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Beyond Territory: Revisiting the Normative Justification of Self-Government in Theory and Practice

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Beyond Territory: Revisiting the Normative Justification of Self-Government in Theory and Practice

Abstract

The association of sovereignty with control over territory is being challenged both internally and externally in modern societies. Demands for political autonomy from sub-state minorities undermine the natural link between nation, state and territory from within, while the movement of capital, goods and information across borders contests the relationship between these concepts from without. Scholars of international relations, law, philosophy and political science have already suggested that the sovereignty of nation-states is under attack; however, scant attention has been paid to the way in which changes in the relation between nation, state, and territory affect the normative weight associated with each of these concepts in discussions about sovereignty and self-government. The objectives of this article is to examine the way in which nation, state, sovereignty, and territory are addressed in normative justifications of indigenous self-government and to better understand how these notions are being treated in its implementation.

Keywords

Indigenous Self-Government, Territoriality, Globalization, Urban Reserves

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Instead of being divided between two orders of government, government powers will have to be divided among three orders. This is a major change, and one that will require goodwill, flexibility, co-operation, imagination and courage on the part of all concerned.

Royal Commission on Indigenous Peoples (1996)

Control over a territory has been the organizing principle *par excellence* of the global order since the signing of the Treaty of Westphalia in 1648. The Westphalian vision of sovereignty postulates that political power, and by extension self-government, is exercised by territorially defined nation-states. The association of sovereignty with the exclusive control over a territory is being challenged both internally and externally in contemporary societies. Demands for political autonomy from sub-state minorities undermine the relationship between nation, state and territory from within, while the movement of capital, goods and information across borders contests the association of these concepts from without. Scholars of international relations, law, philosophy, geography, indigenous studies and political science have already suggested that the sovereignty of nation-states is under attack; however, scant attention has been paid to the way in which changes in the relation between nation, state, and territory affect the normative weight associated with each of these concepts in discussions about sovereignty and self-government. This article emphasizes the importance of distinguishing between these concepts to uncover their normative content as well as their applied meaning.

This article contends that, although the control over a given territory can enhance a group's ability to achieve political autonomy, it should not be viewed as a normative precondition for self-government, self-determination or nationhood. To support this argument, this article is divided into three parts. The first section challenges the perceived 'natural' link between nation, state, sovereignty and territory. The second section re-articulates a normative justification of self-government that is non-territorial and thus relevant for territorially dispersed indigenous peoples. Through an examination of the creation of urban reserves in the Canadian province of Saskatchewan, the third section illustrates the limits of territorially-based justifications of self-government and thereby challenges the idea that sovereignty is contingent on the exercise of control over a territory. The underlying objectives of this article is to examine the way in which the concepts of nation, state, sovereignty, and territory relate to one another in normative justifications of indigenous self-government and to better understand how these concepts are being treated in its implementation.

Conceptual clarity

In theoretical and well as political discussions, territory is often portrayed as a necessary condition for self-government, which is often used interchangeably with self-determination and sovereignty. One of Canada's foremost scholars on minority rights, Will Kymlicka, describes self-government as "devolving political power to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their *historical homeland or territory*" (1995, p. 30, my emphasis).¹ Although self-government is often associated with a "historical homeland" or "territory," J. Edward Chamberlin argues that the emphasis on territories as spaces over which to exercise authority is a "stubborn delusion, part of the mistaken notion that sovereignty is absolute and always territorially defined" (1988, p. 15).²

Most indigenous peoples in present-day Canada are not territorially bound. More than half of this population lives outside the boundaries of traditional reserves in urban and rural areas interspersed with

¹ Critics of dominant accounts take issue with the notion that self-government is devolved. Scholars such as Taiaiake Alfred (1999), Joyce Green (2005), John Borrows (2002) argue that indigenous peoples' right to self-government cannot be devolved since it is inherent and thus existed prior to the establishment of the Canadian state.

² I return to the idea that territory, construed as a bounded place, is privileged in discussions of self-government in Part Three.

non-indigenous persons. There are over 600 indigenous communities in Canada, most of which occupy only fragments of their original land base alongside an ever-growing body of urban individuals (Royal Commission on Aboriginal Peoples, 1996). Given the changes in the territorial organization of indigenous peoples, it is increasingly evident that the realization of indigenous self-government will depend on the development of governance models able to accommodate the changing reality of these groups. In light of the modern reality where indigenous peoples are territorially dispersed in urban, rural and reserve areas intermixed with the non-indigenous population, it is imperative to closely examine the way in which territory is used in the normative justification as well as the practical implementation of indigenous sovereignty, self-determination and self-government. Below, I present a brief overview of the way in which scholars of globalization and political geography provide the conceptual space in which to rethink the link between concepts such as self-government, state, sovereignty, and territory.

Globalization's Challenge to Self-Government as Territorially Defined by Nation-States

In a general way, globalization challenges the Hobbesian idea that sovereignty is indivisible: it undermines the assumption that political autonomy is achieved through, and dependent upon, the exercise of control over a bounded territory. As Saskia Sassen argues, globalization has affected "two distinct features of the modern state: sovereignty and exclusive territoriality" (1996, p. xii). The international relations literature has traditionally linked state sovereignty in various ways with the notion of territory. Hobsbawm writes that "the equation nation=state=people, and especially sovereign people, undoubtedly linked nation to territory, since the structure and definition of states were ... essentially territorial" (1990, p. 19). Both in its ideal theoretical and real political form, the Westphalian model vested decision-making power, authority, and sovereignty in the bounded territory of states. As Agnew writes,

[t]he dominant Westphalian model of state sovereignty in political geography and international relations theory, deficient as it has long been for understanding the realities of world politics, is even more inadequate today, not only for its ignoring the hierarchy of states and sources of authority other than states, but also because of its mistaken emphasis on the geographical expression of authority (particularly under the ambiguous sign of 'sovereignty') as invariably and inevitably territorial. (2005, p. 437)

While much of international relations scholarship views the state as what Giddens (1985, p. 172) calls a "bordered power container," such a view has been supplanted by more nuanced arguments that acknowledge the complex relationship between state, sovereignty and territory. For instance, Nordlinger (1981) distinguishes between state autonomy – the power to achieve goals – and state sovereignty – the entitlement to rule over a bounded territory. Despite the fact that sovereignty and autonomy are "assumed to be embedded within, and congruent with, the territorially organized framework of liberal democratic government" (Held, 1999, p. 29), globalization makes the incongruence of these concepts more evident. David Held writes that, "sovereignty itself has to be conceived today as already divided...and limited by the very nature of this plurality" (1991, p. 222).

Although globalization makes apparent that state and territory are not synonymous, Stuart Hall remarks that "territory matters for the definition of sovereignty, partly because the sense of 'belonging' – sentiments of loyalty – are important constituents of being members of a state; but mainly because of the need to establish the boundaries to power and legal rule" (1984, p. 18). As such, it is important to acknowledge the role territory plays in securing sovereignty without taking these concepts to mean something identical. In what he calls the "territorial conundrum," Michael Keating distinguishes between territory's symbolic importance as the actual location of a group and its functional importance as the space over which the practical exercise of self-determination takes place (2003, pp. 15-16). Territory's role as

representative of a symbolic piece of a larger narrative about the collective identity of a group should be distinguished from its functional roles, which may involve enhancing economic self-sufficiency.³ Given its various uses and applications, it is important to articulate the way in which territory matters for sovereignty, self-government and self-determination. I therefore turn to scholars of political geography to clarify how territory relates to sovereignty and to better understand the relationship between territory and self-government.

Geography's Challenge to Self-Government as Territorial Sovereignty

Territory is often associated or confounded with the colonial ideas of property, boundary and jurisdiction (Buchanan, 2003, p. 239). David Delaney leads the charge of political geographers in arguing that territory does not simply refer to national borders or lines on a map. Rather, it expresses a relationship between land, people and identity: a relationship best described as *territoriality* (2005, p. 4). Territoriality is characterized as a process through which places are created to “satisfy both the material requirements of life and the emotional requirements of belonging – of placing oneself both in time and space” (Penrose, 2002, p. 282). A relational understanding of territory takes into account the symbolic as well as the functional roles geographical areas encompass. The practices and processes of territoriality thus give life to territory and meaning to its boundaries (Delaney, 2005, p. 27).

Given that many indigenous peoples consider land and the resources it holds to be part of “a complex web of interrelated spiritual and natural relationships” (Hendrix, 2005, p. 769), it is appropriate to consider Delaney’s argument that territoriality entails looking beyond the physical manifestation of place and uncovering the questions of “power and meaning, ideology and legitimacy, authority and obligation, and how worlds of experience are continually made and remade” (2005, p. 18). Territoriality takes into account the meanings embodied in the contradictions and relationships continually being constructed between people, place and identity, whereas territory, used to designate jurisdiction over a specific geographical area, obscures the significance of these interactions. To more adequately account for the relationship between a geographical space and political autonomy, a relational understanding of territory is required in discussions about self-government.

Focusing on the functional role of territory and ignoring its symbolic meanings raises particular problems in discussions about self-government in Canada where indigenous groups do not necessarily reside on an exclusive territory and do not all identify with a given physical place. More than half of Canada’s self-identified indigenous population resides in urban areas whereas approximately thirty percent live on territorially concentrated reserves. Indigenous peoples are aware that their claim to self-determination is incompatible with the concept of state sovereignty. Taiaiake Alfred contends that, rather than conceiving of sovereignty in terms of interests and boundaries, indigenous peoples consider it in terms of land relationships and spirituality (1995, p. 250). Although it is often easier to premise the argument for self-determination on a claim to control a specific territory, indigenous peoples’ claim to self-government should not be mistaken as necessarily being a claim for exclusive sovereignty or statehood. The following section examines more closely the way in which these concepts come together in normative justifications of indigenous self-government.

Rearticulating the Normative Justification for Indigenous Autonomy

By challenging the assumption that sovereignty is exclusively exercised by nation-states over a given territory and by undermining the idea that self-government is territorially bound, the literature on

³ For a discussion of territory’s functional roles, see section three of this article.

globalization and political geography provide the conceptual space in which to re-think the connection between state, nation, sovereignty, and territory. Relying on indigenous nationalist discourse in Canada, this section sketches an outline for a justification of indigenous self-determination that does not rely on a claim to the exclusive control of a territory. By taking into consideration the normative content associated with concepts like territory, this discussion sets the stage for a re-articulation of the justification of self-government that has relevance for indigenous minorities who do not reside on a well-defined or contiguous territory.

De-territorialized Indigenous Nationhood in Canada

Indigenous nationalist discourse resurged in the 1970's as a response to assimilative state policies such as the *1969 White Paper*. In reaction to decades of public neglect and political exclusion in Canada, indigenous peoples formulated a claim to self-determination that was consistent with the dominant narrative of nationhood that characterized the Canadian political scene at the time (for a discussion, see Andersen and Denis, 2003, p. 376). Adopting the discourse of nationhood not only allowed indigenous peoples to shape a common political project, but it also enabled them to come together "beyond" the traditional boundaries of their communities by having small and alienated groups participate in a shared political endeavour.

In a sense, indigenous nationalism was evoked to evade marginalization as well as to overcome the divisive realities of secluded indigenous communities with limited governing capacities. At its core, the discourse of nationhood brought indigenous peoples together "above" and "beyond" dispersed and isolated territorial communities. The trend to abandon confining characterizations of nationhood by challenging definitions that privilege territory as a physical place is taken up by Benedict Anderson who presents nations as "imagined communities." Nations are imagined in that members conceive of a comradeship and develop a sense of communal self-awareness even though they will never know most of their fellow members (2003, p. 6). Following Anderson, Ross Poole contends that when people envision themselves as belonging to a particular community that influences their lifestyle and choices, they consequently form a nation (1999, p. 6). Many contemporary theorists of nationhood argue that, regardless of their ethnic make-up or their territorial and spatial organization, indigenous peoples constitute nations insofar as they represent a community with an *aspiration* to be politically self-determining (Guibernau, 1999, p. 16; Miller, 1995, p. 19). Hence, the aspiration for some form of political sovereignty embodied in the shared political self-consciousness of a group is key to a claim to nationhood through which indigenous peoples articulate their claim to self-determination.

The argument thus far suggests that although territory can contribute to the sense of community individuals feel and imagine as part of a nation, nationhood does not depend on any physical place since the attachment people have to a community is constructed. Hence, territory's symbolic element constitutes the core of a justification to national self-determination. To clarify what this argument entails in practice, we can consider the reality of First Nations bands in the Canadian province of Saskatchewan where membership is not necessarily determined by residence or presence on a given territory. Among Cowessess First Nation's 3526 members, only 712 live on reserve; Carry the Kettle First Nation has 2387 members of which 850 live on reserve; and only 1100 of the 3106 George Gordon First Nation members live on reserve (Star Phoenix, 2009). Even though some members of these communities live on reserve while others are dispersed in urban areas or in non-reserve rural regions, their claim to self-determination and thus to nationhood is not diminished by the fact that they do not all live on the same territory.

Likewise, the emerging trend in a number of Canadian cities to expand the territory occupied by indigenous peoples through the creation urban reserves does not necessarily affect their claim to self-determination. It is not the reserve, as a place, that characterizes the nation, but rather their sense of belonging towards the land as well as towards the members of a group who are both on and off the reserve, that characterizes them as a nation and that legitimizes their claim to self-determination. Thus,

belonging to a community which is located in a specific place is important to nationhood only insofar as that specific place may contribute to individuals' sense of belonging to a shared community: whether indigenous peoples reside on their traditional homeland or in urban areas does not take away their capacity to be part of a nation insofar as the nation relies on a political self-consciousness and is – in a sense – imagined. Although territory may also play a functional role in relation to self-determination as will be discussed in section three, it is imperative to acknowledge that its symbolic qualities can form the basis of a normative justification to self-determination and hence to nationhood.

Non-Territorial Self-Government

Recognizing that nationhood and indigeneity transcend territorial boundaries requires that contemporary politics distinguish self-government, self-determination, and sovereignty from the control over a territory and acknowledge the relational character of identity, place and people. Indigenous sovereignty is not contingent on the control of a territory nor is the control over a territory the sole expression of indigenous self-government. Sovereignty, for indigenous peoples, refers to their ability to determine their futures according to their cultural values (Alfred, 1999, p. 47). Similarly, the primary justification for self-government is not to exercise sovereignty over a territory, but to give indigenous peoples the capacity to define and redefine their goals and projects in such a way that their cultural and political vocabulary align with their aspiration as an “imagined” community. Rather than referring to a specific territory, a single group or a homogenous cultural identity, indigenous sovereignty refers to the relationships that exist between persons, identities and places; through self-determination and self-government, indigenous peoples give meaning to these relationships.

In view of the existence of indigenous nations in Canada, the Canadian state cannot accurately describe itself as a nation-state but, as Philip Resnick argues, should instead refer to itself as a multi-nation state. Likewise, indigenous groups consequently form what has been called “nations within” (Fleras and Elliott, 1992). Despite the fact that indigenous peoples do not possess, nor do they necessarily seek to possess, a state of their own, they nevertheless constitute nations that aim to be self-governing. In the same sense that indigenous groups are not required to govern a state to constitute nations, they are not required to occupy a specific territory to have a claim to self-determination, nationhood or self-government. Although the small size of indigenous communities and their territorial isolation raise legitimate concerns with regard to the feasibility and practicality of self-government, they do not, however, diminish the value of indigenous peoples' normative claim to nationhood, self-determination and hence, to self-government.

Non-Territorial Self-Government in Practice

An important question is nonetheless raised regarding *how* indigenous peoples can be self-governing without the exclusive control over a territory. As Peters argues, “space, place, and territory have a number of important implications for the lives, lands, and cultures of Aboriginal Peoples that have not been carefully considered” (1994, p. 163). Given the dominance of geography in the political organization of governance structures, how can indigenous peoples overcome this pragmatic obstacle and become sovereign, self-governing nations? Part of the answer to this challenge requires the creation of institutional designs that can accommodate indigenous peoples who are territorially dispersed.⁴ As Michael Murphy writes,

[r]elational self-determination encompasses a sphere of autonomy for self-determining groups,

⁴ It is important to note that self-government can take different forms and entails various types of structures and powers for each community. Various models of self-government have been proposed by Weinstein (1986), Tizya (1992), Dunn (1985), Groves (1991), and contributors in Peters (1995) and Garcea and Barron, (1999).

but also recognizes that relations of complex interdependence place both practical and ethical limitations to autonomy, creating the need for shared or co-operative forms of governance to manage this interdependence in a manner which is both effective and democratic. (2005, p. 10) Looking at current Canadian initiatives in urban settings, this section illustrates the limits of territorially-based understandings of self-government and highlights the possibilities for non-territorial self-government.

Urban Reserves

Although the Canadian Parliament holds exclusive legislative authority over “Indians and Lands reserved for Indians” according to subsection 91(24) of the Constitution Act, 1867, negotiations for the expansion and addition of reserve lands are putting in question the sovereignty of Parliament over indigenous lands and ways of life. The Canadian government adopted an Additions to Reserves (ATR) policy to allow for the expansion of existing reserves as well as the establishment of new reserves. The adoption of this policy is largely a result of the acknowledgement that many indigenous bands have not received the acreage to which they are entitled according to the treaties signed between 1874 and 1906 (Sully and Emmons, 2004, p. 4). The addition or expansion of reserves is negotiated through Treaty Land Entitlement Framework Agreements (TLEFA) which are provincial protocols developed by federal, provincial and indigenous governments through which land debts owed to indigenous peoples are settled (see Martin-McGuire, 1999).

In 1992, the Saskatchewan TLEFA was reached through negotiations between federal and provincial governments and 25 bands, with 4 additional bands signing later (Sully and Emmons 2004, p. 4). Saskatchewan is one of the rare places where the development of First Nations reserves has happened in an urban setting (SCC, 2008). As Garcea and Barron write, “urban reserves in Saskatchewan are not mere imitations of what can be found elsewhere, but rather are unique inventions, peculiar to the province” (1999, p. 10). Urban reserves elsewhere generally result from urban sprawl or the municipal annexation of lands surrounding already existing reserves. However, Saskatchewan has witnessed the creation of new urban reserves as part of a conscious strategy by indigenous groups to purchase lands in urban areas to convert them into new reserves. Garcea writes that,

[u]nlike reserves of earlier times, which were created largely at the behest of federal government officials to segregate, isolate, marginalize, and subordinate Aboriginal communities and to circumscribe the land holdings and mobility of their members, the new satellite reserves are being created at the request of First Nations leaders who see them as a means to advance their economic, social, cultural, and political development objectives. (2008, p. 287)

Of the 33 new urban reserves created in the province, 9 are in cities. In 1988, Saskatoon became the first city in Canada to establish an urban reserve, Muskeg Lake Cree Nation.

The City of Saskatoon, affirms that “[i]n addition to fulfilling original treaty commitments, TLE agreements have already led to greater economic and social independence and self-sufficiency for Saskatchewan First Nations. It is also providing economic development opportunities for all people of the City and province” (SCC, 2008). Economic self-sufficiency is a large component of the rationale behind establishing urban reserves though the idea that urban reserves are the best way to achieve economic self-sufficiency is contested (see Garcea and Barron, 1999, pp. 22-31 and Peters, 2007).⁵ The success of the Muskeg Lake Cree Nation urban reserve lies in its ability to find new strategies for economic development

⁵ A report entitled “The Urban Reserves in Saskatchewan,” (2005) prepared for the Western Economic Diversification Canada, states that “the major question of whether urban reserves are the best tool for assisting First Nations in achieving economic independence still remains to be answered. Although there are arguments to support the notion that the establishment of urban reserves help to achieve this goal, further research is still required to determine a conclusive response to all of these questions.” Retrieved on November 29, 2010 from <http://www.wd.gc.ca/eng/10948.asp>.

outside the confines of the traditional reserve.

The creation of urban reserves, though undertheorized and subject of few scholarly investigations, are a potential site for working through the relationship between nation, sovereignty and territory. Insofar as sovereignty is exercised beyond the set traditional boundaries of indigenous communities, urban reserves provide a way of re-imagining nationhood beyond the traditional confines of territorial reserves. Of course, territory remains present in the development of urban governance. However, in contrast to the most common examples of self-government, territory in this case is seen as an extension of, rather than a precondition to, self-government insofar as already governing indigenous groups are making a claim for territories in urban settings. In other words, urban territories are seen as an extension of the sovereignty of indigenous peoples in Saskatchewan, not a precondition to their sovereignty.

Urban reserves enhance the viability of self-government by providing economic revenues for indigenous groups (Peters, 2007). Hence, territory plays an important role in that it acts as the space where indigenous communities develop economic strategies for greater self-determination. While economic self-sufficiency is integral to self-government, it is important to signal that self-government extends beyond economics. Garcea and Barron capture the potential difficulty of urban reserves as tools for economic sufficiency when they write that,

[i]n theory, urban reserves can be created for any purpose bands deem appropriate, subject to federal approval. But for the most part, the urban reserves created in major urban centres in the central and southern parts of Saskatchewan have been designed for commercial and institutional purposes. (1999, p. 5)

As indigenous peoples pursue their self-government goals in urban areas, it is important to take into consideration the potential danger of reducing self-government to economic self-sufficiency.

Another danger is what Keating refers to as “reterritorialization.” At the same time that indigenous nations are redefining the relationship between nationhood and territory, Keating argues that control over a territory has become more rather than less important (2001:26-28). He attributes the tendency towards reterritorialization to territory’s functional, political, and normative roles. As the primary unit of economic development, territory remains the political basis for governance and counter-governance institutions in the absence of non-territorial governance bodies. It is precisely because of this tendency to reterritorialize self-government that it is important to distinguish the role territory plays in the justification of self-government from the role it occupies in its realization. Paying excessive and disproportionate attention to territory’s functional attributes leads to the neglect of its symbolic role thereby marginalizing many indigenous groups who are not territorially concentrated from making claims to self-determination or self-government. Although territory takes on a key role in self-government in practice – particularly by providing commercial and institutional opportunities for communities – it is crucial that territory does not become a precondition for self-government. Such a condition would render it difficult, if not impossible, to honour the right to self-government for many urbanized indigenous peoples who may propose new and creative models of non-territorial governance. The importance of properly identifying the normative role of territory in the justification and the implementation of self-government thus becomes evident.

In addition to offering a unique model of governance that extends beyond the boundaries of traditional reserves, the creation of urban reserves also constitutes an example of shared governance. The success of urban reserves depends on shared rule. Stakeholders in the establishment of urban reserves include members of indigenous bands, band councils, tribal councils, municipal, provincial and federal governments, local governance bodies, as well as the general public. All of these groups play a role in the successful negotiation of TLEFAs. In its very formulation, the Saskatchewan TLEFA outlines the various actors that may be involved in the process. For instance, section 9 speaks of reconciling the different legal environments governing reserve and non-reserve property. This entails that school divisions must be consulted if they are affected by the establishment of urban reserves (Saskatchewan TLEFA, 9.01).⁶

⁶ To avoid a party exercising veto power over the creation of an urban reserve, there are protections to ensure that if no agreement is reached between the band and a party within five months, and this disagreement is due to the party’s unwillingness to negotiate in

Furthermore, all concerned parties must re-enter negotiations in good faith upon the 14th year after the execution date to ensure the continuance of agreements, either in their existing or modified form, between parties.⁷

Insofar as urban reserves depend on the successful negotiation with various representatives, governments and individuals, they denote an interesting example of the way in which self-government is achieved not through negotiations with the traditional sovereign governments – the usual provincial and federal governments – but through discussion and collaboration with all affected parties whether they be municipal governments, school boards or individual citizens. As decision-making power is divided among various actors in a globalized world, the collaboration of all stakeholders is crucial. In acknowledging the interdependent relationship between various actors, the creation of urban reserves in Saskatchewan confirm the need to further reflect on non-territorial models of self-government.

Conclusion

This article has argued that territory, although important to enhance the self-sufficiency of indigenous groups, is not and should not be conceived of as a precondition for self-government, self-determination or nationhood. As demonstrated through the Saskatchewan experience, distinguishing between these various concepts and uncovering the relationship between them is of crucial importance. Such conceptual precision is of great consequence in articulating a claim for indigenous self-government insofar as models of self-government are a product of their normative justifications. In arguing that territory is not a precondition for self-determination and for self-government, the intention of this article is to generate interest in the role territory plays in practice. As indigenous peoples become increasingly urbanized and territorially dispersed, it is imperative to develop new models of self-government relevant to the realities of these groups. Re-imagining the shape of indigenous self-government requires thinking about how concepts are treated, what normative force they bring and how their applied meaning concords with their normative intent.

good faith, the Government of Canada can set aside land, and any outstanding claims can be addressed by the Arbitration Board of Canada, Saskatchewan or the Band in question.

⁷ The same provisions as outlined in the previous footnote apply here.

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