, however, rejected by the population of Nunavik in a referendum held in April 2011. The Micmac of Gespeg also undertook self-government negotiations with the governments of Quebec and Canada. In 1999, the parties ratified a framework agreement to this effect. Since 2004, a series of Supreme Court of Canada decisions, including *Haida* and *Taku River*, have had a significant impact on the relationship between the government and Aboriginal nations. These decisions set out new requirements that Aboriginal communities must be consulted if any government action is likely to affect their claimed rights.

## **2.4 Youth in Aboriginal Communities Facing Globalization**

The world of Wemotaci's Atikamekw youth is largely similar to that of other youth in Quebec. In addition to the music, songs and films that boys and girls find on websites, many Atikamekw youth add the traditional drum, which they know how to beat to obtain the sounds that give the original rhythm - that of the heart - to all Aboriginal music (Jérôme, 2010). The young people of Wemotaci are also very present on social networks - powerful tools for communicating with friends from the nation and elsewhere - but this does not prevent them from living an intense life of companionship and friendship through the practice of team sports, involvement in artistic creation groups and participation in many other activities<sup>8</sup>. In fact, these young people live on the border of two cultures, two languages, and two knowledge, leaning sometimes more towards their Atikamekw identity, sometimes more towards the world of La Tuque, Trois-Rivières, and Montreal that many young people dream of discovering.

---

<sup>8</sup> The Wapikoni mobile project - [www.wapikoni.ca](http://www.wapikoni.ca) - set up by filmmaker Manon Barbeau, together with the Atikamekw Nation Council and the First Nations Youth Council, created mobile studios in the early 2000s that enabled young Aboriginals from many nations - including the Atikamekw - to learn about film and video. Cirque du Monde also intervenes in the communities to teach circus arts - acrobatics, trapeze, jingling - to young Aboriginals. The school hockey classes launched by Joé Juneau - a former Montreal Canadiens player - have met with great success in Aboriginal communities, including Wemotaci where all team sports - hockey, baseball, etc. - are practiced with enthusiasm in the local arena, gymnasium and playgrounds. All of these interventions combine to try to address the high rates of school dropout, substance abuse and suicide among youth.



The tension between these two worlds, to which young people cannot fully belong, creates difficulties and discomfort for some who are unable to integrate the various components of their identity. Some young people experience serious problems of a psychological and social nature, especially those who are unable to free themselves from the devaluing and stigmatizing, even alienating, image imposed on them by colonial history<sup>9</sup>. The stereotypes and prejudices of whites about "Indians" that continue to manifest themselves often inflict strong wounds that disturb them.

#### ❖ **Youth in turmoil**

In 2012, and specifically in the fall of 2012, the Idle No More movement was born in Western Canada as four Aboriginal women (Nina Wilson, Sheelah Mclean, Sylvia McAdam, and Jessica Gordon) publicly expressed their anger at the Government of Canada's introduction of Bill C-45, an omnibus bill that would change a range of laws. "These included the Indian Act and the Navigable Waters Protection Act, changes that would directly affect the lives of Aboriginal communities without their input. These women organized protest marches and rallies. This was the beginning of mobilization in major Canadian cities. In December 2012, Theresa Spence, Chief of the Ontario community of Attawapiskat, began a hunger strike to protest against a severe housing crisis in her community. Her spectacular action fuelled the protest movement across the country and contributed to drawing media attention to the living conditions in Aboriginal communities" (Lepage, 2019).

Mélissa Mollen-Dupuis agrees and explains why the movement has taken on an unexpected magnitude in Quebec. She found that in the urban environment where she has lived for several years. There were no political channels such as the band councils in each community. "The creation of the movement filled this gap. The new all-volunteer organization had to rely on the commitment and dynamism of its members while fostering an open membership base. As in the case of Quebec Native Women, the movement believes in the importance of building alliances with non-Aboriginal organizations" (Study Day, Justice and Faith, 2014)

#### ❖ **The great challenges of Aboriginal youth**

---

<sup>9</sup> In field research conducted among youth in the Innu community of Mani Utenam, ethnologist Annalisa D'Orsi (2013) described situations comparable to those found among youth in Wemotaci. In Mani Utenam, the new generations speak less and less Innu Aimun on a daily basis - on this point there seems to be a difference between Mani Utenam and Wemotaci. In both communities, young people say that they have little exposure to oral narratives, while expressing a strong desire to learn more about their oral literature.

"Much younger than the Quebec population as a whole, this is certainly an asset, but at the same time an enormous challenge in terms of education, particularly in several communities where, at a certain time, up to 80% of young people dropped out before completing their secondary education. However, the issue of school retention is not only a worrying reality in the Aboriginal school system" (LEPAGE, 2019). "Noting that the performance of Aboriginal students attending schools in non-Aboriginal school boards was also low and that few of them obtained their 5<sup>e</sup> secondary school diploma, the Ministère de l'Éducation, du Loisir et du Sport proposed a series of measures aimed at the educational success of this clientele with special needs: 'support and accompaniment for students to ensure their harmonious integration, measures to combat prejudice and discrimination, awareness-raising among school staff of the Aboriginal reality, steps to better equip teachers with the type of intervention to be implemented to meet the specific needs of this clientele, etc' (Quebec, MELS, 2018).

## **3 LEGISLATION**

### **3.1 History of Aboriginal Peoples' and Human Rights Law in Canada**

#### **3.1.1 History of Peoples' Law**

In 1867, the newly created federal government became responsible for some 100,000 to 120,000 Indians and lands reserved for Indians. This responsibility was at that time doubly challenging and complex. At the time, the various Aboriginal societies across the continent had different relationships with Euro-Canadians. The Canadian government was thus faced with the enormous task of developing policies for this diverse population. The magnitude of the task was so great and the timeframe so pressing that it is partly understandable why Canada has had such a poor record in its relations with Aboriginal peoples.

The Atlantic region alone presented complex negotiating conditions. In Newfoundland, which did not become a province until 1949. Economic competition and disease, particularly tuberculosis, killed the last Beothuk in 1829 ; this disappearance of an entire people was the worst consequence of the arrival of Europeans.

In the 1860s, about one hundred and fifty Mi'kmaq still lived in the interior of the island, earning a meagre living partly from temporary employment and the sale of their products to settlers, partly from their traditional activities of gathering, hunting and fishing. On the Labrador coast, another characteristic kind of contact between Aboriginal and non-Aboriginal people had been established : the Inuit traded with Europeans and Christian ministries through Moravian missionaries. Prince Edward Island, the other Atlantic island that became a province when it joined Canada in 1873, was essentially agricultural. Land was not set aside for the Mi'kmaq until relatively late in life.

Reserves" were created in 1859 at Morell River and in 1870 on Lennox Island. By the time Prince Edward Island entered Confederation in 1873, it had a population of about 300 Mi'kmaq.

Nova Scotia and New Brunswick had about 10 to 100 of the 30,000 Indians living in the four founding provinces of the Dominion. Before Confederation, settlement and agricultural development in Nova Scotia had marginalized the Mi'kmaq, who constituted the bulk of the population at the time, and were thus concentrated in Cape Breton and near Shubenacadie in the centre of the province.

There was no reserve system in place, and the colonial administration had allowed squatters to buy land from the natives. In principle, the money collected was to be put into an Indian relief fund, but the amount increased seemed minimal at the time of Confederation.

The Mi'kmaq of Nova Scotia were a demoralized and marginalized people, subsisting on alms, wages, temporary employment, and the sale of crafts and food. In New Brunswick, where reserves had been established, the situation was not much better for the approximately 2,100 Mi'kmaq, Malecites and Abenakis.

Between the years 1840 and 1865, one-sixth of the land set aside was sold, but the money from these sales was not even sufficient to build up a substantial relief fund.

Except for those in the northern part of the province who were able to maintain a subsistence economy based on uncut standing timber in certain areas, the majority of New Brunswick's Aboriginal people were as disorganized and dependent on white people as those in Nova Scotia. It is not surprising, then, that William Spragge, the first Deputy Superintendent General of Indian Affairs in Canada, declared that a philanthropic effort should be made in the Maritimes to bring [the Native people] up to at least the level of the more advanced Indian communities in the provinces of Ontario and Quebec.

In saying more advanced, Spragge was thinking of the fact that the Aboriginal population of Quebec could be divided into two categories, although it was quite extinct. In the Canadian Shield region, north of the farmlands, the populations, largely made up of Cree, Montagnais and Naskapi [now called Innu], lived by gathering and hunting in the manner they practiced before the arrival of Europeans.

In the 1770s and 1780s, the British negotiated with the Mississaugas for land north of the lower Great Lakes ; after the American Revolution and the War of 1812, treaty settlements were used to allow both European settlers and Aboriginal people, especially the Mohawks, to obtain land amicably. This method of trading land for compensation was used until the 1820s and 1830s, by which time most of southern Ontario had been traded.

Around 1845, the colonial assembly authorized mineral exploration in Ojibwa territory near Lake Huron. Many Ojibwa protested this encroachment, and a group led by Chief Shingwauk of Garden River (near Sault Ste. Marie) threatened the miners.) The intruders demanded the intervention of the colonial administration, which responded to this call for help by commissioning W.B. Robinson to negotiate with the Ojibwa. The Robinson Treaties that

resulted from these talks had several important features. Aboriginal enfranchisement was the other significant component of the Ontario political initiative. In offering enfranchisement to Aboriginal peoples, the government hoped to eliminate their separate status and grant them the rights and duties of Canadian citizenship. It also hoped to bring about their voluntary assimilation. The method was formulated in the Gradual Civilization Act of 1857. The method advocated was formulated in the Gradual Civilization Act of 1857 (The Act for the gradual civilization of the Indian tribes of the Canadas), which contained the same definition of Indian status as that originally set out in a Quebec law in 1850. Ironically, the 1857 Act outlined the process by which an Indian could cease to be one. Any adult male who could read and write, was free of debt and of good moral conduct could, upon approval of a committee, be enfranchised and obtain a parcel of land under freehold title. In addition, his wife, children and their descendants would automatically be enfranchised. The 1857 law had especially lasting consequences. The significance of the enfranchisement provision lies in the fact that it would find its way into post-Confederation policies and would still be part of the Indian Act at the end of the twentieth century (although it was amended in one important respect in 1985). In the 1870s, the intention was to conclude treaties for the territories extending from the Lake of the Woods to the Rocky Mountains and from the "medicine line" to the northern limit of the proposed settlement areas. These motives, objectives and assumptions formed the basis of the seven numbered treaties between Canada and the western First Nations between 1871 and 1877.

By the end of the negotiations in 1877, Canada had obtained the territories it wanted, but at a much higher price than it had expected. Although they had not won some of their claims, the majority of Aboriginal leaders believed that they had achieved their main objective, which was to establish a formal relationship with the Canadian government. This achievement, however, had a significant counterpart : a significant minority of chiefs had refused to enter into treaties from 1871 to 1877. Although the need to develop programs for the Aboriginal people of the Prairies and the British Colony was the impetus for this policy, many of its provisions were later applied to First Nations peoples across the country. "Moreover, the goal of the post-Confederation policy was assimilation, etc. was the most insidious feature. As expressed by the Indian Affairs Branch in 1871, the policy was "to bring the Indians gradually to mingle with the whites in the ordinary activities of life. The Gradual Enfranchisement Act of 1869 bridged the gap between pre- and post-Confederation policies. An 1880 amendment allowed government agents to impose an elected band council on a community, whether that

community wanted European-style electoral procedures. Even more serious was the Indian Removal Act of 1884, which expanded somewhat the list of municipal powers granted to a band council, but allowed Ottawa to remove chiefs whom federal agents deemed unfit or unable to carry out their responsibilities. The potentially oppressive provisions of the Act of Advancement became part of federal policy when they were enshrined in the Indian Act of 1906. Moreover, the involuntary enfranchisement clause would reappear in an amended version in 1933 and remain in the Act until its revision in 1951" (Miller, 1997).

In June 1969, "the government responded in its infamous white paper entitled *The Indian Policy of the Government of Canada*. Instead of embracing the notion of Indians as "citizens plus" and settling land claims, the discussion paper advocated ending Indian status as discriminatory. The White Paper also recommends winding up the Department of Indian Affairs and granting revised legal status to Indian reserve lands" (Leslie, 2002). An Indian Claims Commissioner is appointed to look at how to settle claims and treaty issues. "In many ways, the 1969 White Paper brought the Indian question directly back to the 19th century, once again advocating outright assimilation. The federal proposals caused a political uproar among Indians and their supporters. The discussion paper was formally withdrawn in 1970, but it left a lot of bitterness behind" (Leslie, 2002).

### **3.1.2 Overview of the source of Aboriginal rights in Quebec**

By recognizing and "affirming" the "existing" Aboriginal rights of the Aboriginal peoples of Canada, section 35(1) of the Constitution Act, 1986<sup>10</sup> affirms the prior existence of these rights. As noted by the Supreme Court, the wording of the constitutional provision reflects, among other things, the fact that these rights existed before 1982 in the common law<sup>11</sup>, so that "a pre-existing legal doctrine has been given constitutional status. Since the common law of aboriginal rights is itself derived from the imperial practices and policies of the British colonies<sup>12</sup>, the

---

<sup>10</sup> Constitution Act 1982, Schedule B to the Canada Act 1982 (1982, U.K., c. 11). Section 35 (1) states: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

<sup>11</sup> The recognition of common law aboriginal title, also referred to as "aboriginal title" by the Supreme Court, dates back in Canada to *Calder v. Attorney General of British Columbia*, [1973] S.C.R. 313. See also *Guerin v. The Queen*, *supra*, note 2.

<sup>12</sup> *R. v. Van der Peet*, *supra*, note 1 at para. 29. In *Delgamuukw v. British Columbia*, *supra*, note 2, the Chief Justice states (para. 133): "It is clear from a plain reading of s. 35(1) that this provision did not create Aboriginal rights, but rather constitutionalized those that were 'existing' in 1982. At the very least, this provision constitutionalized the common law rights of aboriginal peoples, since these rights existed at the time s. 35(1) came into force.

study of the sources of aboriginal rights takes on a singular inflection in the case of the territories, including a large part of present-day Quebec (southern Quebec), initially colonized by France and subsequently integrated into the British Crown domain. If the recognition of ancestral rights is dependent on the colonial experience, is it not logical to question French colonial law in the presence of a claim to ancestral rights on lands ceded to the British Crown in 1763 ? And, if the French regime did not enshrine the ancestral rights of indigenous populations, could the advent of British sovereignty have had the effect of transposing an imperial common law that protected ancestral rights in its entirety into Her Majesty's new possession ? In *R. v. Côté*, the highest court in Canada, was called upon to rule on a claim of aboriginal rights to lands located in a region of Quebec that had been part of the territory of the former New France. The Court held that, in order to dispose of the dispute, it was inappropriate to focus the debate on the recognition of aboriginal rights in Quebec under French and British colonial law. According to the Supreme Court, the constitutional protection offered by section 35(1) is sufficient, lacking an express abrogation of pre-1982 Aboriginal rights, to entrench those rights in the state order. Lamer C.J., expressing the opinion of the Supreme Court on this point, considers that it is "preferable to analyse the respondent's argument in light of the wording and purpose of s. 35(1) of the Constitution Act, 1979"<sup>13</sup> since the entrenchment of aboriginal rights in the Constitution "has changed the status of aboriginal rights in Canada. <sup>14</sup> Thus, an Aboriginal claim that is consistent with the purpose of the constitutional provision can be defeated simply because the right claimed was not legally recognized by European colonizers. Section 35 (1) can therefore serve as a sufficient basis for the recognition and affirmation of Aboriginal rights throughout Quebec<sup>13</sup>.

### **3.2 Law governing the life of Aboriginal people in Canada**

As a community like any other, there are many principles that govern the lives of Aboriginal people in Canada :

- *The Government of Canada recognizes that all relationships with Aboriginal peoples must be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.*

---

<sup>13</sup> For a detailed analysis of the empowerment of Article 35 (1) as a formal source of aboriginal rights, see G. OTIS, loc. cit, note 9, 72-74.

At this level, let us understand that the priority given to recognition in a renewed nation-to-nation, government-to-government and Crown-to-Inuit relationship. As established by the courts, an Aboriginal nation or rights-bearing group is a group of Aboriginal people who shared essential characteristics such as language, customs, traditions and historical experience at the time of first contact, assertion of Crown sovereignty or effective control. The Royal Commission on Aboriginal Peoples estimates that there are between 60 and 80 historic nations in Canada. The Government of Canada's recognition that the continuing presence and inherent rights of Aboriginal peoples are a defining feature of Canada is based on the promise of section 35 of the Constitution Act, 1982, and is consistent with Articles 3 and 4 of the United Nations Declaration. This promise is intended to reconcile the prior existence of Aboriginal peoples with the Crown's claim to sovereignty, as well as with respect for historic treaty relationships. This principle is intended to illustrate the call for respect for the UN Declaration and to promote the inherent rights of Aboriginal peoples. This includes rights arising from their political, economic and social structures and culture, spiritual traditions, history, laws and philosophy, in particular their rights to their lands, territories and resources (Canada, 2018). After that, we have :

- *The Government of Canada recognizes that reconciliation is the fundamental purpose of section 35 of the Constitution Act, 1982.*

Reconciliation is an ongoing process whereby Aboriginal peoples and the Crown work together to establish and maintain a framework for living together based on respect, to foster strong, healthy and sustainable Aboriginal nations within a strong Canada. As we build a new future, reconciliation requires acknowledging rights and all the wrongs of the past, knowing our true history and working together to implement Aboriginal rights. This transformative process is about reconciling the pre-existence of Aboriginal peoples and their pre-existing Aboriginal rights with Crown sovereignty, including inherent rights, title and jurisdiction. Reconciliation, based on recognition, will require all to work hard, change their views and actions, compromise and act sincerely.

- *The Government of Canada recognizes that the honour of the Crown guides the Crown's behaviour in all its dealings with Aboriginal peoples.*

The Government of Canada recognizes that it must uphold the honour of the Crown, which obliges the federal government and its departments, agencies and officials to act with honour, integrity, good faith and fairness in all its dealings with Aboriginal peoples. The honour of the



Crown gives rise to a variety of legal obligations in different circumstances, including fiduciary obligations and duties of care. The objective is to ensure that Aboriginal peoples are treated with respect and as full partners in Confederation.

- *The Government of Canada recognizes that Aboriginal self-government is part of Canada's evolving system of cooperative federalism and separate orders of government.*

In light of the United Nations Declaration, Aboriginal peoples have a special relationship with their lands, as well as constitutionally protected interests, including decision-making, governance, jurisdiction, legal traditions and fiscal relationships associated with those lands. Nation-to-nation, government-to-government, and Inuit-Crown relationships, including treaty relationships, therefore include: a. The development of mechanisms and the design of processes that recognize Aboriginal peoples as a fundamental component of Canada's constitutional framework; b. The participation of Aboriginal peoples in effective decision-making and in the governance of the shared country; c. the establishment of effective mechanisms to support the move away from colonial systems of administration and governance, including, where currently applicable, governance and administration under the Indian Act; and d. the assurance, based on the recognition of rights, of providing space for the application of Aboriginal jurisdiction and laws.

- *The Government of Canada recognizes that treaties, agreements and other constructive arrangements between Aboriginal peoples and the Crown have been and are acts of reconciliation based on mutual recognition and respect.*

This principle respects historic treaties as frameworks for living together, including the modern expression of these relationships. Consistent with the Royal Proclamation of 1763, many Aboriginal nations and the Crown have historically relied on treaties to ensure mutual recognition and respect to frame their relationship. In most of Canada, the treaty relationship between the Crown and Aboriginal nations is the basis for ongoing collaboration and partnership with Aboriginal peoples.

- *The Government of Canada recognizes that meaningful engagement with Aboriginal peoples is about obtaining their free, prior and informed consent when Canada proposes to take actions that affect Aboriginal peoples and their rights to their lands, territories and resources.*

This principle only recognizes the Government of Canada's commitment to a new nation-to-nation, government-to-government, and Inuit-to-Crown relationship, but is not limited to the

legal duty to consult. In implementing this commitment, the government recognizes the right of Aboriginal peoples to participate in decision-making on matters affecting their rights, through their own representative institutions, and the need to consult and work with them sincerely to obtain their free, prior and informed consent.

- *The Government of Canada recognizes that it is essential to respect and implement rights and that each infringement of section 35 rights must, by law, be justified in the highest terms, considering Aboriginal perspectives and meeting the Crown's fiduciary obligations.*

This principle reiterates the critical importance of working in partnership to recognize and implement rights and, thus, that each infringement of Aboriginal and treaty rights requires justification that meets the highest standards established by Canadian courts and must occur to uphold the honour of the Crown and to meet the objective of reconciliation. This requirement flows from Canada's constitutional provisions. A constructive dialogue with Aboriginal peoples must be engaged when the government contemplates infringing a section 35 right.

- *The Government of Canada recognizes that reconciliation and self-government require a new fiscal relationship with Aboriginal nations, established in a spirit of cooperation with them, which fosters an environment conducive to economic partnerships and resource development.*

This principle recognizes that a new economic and fiscal relationship must work to ensure that Aboriginal nations have the financial capacity, as well as access to their lands and resources, to effectively govern and deliver programs and services to those for whom they are responsible. A new fiscal relationship will also enable Aboriginal peoples to have fair and ongoing access to lands, territories and resources to support their traditional economies and to share the wealth derived from these lands and resources as part of the broader Canadian economy. A more equitable fiscal relationship with Aboriginal peoples can be achieved through a variety of mechanisms such as tax measures, new methods of calculating fiscal transfers and the negotiation of resource revenue sharing agreements.

- *The Government of Canada recognizes that reconciliation is an ongoing process that takes place in the context of evolving relationships between Aboriginal people and the Crown.*

Treaties, agreements and other constructive arrangements should be able to evolve. In addition, they will need to provide predictability for the future as to how and under what circumstances, provisions can be amended or implemented. Canada is open to flexibility, innovation and diversity in the nature, form and content of agreements and arrangements. The Government of

Canada also recognizes that it has an active role and responsibility to ensure the cultural survival of Aboriginal peoples and to protect Aboriginal and treaty rights.

- *The Government of Canada recognizes that we must have a rights-based approach to ensure that the unique rights, interests and circumstances of First Nations, Métis Nation and Inuit are recognized, affirmed and implemented.*

The Government of Canada recognizes First Nations, Métis Nation and Inuit as Aboriginal peoples of Canada, constituted as distinct communities with their own rights and history, including with the Crown. Work towards a renewed relationship based on rights recognition, respect, cooperation and partnership must reflect the unique interests, priorities and circumstances of each people.

## **4 ABORIGINAL SOCIO-CULTURAL ISSUES IN CANADA**

### **4.1 Aboriginal Peoples and Policy Issues**

The very notion of Aboriginal politics is problematic because it implies that there would be policies targeted at only a portion of the population, based on ethnicity, and implemented by a democratic government, which would run counter to the original principles of democracy and of a so-called liberal state, namely equality and universality.

In Canada, Aboriginal people are subject to separate policies : unlike all other citizens, First Nations people, for example, are under the sole control of the federal government, governed by the Indian Act. According to several authors, Aboriginal policies in Canada have always followed two objectives :

- Assimilation
- Opening up the land (expansion and integration).

#### **4.1.1 Objective I : Assimilation**

Residential schools (the main Aboriginal policy of assimilation) are one of the main elements of Aboriginal assimilation policy in Canada. They were created by the federal government, run by religious communities whose aim was to turn Aboriginal children into good Canadian citizens, speaking English or French, and to 'kill the Indian in the child' (a phrase of the time). Residential schools began in New France and became common in the 19th century, but were compulsory in 1920 for all children aged 7 to 15. The last residential school closed in 1996.

The socio-cultural consequences of this Aboriginal policy of assimilation included

- The impact on children, who will often be deprived of seeing their families for months or even years, was deemed immeasurable for Aboriginal peoples.
- In 2015, the Truth and Reconciliation Commission and Supreme Court Chief Justice Beverley McLachlin called the Canadian residential schools a cultural genocide.
- The main impacts identified were : loss of cultural connection, loss of parenting skills, physical and sexual abuse.
- All of these factors have been grouped together under the term "residential school syndrome", affecting both the children and the families from which the children were taken.

Concerning the reserves, they constitute an important paradox for the objective of assimilation: "It is clear, as we have seen, that one of the objectives was to civilize the Indians to make them Canadian citizens" (RODON, 2019).

To achieve their goal of assimilation, Canadian policies were busy moving Aboriginal people to reserves. However, by keeping them isolated on reserves, this has had the opposite effect of the intended goal and has helped to maintain their Aboriginal identity. The Canadian federal government's assimilation policies have therefore not had the desired effect and can be described as failures from a government perspective.

"Many Canadians consider that the reserve system is anachronistic and should be abandoned. Many people also accuse the federal authorities of having deliberately kept the Indians in a state of dependence, which has had perverse economic and social effects." (MORIN, 2017)

## **4.1.2 Objective II : Opening up the land**

### **4.1.2.1 Expansion**

One of the major issues and sources of conflict in land policy is the control of traditional lands. Indeed, the reservation has limited access to land for Aboriginal people, and Canadian reservations are tiny : the total area of Canadian reservations is smaller than the area of the Navajo reservation in the United States. Different conceptions of territory : among Aboriginal peoples, territory is often seen as an entity, not belonging to humans, but rather humans belonging to the territory. Boundaries are therefore often unclear to them, probably because many of the groups were semi-nomadic and moved seasonally for hunting. The conception of a territory as the private property of a person is therefore not shared by most Aboriginal people, and is even aberrant for them.

"Aboriginal people, on the other hand, claim the position of custodian who protects the territory for the next generations."

In land negotiations, the Western view of private ownership of the land is more dominant. Global land claims :

From the 17<sup>e</sup> century to about the 1970s, it had been wrongly assumed that Aboriginal people had no special or aboriginal rights to Canadian lands.

The 1969 White Paper stated that 'Aboriginal rights ... are so general that it is unrealistic to regard them as specific rights, capable of settlement except by a set of policies and measures which will end the injustices which the Indians have suffered as members of Canadian society' (RODON, 2019).

This was completely overturned by the Calder Decision (1973), which stated that Aboriginal rights still existed, that they could never have been extinguished, and that the Crown had to negotiate the surrender of all Aboriginal territories for which it had not signed a treaty.

The comprehensive land claims policy was established in 1987. In order for negotiations to take place, the claim must be accepted by the federal government. If the claim is accepted, it is

funded by negotiation loans that will have to be repaid from compensation funds. In some cases, this will amount to more than 50% of the compensation.

There are many steps in such a negotiation, and once the agreement in principle is reached, there are many steps to get the agreement approved. Since 1979, several negotiations have been underway and have not yet been concluded in 2020. It can therefore take 10 to 30 years to reach a final agreement.

Since the 1982 patriation, section 35 of the Constitution Act recognizes and protects Aboriginal rights, so they can no longer be extinguished. From 1973 to 2016, the federal government has concluded 27 comprehensive claims agreements. As of September 2016, there were 93 active comprehensive land claim and self-government negotiation tables. However, this process is severely criticized by Aboriginal people, as the federal government plays a dual role as judge and jury : it determines whether claims are eligible and selects the groups with whom it wants to negotiate. Funding for negotiations is also a critical issue. The slow pace of negotiations has resulted in significant costs for Aboriginal people.

#### 4.1.2.2 Integration

For integration, Band Councils have been created from scratch by the federal government. They are often compared to a municipal model (all the powers of a municipality, plus education, social services and, for some large cities, police services). The powers of Band Councils are much broader than those of a municipality, but on the other hand, they are very restricted. The powers of Band Councils can only be exercised over community members who reside within the boundaries of the reserve. By-laws adopted by the Band Council must be consistent with existing federal and provincial laws. The Minister responsible for the ANCAs may rescind any by-law passed by a Band Council within 40 days. He or she can also place a Band Council under administrative and financial trusteeship ; however, since the 1960s, the AANC has not used these powers very frequently and has tried to stay out of the internal affairs of the Band Council. They are elected by the members of the reserve. Their income comes from the federal government.

Bill C-27 First Nations Fiscal Transparency Act (2011) : This Act requires First Nations governments to publish their audited consolidated financial statements and schedules of salaries and expenses online. While the objective of transparency was very laudable, the fact that it was imposed by the colonizer was not seen as a move towards Aboriginal self-

determination. This law provoked mass opposition, as this information was already being disclosed voluntarily or on request by Band Councils, and even triggered the "Idle no more" movement. Justin Trudeau, in December 2015, stopped implementing the requirements of this law.

### Self-government policy

Why a self-government policy ? To respond to the desire for self-determination of the Aboriginal peoples of Canada. It is part of the decolonization process that began with the creation of the UN. However, the decolonization provided for by the UN did not affect the Aboriginal peoples of the North, who were instead subject to internal colonialism ; they were therefore entitled to internal self-determination.

"From an Aboriginal perspective, even though the centre of power migrated, during the XX<sup>e</sup> century, from London to Ottawa, about Aboriginal peoples did not really transform, the relationship remaining one of perceived alien domination." (RODON, 2019)

"The question of autonomy must be understood in this framework, as the will of indigenous communities to regain control over their lives and their territory by leaving the colonial logic in which they are placed." (RODON, 2019)

The last self-government policy to date for Aboriginal policies was adopted in 1995. The right to self-government has been suggested or recognized on several occasions : during the constitutional conferences of 1983 to 1987, recommended in the Penner Report (1983), explicitly recognized in the Charlottetown Accord (1992), and then the Royal Commission demonstrated that self-government was part of the Aboriginal rights of Aboriginal people. Once this right was demonstrated and recognized, it had to be implemented, which was done in the federal self-government policy. This policy is based on the recognition of the inherent right of Aboriginal self-government, on the Charter of Rights and Freedoms, on the self-government negotiated in treaties, and on an approach that varies according to the situation. But Aboriginal governments do not have constitutional recognition. Self-government is a significant element of the policy of reconciliation in Canada," said Justin Trudeau before

## Integrating and protecting indigenous values and culture

The project of creating self-government for indigenous peoples must be a broader project than simply increasing political rights and opportunities to participate in decision-making. Indeed, it must also and above all serve to create space for the survival of distinct indigenous societies. For these new mechanisms for indigenous self-determination to succeed in this objective, they will need to reflect and carry the values and traditions of the indigenous culture they intend to serve. (OTIS, 2013)

How can we ensure that these new institutions reflect indigenous values, principles and traditions ?

There is a great risk that institutions will be recreated that are more like the dominant institutions. When new political projects are created, they will often be modelled on those of the dominant culture ; in the Canadian case, there is an attempt to integrate new indigenous political structures into existing Euro-Canadian political and legal structures. This desire for uniformity for the dominant culture inevitably colours the negotiations and adds a certain amount of pressure on the indigenous peoples. Moreover, the dynamics of the negotiations appear to be insensitive to the cultural differences associated with the very manner of negotiation : "the federal policies that guide governance negotiations ignore the risks of marginalizing indigenous values through the very process that promises to create new orders of indigenous government." (OTIS, 2013)

## **4.2 The changing relationship between Aboriginal peoples and the powers that be**

Recently, there has been a desire to demonstrate the Aboriginal contribution to the construction and evolution of North America, moving from being subjects to actors in Canadian history.

### Rejection of external authority

The contestation of Canadian authority among Aboriginal peoples is often presented as a contemporary fact ; nevertheless, it is important to remember that the Aboriginal peoples of Canada have always refused any external power (French, English or Canadian) that attempted



to establish their authority over them and to exercise any jurisdiction over the land. If the refusal of external authority has always been present, it is the behaviour of the conqueror that has changed.

The relationship between indigenous peoples and authority over the so-called Canadian territory

There are three distinct historical periods in the relationship between Aboriginal peoples and the authority over the territory of Canada : the period of alliances, the period of submission and the period of renegotiation of the place of the Aboriginal peoples within Canada. In terms of the evolution of relations between Aboriginal people and government authorities, three dates or treaties mark the history : 1763 with the Royal Proclamation, 1867 with Canadian Confederation, and 1982 with the patriation of the Constitution and the Charter of Rights and Freedoms.

#### ❖ **THE ALLIANCE PERIOD** (from 1603 to about 1815 in the east and 1870 in the west)

The French Alliances

The alliances between the Aboriginals and the French made possible the very foundation of Canada. The policy of alliances was essential for the French, who were not numerous enough to control the territory or to act with authority towards the Aboriginal peoples. On the economic level, the cooperation of the Aboriginals was necessary for the fur trade (New France's main economic activity). At the time, the colonizers considered their alliances with the Aboriginal peoples to be based on principles of equality, peace and mutual exchange.

British alliances

Factors explaining the change in the balance of power between the British and

Aboriginal peoples in Canada :

- The decline in the number of Aboriginal people, due to the high mortality caused by epidemics brought by Europeans ; from over 500,000 in the 15<sup>e</sup> century to less than 200,000 in the 18<sup>e</sup> century, Aboriginal peoples were thus almost decimated in a few centuries.

- The English colonies, on the other hand, were becoming increasingly populous, with nearly 1.6 million inhabitants in the American colonies and the British began to compete with the French alliance policy.
- The demographic imbalance thus often harmed the natives.

### The Treaty of Paris and the Royal Proclamation of 1763

- With the Treaty of Paris (1763) and the end of New France, the King of France ceded the territory of his Aboriginal allies to the King of England on paper, which was not immediately accepted.
- This situation would lead to what is referred to as one of the last acts of Aboriginal resistance, the "rebellion" of 1763 to 1766 by the coalition led by Chief Pontiac to drive the British out of southern Ontario.
- This event led the British to draft the Royal Proclamation of 1763, which is part of the Canadian Constitution, the founding document of Canada's Aboriginal policies.
- This document put in place measures to protect the "Indian" territories from further uprising in their new colony.
- The Royal Proclamation "was to assure the natives of peaceful possession of their traditional lands, with the promise that any surrender of these lands would be subject to a consultation process involving a special assembly of the Indians concerned." (MORIN, 2017)

The Royal Proclamation reaffirms two (02) things in the relationship between Canada and Aboriginal peoples :

1. Canadian sovereignty over the territories acquired with the Treaty of Paris.
2. The recognition of the territorial rights of the Indian nations and the protection of these rights by Canada by establishing that only an agent of the Crown, with the consent of the Indians in assembly, may purchase Indian lands.

It should also be noted that the core of the 1763 Royal Proclamation still applies today, namely that "if the natives wish to dispose of their lands, they must do so at a public meeting called for

that purpose [...] and this disposal can only be to the Crown and not to individuals." (MORIN, 2017)

Based on these provisions, the Canadian government has entered into numerous treaties with Aboriginal people, following the evolution and development of the country.

#### ❖ **THE SUBMISSION PERIOD (1815 to 1951)**

Between the Royal Proclamation and Confederation, there was some decline in Aboriginal influence in Canada. Aboriginal influence and "power" continued until 1812 (until the war between the United States and England), when it began to decline. There was a gradual occupation of Aboriginal territory by the English settlers, who arrived in increasing numbers. The natives felt invaded and began to send petitions to the authorities, from the 1830s onwards, asking for land to be set aside for them, free from colonization and development. Many these petitions are said to exist. A commission of enquiry was set up in the colony in the mid-1840s to analyse the situation. An act was passed in 1851 in the colony : An Act to set apart certain tracts of land for the use of certain tribes of savages in Lower Canada. Territories were thus set aside for several Aboriginal groups in Quebec, but none in Upper Canada (Ontario)

For many, Canadian Confederation (1867) would be a dark period in Aboriginal history. "It was the time of their territorial dispossession and the creation of reserves under the Indian Act at the time of Canadian Confederation. The Indian question became a simple matter of federal jurisdiction without the Aboriginal people being consulted." (MORIN, 2017)

#### ❖ **THE PERIOD OF RESISTANCE**

"Resistance is, by definition, the power of the weakest, and the legally subordinate Aboriginal people have made great use of this weapon. Aboriginal people have never stopped resisting, but this resistance has taken different forms, at different times, to fit multiple contexts." (RODON, 2019)

Reculturated resistance

In the so-called reculturated resistance, it is possible to observe a resistance established on the knowledge of the Western political-legal system with the use of the legal frameworks of the states to carry out this contestation. For example, during the patriation of the Constitution in 1982, Canada's indigenous peoples showed that they had the capacity to influence Canadian policy and even to obtain important concessions and to make the government back down. It was clear in 1982 that Aboriginal people are important political actors.

International resistance

Throughout history, Aboriginal peoples in Canada have even used the international platform to gain additional support for their demands and to draw attention to their cause.

- Presenting grievances to the King of England (1910 and 1913)
- Grand River leader at the League of Nations (1923)

New forms of resistance : entering the spheres of public power

In the 2015 federal election, a record number of 10 MPs were elected to the House of Commons, including 2 appointed as ministers.

This is a new strategy of resistance to influence policies and debates from within, where previously Aboriginal people had tended to remain on the margins of representative politics.

### **4.3 The Status of Aboriginal People in Canada**

According to many, the legal status of Aboriginal people is one of trusteeship ; they are therefore considered minors before the law and subject to the legislative authority of the Canadian Parliament.

The Indian Act focuses in the post-federation relationship between Aboriginal people and the state.

What the Indian Act changes :

- ✓ Determines the status of First Nations, their children and their tax system
- ✓ Establishes an official registry
- ✓ Regulate the matrimonial regime

- ✓ Governs the transmission of inheritance
- ✓ Determines the status of reserve lands
- ✓ Changes the name of the Indian nation or tribe to "band"
- ✓ Determines the powers of their governments, i.e. band councils.

A move towards the repression of the Indian Act :

- ✓ Traditional Aboriginal political structures are eliminated and replaced by band councils
- ✓ Introduction of direct trusteeship through an Indian agent with full powers over the reserve and the Indians residing there (1876)
- ✓ Introduction of a pass system to restrict the mobility of Indians who required the agent's permission to leave the reserve (1885)
- ✓ Prohibition of ceremonial and religious activities (1884); attempts to limit social and political gatherings. This was repealed in 1951 under pressure from the Calgary Stampede organizers, who wanted to see traditional Aboriginal performances.
- ✓ Prohibition on raising money for claims and hiring a lawyer (1927) ; this was intended to prevent them from having their rights recognized before the Canadian courts.

Amendments to the Indian Act :

- ✓ 1951: the most repressive provisions are repealed, such as the prohibition to hire a lawyer or to sue the Crown.
- ✓ 1960: the right to vote is granted to First Nations
- ✓ 1985: 2<sup>e</sup> wave of amendments following Canada's condemnation by the UN Human Rights Commission. Certain clauses discriminating against Indian women are eliminated, including loss of status in case of marriage to a non-Indian.

Why not abolish the Indian Act ?

- ✓ P.E. Trudeau proposed this in his 1969 White Paper
- ✓ Some believe that abolishing the Act would be a progressive policy, but : as proposed in 1969, the federal government would be giving up its exclusive jurisdiction over First Nations, and thus its financial responsibility as well.
- ✓ The simple abolition of the Indian Act (without replacing it with anything else) would therefore have allowed for the assimilation of the Aboriginals, since there would no longer be any territorial or cultural recognition of the First Nations.

- ✓ Thierry Rodon notes this important fact : "It should be noted that assimilation has been the objective of all Indian policies since Confederation. It was then proposed to achieve this by another road : we moved from assimilation by placing people on reserves to assimilation by removing them. (RODON, 2019)

Differential socio-economic status of Aboriginal people in Canada (Statistics Canada, 2016)

- ✓ Aboriginal populations are young, with a median age 10 years younger than the median age for non-Aboriginal people.
- ✓ The socio-economic status of Aboriginal people is varied.
- ✓ Economic insecurity is especially important for those living on remote reserves : living and health conditions are difficult, particularly regarding housing, drinking water and child and family services.
- ✓ For each person incomes among Aboriginal people are much lower than for the rest of the population, while unemployment rates are higher.
- ✓ The over-representation of Aboriginal people in the prison system is significant : in 2015-2016, they accounted for 26% of admissions to provincial and territorial correctional services, while they represent only 3% of the population. For Aboriginal women, the rate rises to 38%.

#### **4.4 Aboriginal-State relations in the contemporary period or the search for a new relationship**

The early 1950s saw the liberalization of Aboriginal policies : because previous policies had all failed. At the time, Aboriginal people did not have the right to vote, hire a lawyer or sue the federal government, even though they had fought in both world wars and been conscripted. The African American civil rights movement will spread to Indian Americans.

The search for a new relationship

From this time onwards, three approaches to indigenous policy will be distinguished : assimilation, integration or distinction. Assimilation : it was proposed that the Aboriginals should merge into the general population, giving up their status. Proposed in Pierre Elliott Trudeau's 1969 White Paper, as well as by Stephen Harper's advisor, Tom Flanagan (2002). Integration : The emphasis is on integration, but with recognition and acceptance of the

protection of distinction. This approach proposes a "citizen plus" status for Aboriginal people. Distinction : Nation-to-nation relationship called "institutional parallelism". There would be two political, legal and cultural realities that could share the same territory, Canada. This path would, however, require a distinct and autonomous order of government. This was the path advocated by the Royal Commission on Aboriginal Peoples.

Contemporary Aboriginal Claims : Recognition of Aboriginal and Territorial Rights at the Basis of Aboriginal Struggles

### *Calder decision*

The Supreme Court recognizes the existence and persistence of Aboriginal rights, the government still has an obligation to negotiate treaties with Aboriginal people before it can use the land. The Calder decision marks a legal shift by recognizing that Aboriginal people have land rights and by recognizing that the federal government could not terminate these rights by simply passing a law.

Redefining the Relationship between the Canadian State and Aboriginal People through Constitutional and Political Means

### *Repatriating the Constitution*

- ✓ Canada's Aboriginal peoples won explicit recognition of their rights in section 35 of the Constitution Act, 1982.
- ✓ This almost didn't happen because the Western Premiers had asked that all references to the rights of Aboriginal peoples be removed from the Constitution.
- ✓ The Aboriginal and British reaction was such that the federal government put the section on Aboriginal rights back into the Constitution.
- ✓ Section 35 of the Constitution Act, 1982 laid the foundation for a new relationship.

### *The Charlottetown Accord (1992)*

This agreement followed the failure of the 1987 Meech Lake Accord. A much more inclusive process was put in place. Measures for Aboriginal people included the inherent right to self-government within Canada, recognition of Aboriginal governments as a 3<sup>e</sup> order of government, guaranteed representation in the Senate, etc. This agreement, which many saw as

well-balanced, had the support of many Aboriginal organizations. It was decided to hold a Canada-wide referendum, and the agreement was rejected.

### *The Royal Commission on Aboriginal Peoples (RCAP) (1992-1996)*

The various constitutional failures of the 1980s and early 1990s had created tensions that led to the Oka Crisis of 1990 and in response the Royal Commission was created. The mandate of this Commission was to analyse the evolving relationship between Aboriginal people, the Canadian government and Canadian society as a whole. It was also to propose solutions. It was the most ambitious research programme ever conducted on Aboriginal peoples. The report, in 5 volumes, contains 440 recommendations. These include

- ✓ Creation of 60-70 self-governing Aboriginal governments
- ✓ Creation of an Aboriginal Parliament and a House of First Peoples which, together with the House of Commons and the Senate, would form the Canadian Parliament.
- ✓ Creation of an Aboriginal Lands Tribunal
- ✓ More equitable redistribution of land and resources.

Most of these recommendations will remain unheeded.

### *Political Management of the Liberal Government, 1993-2006*

Jean Chrétien will table the RCAP report. However, he will announce a low-ambition program that was intended to meet some of RCAP's demands.

- For example, Chrétien adopted an Aboriginal self-government policy in 1995, proposing limited recognition of the inherent right to self-government.
- In 1998, Chrétien proposed the Gathering Strength policy in response to RCAP. This policy is virtually a rejection of RCAP's recommendations.
- Chrétien will undertake the modernization of the Indian Act, aimed at making Band Councils more transparent and accountable. However, in the face of First Nations resistance, the bill was abandoned.
- In 1996, during a period of fiscal restraint, Chrétien limited budget increases for Aboriginal peoples to 2% per year, resulting in chronic underfunding for health, education, housing and infrastructure.



- Kelowna Accord: Paul Martin will follow the same path as Chrétien; however, he will be willing to reinvest heavily in Aboriginal services under the Kelowna Accord. This is a press statement made after a meeting between Canadian Premiers and Aboriginal organizations.
- The Kelowna Accord will never be implemented, as the Martin government will be defeated in the 2006 election.

#### The Conservative Government, 2006-2015

Stephen Harper has been a leader on the issue of Aboriginal recognition and redress, particularly regarding residential schools.

- While class action suits were underway, Harper chose the path of compensation and his government approved the Indian Residential Schools Settlement Agreement on May 10, 2006.

- This is a legal approach, aimed at individual restitution, which requires the release of all further lawsuits, but does not recognize the collective trauma of past institutional policies.

- However, the Harper government established the Truth and Reconciliation Commission in 2008 with the objective of documenting the allegations of former residents and informing Canada.

- The Commission's final report concluded in 2015 that residential schools had enabled a form of cultural genocide, a conclusion rejected by the Conservative government, which preferred to speak of forced assimilation.

- In early 2008, at the beginning of the Commission's work, Harper apologized on behalf of the Canadian government to the former residents. More than a symbolic event, it was the first time that Canada officially acknowledged its wrongs.

- Although Canada initially refused to sign the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), it finally signed it (2010) when all other countries with similar contexts did (Australia, New Zealand, United States) and felt very isolated if it did not. The UNDRIP was mostly adopted symbolically by Prime Minister Harper, but, following a promise by Justin Trudeau, implementation will begin in 2016.

- Jobs and Growth Act, 2012 : Omnibus Bill (Bill C-45), which changes the way reserve land use is determined. With this legislation, only the Band Council can give its consent to surrender land, whereas before the procedure required a referendum in the community. The bill thus

diminishes the democratic processes in place on reserves. This was the trigger for the "Idle No More" movement.

- Federal First Nations Fiscal Transparency Act (2013) : obliges First Nations to make public financial statements, salaries of elected officials, expenses, etc.

- The Harper government, despite the implementation of compensation programs, has not succeeded in renewing the relationship between the Canadian government and First Nations. Instead, his government will be seen as having sought to put in place new controls over Aboriginal people.

Justin Trudeau's government (2015 to ...):

Upon election, Trudeau set out an ambitious agenda with Aboriginal people, including restoring the relationship between Aboriginal people and the federal government, refinancing infrastructure and services, and putting reconciliation with Aboriginal people at the heart of his policy.

Commission of Public Inquiry into Missing and Murdered Aboriginal Women : one of the Trudeau government's first actions in 2016.

Announced its intention to implement the UN Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission.

Released a policy statement outlining 10 principles to guide government action on relations with Aboriginal peoples (July 2017). It states that government action must be based on respect for the inherent rights of indigenous peoples and the principles set out in the UNDRIP, including the principle that indigenous peoples have free, prior and informed consent to government actions that may affect the exercise of their rights.

It has refinanced Aboriginal services (\$21 billion over 8 years).

However, he has a very ambitious agenda for Aboriginal people, with many promises.

Trudeau's outreach to Aboriginal peoples has raised a lot of hope, but he has sometimes had difficulty prioritizing this issue.

## 5 CONCLUSION

This research has demonstrated that the relationship between Canada's First Peoples and the federal government has evolved very slowly since 1867. As a result, "Aboriginal identities and territorialities in Canada are now, more than ever, in flux and being reconfigured. The evolution of comprehensive territorial negotiations, the conclusion of agreements between Aboriginal peoples and provincial and federal governments, and the implementation of co-management models for natural resources suggest that Canada has now chosen to respect the cultural and political aspirations of First Nations, Inuit and Métis peoples" (Caroline Desbiens, 2012/4). The Indian Act, which has been amended many times in the past, has long prevented Aboriginal people in Canada from asserting their Aboriginal rights. Canada seems to have been unsympathetic in its fiduciary role, and it is finally the Supreme Court, from the 1950s onwards, that will render decisions in favour of the common good of Aboriginal peoples and their territories. Indeed, this research indicates that the Supreme Court's decisions, starting with the Calder decision, have, one by one, allowed Aboriginal rights to be built. With the addition of section 35 to the Constitution Act, 1982, the First Peoples of Canada had even more opportunities to have their rights recognized. The Supreme Court of Canada has been perhaps the best ally of First Peoples in the recognition of their rights, even reminding the federal government of the principle of honour that should guide its behaviour and decision-making regarding Aboriginal people. Overall, it was indeed the Court that had to recall the benevolent nature that should have been associated throughout with the fiduciary role of section 91(24) of the Canadian Constitution. However, it is important to recognize the perseverance and patience of Aboriginal peoples in their quest to have their rights recognized and to regain the political autonomy they enjoyed even before the Conquest. While this period of claims and litigation has been salutary for Aboriginal peoples, it has also highlighted the isolation experienced by many early peoples. The fact that they were dispersed on reserves and sometimes even displaced from their original territory created a real isolation for some nations. . This is why the UN and RCAP recommended that Aboriginal people be given the means (as is the case elsewhere in the world) to form nations to break the isolation of some and create a sense of community and strength in numbers. This is an issue to be monitored as the federal government's Aboriginal nation rebuilding programme is only just being launched. An analysis of electoral platforms from 1867 to the present demonstrates a major flaw in the Canadian political system, namely the lack of continuity in policy issues and legislation. This is true for a number of issues, but in the case of Aboriginal issues, we note that disturbing, even urgent,

problems should have been dealt with as a priority, without regard to partisanship. Indeed, since projects die on the order paper as soon as there is a change of government, the progress promised on numerous occasions (improvement of housing, water quality, education, etc.) never comes to fruition or progress is very slow. If we look at the election platforms, we see many initiatives and projects that would certainly have improved the social and economic conditions of Aboriginal people in Canada, but political breakdowns have caused these projects to fail.

## 6 BIBLIOGRAPHIC REFERENCES

Bibeau, G. (2004). *Governance and Mental Health. The Place of Youth in Aboriginal Communities*. University of Montreal, 7.

Canada, M. D. (2018). *Principles Governing the Government of Canada's Relationship With Aboriginal Peoples*. Isbn 978-0-660-25094-6 Cat. J2-476/2018E-Pdf, 5-16.

Caroline Desbiens, I. H. (2012/4). *Aboriginal Peoples in Canada : Changing Spaces and Peoples*. Armand Colin | "L'Information Géographique", Vol. 76 | Pages 29 à 46.

Faith, J. E. (2014). *Aboriginal Autonomy Today in Quebec : What Claims and What Leadership ?* Study Day, 152.

Shepherd, L.M. (2014). From colonization to right relations: The Evolution of United Church of Canada missions within Aboriginal communities. *International Review of Missions*, 103(1), 153–171.

François, C. (2021). *Residential Schools : The Crime From Which Canada Is Struggling to Recover*. Tv5monde-Informations, 1.

Development in Aboriginal Communities: Economic Strategies and Policies. (2008). *Applied Anthropology in Canada*, 156–181.

Garneau, G. F.-X. (1944). *History of Canada, Volume I*. Montreal : Les Editions de l'Arbre.

Josianne, D.-S. v. (2019). *Canadian Residential Schools, History, Memory : Montages and Views on Archival Images Through a Participatory Exhibition*. Montreal : Université du Québec à Montréal.

Lepage, P. (2019). *Myths and Realities About Aboriginal Peoples*. Musée de la Civilisation, Québec, 151-160.

Leslie, J. (2002). *The Indian Act : A Historical Perspective*. Summer 2002 / Canadian Parliamentary Review, 27.

Miller, J. (1997). *Canada and the Aboriginal Peoples 1867-1927*. Canadian Historical Association, 2-20.

Moran, R. (2022). *The History of Residential Schools in Canada*. Retrieved from Atlas / The Truth and Reconciliation Commission : <https://atlasdespeuplesautochtonesducanada.ca>

Morin, R. (2017). *The Construction of Aboriginal Law by the Supreme Court of Canada : From a Litigator*. Quebec, Canada.

Otis, G. E. (2013). *Federalism and Aboriginal Governance*. Quebec City : Presses de L'Université Laval.

Quebec, R. d. (July 2006). *Urban Aboriginals : A Claimed Identity*. 5.

Quebec, S. E. (2018). *Youth Protection at the Heart of Our Priorities - Signing of an Agreement Between the Government of Quebec and the Atikamekw Nation Council*. Press Release, la Tuque, 154.

Rodon, T. (2019). *The Aporias of Canadian Aboriginal Politics*. Quebec, Canada : Presses de L'Université du Québec.

Sophie, R. (2021). *Understanding the Evolution of Aboriginal Issues in Canada or the Inertia of the Federal Government*. Canada: Senate of Canada.

## **7 TABLE OF CONTENTS**

<b>SUMMARY</b>	<b>2</b>
<b>1 INTRODUCTION</b>	<b>1</b>
<b>2 HISTORY OF ABORIGINAL COMMUNITIES IN CANADA</b>	<b>3</b>
2.1 History of Canada	3
2.2 Identification of Aboriginal communities (origin, first settlements, missionaries...)	7
2.3 Evolution of Aboriginal communities in Canada (migration from European and American peoples, and even from Africa)	11
2.4 Youth in Aboriginal Communities Facing Globalization	13
□ Youth in turmoil	14
<b>3 LEGISLATION</b>	<b>16</b>
3.1 History of Aboriginal Peoples' and Human Rights Law in Canada	16
3.1.1 History of Peoples' Law	16
3.1.2 Overview of the source of Aboriginal rights in Quebec	19
3.2 Law governing the life of Aboriginal people in Canada	20
<b>4 ABORIGINAL SOCIO-CULTURAL ISSUES IN CANADA</b>	<b>24</b>
4.1 Aboriginal Peoples and Policy Issues	24
4.1.1 Objective I : Assimilation	25
4.1.2 Objective II : Opening up the land	26
4.1.2.1 Expansion	26
4.1.2.2 Integration	27
4.2 The changing relationship between Aboriginal peoples and the powers that be	29
4.3 The Status of Aboriginal People in Canada	33
4.4 Aboriginal-State relations in the contemporary period or the search for a new relationship	35
<b>5 CONCLUSION</b>	<b>40</b>
	44

**6 BIBLIOGRAPHIC REFERENCES**

**42**

**7 TABLE OF CONTENTS 44**



## Summary of the paper

Gli aborigeni urbani, proprio per la loro condizione, vivono oggi una situazione precaria che li costringe a porsi domande fondamentali, non solo sul proprio destino, ma anche sul futuro dei loro fratelli e sorelle che vivono in comunità. Allontanandosi dal proprio luogo d'origine e vivendo in città, questi ultimi non solo perdono la protezione naturale della loro comunità, ma si trovano anche faccia a faccia con un ambiente non aborigeno che, pur non essendo loro necessariamente ostile, difende costumi e valori molto lontani da quelli che li definiscono personalmente.

Per garantire la conservazione della propria cultura e identità nella città, gli aborigeni urbani non hanno aspettato che venisse loro suggerita una soluzione; al contrario, si sono uniti e hanno creato luoghi di incontro che contribuiscono al loro rafforzamento identitario, culturale, sociale, economico e politico. In questo senso, ad esempio, il *Native Friendship Center Movement* è una rete efficace e accessibile che promuove lo sviluppo di una comunità emergente: la comunità aborigena urbana.

Il termine "aborigeno" si riferisce ai primi popoli del Nord America e ai loro discendenti che, provenendo dalla Siberia, entrarono in Canada migliaia di anni fa. Durante gli anni dal 1867 al 1996, il governo canadese ha collocato oltre 150.000 bambini in 139 scuole residenziali ad uso esclusivo degli studenti aborigeni, presenti su tutto il territorio nazionale. Tuttavia, il sistema scolastico residenziale divenne presto un mezzo di colonizzazione e assimilazione forzata dei popoli e territori aborigeni nella sfera linguistica e culturale europea, attraverso la conversione di massa di studenti aborigeni, perlopiù i meno abbienti, al cattolicesimo o al protestantesimo. Integrando gli indigeni nella società, si sarebbe ridotta la necessità di riserve e trattati per i diritti dei popoli aborigeni.

Le scuole residenziali per gli studenti indigeni erano caratterizzate da uno scarso livello di istruzione ed edifici antigienici, con giovani mal alloggiati e mal nutriti poiché sottofinanziati e mal gestiti. Secondo le testimonianze dei sopravvissuti e del personale, gli edifici erano spesso fatiscenti, a volte al punto da essere pericolosi.

Negli ultimi sessant'anni, la comunità aborigena ha attraversato alcuni cambiamenti, tra cui una sedentarizzazione più accelerata, fonte di ulteriori mutamenti a livello sociale ed

economico. Oggi le comunità situate vicino ai grandi centri sono integrate nella vita urbana e regionale. La natura urbana di alcune comunità le ha incoraggiate a sviluppare nuovi rapporti con la società del Quebec e ha favorito la loro partecipazione a progetti collettivi. Poiché i valori sociali si sono evoluti negli ultimi cinquant'anni, la società canadese è diventata più flessibile e aperta. Molte comunità stanno approfittando dell'espansione delle opportunità di istruzione secondaria e post-secondaria e sempre più donne stanno diventando lavoratrici professionali. In passato, alla maggior parte dei canadesi asiatici era stato negato il diritto di voto alle elezioni federali e provinciali; tuttavia, gli ultimi di loro a cui fu negato questo diritto, i canadesi giapponesi, lo ottennero finalmente nel 1948. Gli aborigeni ottennero il diritto di voto nel 1960 e nel 1968 fu creata la *National Indian Brotherhood*. Questa organizzazione, fondata per rappresentare gli interessi degli Indiani di Stato presso il governo federale, divenne l'Assemblea delle Prime Nazioni.

Nel 1867, il governo federale appena creato divenne responsabile dei circa 100.000-120.000 indiani e delle terre loro riservate. A quel tempo, le varie società aborigene in tutto il continente avevano rapporti diversi con gli euro-canadesi. Il governo federale si è quindi trovato di fronte all'enorme compito di sviluppare politiche per questa popolazione eterogenea, riconoscendo e "affermando" i diritti "esistenti" dei popoli aborigeni del Canada, con la sezione 35(1) del *Constitution Act* del 1982. Come rilevato dalla Corte Suprema, la disposizione costituzionale riflette il fatto che tali diritti esistevano prima del 1982 nel diritto comune, portando alla conclusione per cui una dottrina giuridica preesistente ha ricevuto rango costituzionale. Essendo una comunità come le altre, sono molti i principi che governano la vita degli aborigeni in Canada, infatti il Governo del Canada riconosce che tutti i rapporti con i popoli aborigeni devono essere basati sul riconoscimento e l'attuazione del loro diritto all'autodeterminazione, compreso il diritto intrinseco di autogoverno.

Come stabilito dai tribunali, una nazione aborigena o un gruppo di titolari di diritti è un gruppo di aborigeni che condividono caratteristiche essenziali come lingua, costumi, tradizioni ed esperienza storica al momento del primo contatto, affermazione della sovranità della Corona o controllo effettivo. La *Royal Commission on Aboriginal Peoples* stima che ci siano tra le 60 e le 80 nazioni storiche in Canada.

Il governo del Canada riconosce che la riconciliazione è lo scopo fondamentale della sezione 35 del *Constitution Act*, 1982. La riconciliazione è un processo continuo in cui i popoli aborigeni e la Corona lavorano insieme per stabilire e mantenere un quadro per la convivenza

basato sul rispetto, per promuovere nazioni aborigene sane e sostenute all'interno di uno stato forte. Il Canada riconosce di dover sostenere l'onore della Corona, che obbliga il governo federale e i suoi dipartimenti, agenzie e funzionari ad agire con onore, integrità, buona fede e correttezza in tutti i suoi rapporti con i popoli aborigeni, e che l'autogoverno aborigeno fa parte del sistema canadese in evoluzione di federalismo cooperativo e ordini di governo separati. A questo fine vengono riconosciuti trattati e accordi costruttivi e di riconciliazione tra i popoli aborigeni e la Corona basati sul riconoscimento e sul rispetto reciproci. Il governo del Canada riconosce inoltre un impegno significativo con i popoli aborigeni che consiste nell'ottenere il loro consenso libero, preventivo e informato quando il Canada propone di intraprendere azioni che riguardano i popoli aborigeni e i loro diritti sulle loro terre, territori e risorse. Viene considerato essenziale rispettare e attuare i diritti e che ogni violazione dei diritti della sezione 35 deve, per legge, essere giustificata nei più alti termini, considerando le prospettive aborigene e adempiendo agli obblighi fiduciari della Corona. La riconciliazione e l'autogoverno richiedono un nuovo rapporto fiscale con le nazioni aborigene, stabilito in uno spirito di cooperazione con loro, che promuova un ambiente favorevole ai partenariati economici e allo sviluppo delle risorse, viene considerato un processo continuo che si svolge nel contesto dell'evoluzione delle relazioni tra gli aborigeni e la Corona.

Per quanto riguarda le questioni politiche che interessano gli aborigeni, la nozione stessa di politica aborigena è problematica poiché implica che essa sia mirata solo ad una parte della popolazione, selezionata su base etnica, e attuata da un governo democratico, il che andrebbe contro i principi originari della democrazia e di un cosiddetto stato liberale, vale a dire l'uguaglianza e l'universalità. Tuttavia, ad oggi gli aborigeni sono soggetti a politiche separate, a differenza di tutti gli altri cittadini. Le persone delle Prime Nazioni, ad esempio, sono sotto il controllo esclusivo del governo federale, disciplinato dall'*Indian Act*.

Secondo diversi autori, le politiche aborigene in Canada hanno sempre perseguito due obiettivi: l'assimilazione, l'espansione e l'integrazione. Le scuole residenziali erano il principale luogo di attuazione della politica di assimilazione degli aborigeni in Canada. Create dal governo federale, esse sono state gestite da comunità religiose il cui scopo era trasformare i bambini aborigeni in buoni cittadini canadesi, che parlassero inglese o francese, con lo scopo di "uccidere l'indiano presente nel bambino". Per quanto riguarda la politica di espansionismo, una delle principali questioni e fonti di conflitto nella politica fondiaria è il controllo delle terre tradizionali. In effetti, la riserva ha un accesso limitato alla terra per gli aborigeni e le riserve canadesi sono minuscole: l'area totale delle riserve canadesi è inferiore

all'area della riserva Navajo negli Stati Uniti. Gli aborigeni rivendicano la posizione di custode che protegge il territorio per le generazioni future. Anche il finanziamento dei negoziati è una questione critica, poiché la lentezza dei negoziati ha comportato costi significativi per gli aborigeni.

Dal lato dell'integrazione, il progetto di creare un autogoverno per le popolazioni indigene deve essere un progetto più ampio del semplice aumento dei diritti politici e delle opportunità di partecipare al processo decisionale. Essa, infatti, deve anche e soprattutto servire a creare spazio per la sopravvivenza di società indigene distinte. Affinché questi nuovi meccanismi di autodeterminazione indigena possano raggiungere questo obiettivo, dovranno riflettere e portare i valori e le tradizioni della cultura indigena che intendono servire.

Il rapporto tra i popoli indigeni e l'autorità sul cosiddetto territorio canadese viene descritto basandosi sulla distinzione tra tre periodi storici distinti: il periodo delle alleanze, il periodo della sottomissione e il periodo della rinegoziazione del posto dei popoli aborigeni all'interno del Canada. In termini di evoluzione dei rapporti tra gli aborigeni e le autorità governative, tre date o trattati segnano la storia: 1763 con il Proclama Reale, 1867 con la Confederazione Canadese e 1982 con la ratifica della Costituzione e della Carta dei Diritti e delle Libertà.

I primi anni '50 videro la liberalizzazione delle politiche aborigene, poiché le politiche precedenti erano tutte fallite. A quel tempo, gli aborigeni non avevano il diritto di voto, assumere un avvocato o citare in giudizio il governo federale, anche se avevano combattuto in entrambe le guerre mondiali ed erano stati arruolati. Il rapporto tra i primi popoli canadesi e il governo federale si è evoluto molto lentamente dal 1867. Di conseguenza, "le identità e le territorialità aborigene in Canada sono ora, più che mai, in evoluzione e in fase di riconfigurazione.

Dopo aver svolto un'analisi sulla letteratura e aver studiato la politica sul rapporto tra i popoli indigeni e il governo Canadese è possibile comprendere come l'evoluzione dei negoziati territoriali globali, la conclusione degli accordi tra i popoli aborigeni e i governi provinciali e federali, e l'attuazione di modelli di gestione delle risorse naturali suggeriscono che il Canada abbia ora scelto di rispettare le aspirazioni culturali e politiche dei popoli First Nations, Inuit e Métis" (Caroline Desbiens, 2012/ 4). L'Indian Act, che è stato emendato molte volte in passato, ha a lungo impedito agli aborigeni in Canada di far valere i propri diritti aborigeni. Il Canada sembra essere stato poco propenso nello svolgimento del suo ruolo fiduciario, ed è infine la Corte Suprema, dagli anni Cinquanta in poi, a pronunciarsi in favore

del bene comune dei popoli aborigeni e dei loro territori. In effetti, questa ricerca indica che le sentenze della Corte Suprema, a partire dalla decisione Calder, hanno permesso, una dopo l'altra, di costruire i diritti degli aborigeni. Con l'aggiunta della sezione 35 al *Constitution Act* del 1982, i *First Peoples of Canada* hanno avuto ancora più opportunità di vedere riconosciuti i propri diritti. La Corte Suprema del Canada è stata forse il miglior alleato dei Primi Popoli nel riconoscimento dei loro diritti, ricordando anche al governo federale il principio dell'onore che dovrebbe guidare il suo comportamento e il suo processo decisionale nei confronti degli aborigeni. Tuttavia, è importante riconoscere la perseveranza e la pazienza dei popoli aborigeni nella loro ricerca per vedere riconosciuti i propri diritti e per riconquistare l'autonomia politica di cui godevano anche prima della conquista. Sebbene questo periodo di rivendicazioni e contenziosi sia stato salutare per i popoli aborigeni, ha anche evidenziato l'isolamento vissuto da molti dei primi popoli. Il fatto che fossero dispersi nelle riserve e talvolta addirittura sfollati dal loro territorio originario creò un vero e proprio isolamento per alcune nazioni. Questo è il motivo per cui l'ONU e l'RCAP hanno raccomandato che agli aborigeni vengano dati i mezzi (come avviene in altre parti del mondo) per formare nazioni per rompere l'isolamento di alcuni e creare un senso di comunità e forza nei numeri.