

## Two Policy Approaches to Native Education: Can Reform Be Legislated?

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The evolution of Canadian federal policy for Native elementary and secondary education has followed a pattern remarkably similar to that in the United States. A significant difference in the provision of educational services to indigenous peoples is, however, that whereas the United States has historically attempted to regulate and reform Native education through federal legislation, Canada has generally eschewed such a proactive strategy in favour of what Hall (1992) refers to as the “No Policy-Policy.” In this article I examine the evolution of Native education policy in both countries to determine which approach has brought Native people closer to their desired goal of having control over their children’s education.

La politique fédérale canadienne d’enseignement primaire et secondaire destinée aux autochtones suit une évolution semblable à celle des États-Unis. Il existe toutefois une différence significative dans la prestation des services éducatifs aux peuples autochtones: les États-Unis ont toujours tenté de réglementer et de réformer l’éducation des autochtones par le biais de lois fédérales tandis que le Canada évite, en règle générale, ce genre de stratégie proactive et préfère ce que Hall (1992) désigne comme une “politique de non-politique.” Dans cet article, l’auteur analyse l’évolution, dans les deux pays, de la politique en matière d’enseignement aux autochtones afin de déterminer quelle approche permet aux peuples autochtones de se rapprocher de leur objectif, qui est de contrôler l’éducation de leurs enfants.

In his review of the Assembly of First Nation’s document *Tradition and Education: Towards a Vision of Our Future* (AFN, 1988), MacPherson (1991) examined the constitutional and legal issues affecting Native education in Canada. He believed that “federal education policy in the Indian education area is skeletal, incremental, and . . . lacking in coherently articulated foundations or premises” (p. 12). In MacPherson’s opinion:

Federal policy must be searched for in a bewildering array of other laws, subordinate laws, policy directives and individual agreements (both inter-governmental and government-Indian band). Moreover, a good portion of federal policy cannot be found anywhere; it just happens depending on who might be involved in a particular matter at a particular time in a particular locale. (p. 12)

This approach to public policy closely resembles what Hall (1992) calls the “No Policy-Policy” option, in direct contrast with the situation in the United States,

where a considerable body of legislation directly affects Native education. These dissimilar national approaches to public policy provoke the question: Has the proactive approach to Native education policy on the part of the United States' federal government made a significant difference in the delivery of educational services to that country's first citizens as compared to the Canadian experience? In this article I attempt to answer that question by examining two aspects of Native education policy in Canada and the United States: (a) the evolution of federal Native education policy in each country and (b) how much control Native people in each country have over their children' education.

#### THE EVOLUTION OF NATIVE EDUCATION POLICY

The legislative framework governing Native education in Canada and the United States has often developed out of the larger policy decisions made by both countries' governments regarding their Native people's place in their respective societies. Although these governments' relations with their respective indigenous populations have major differences, their educational initiatives have remarkable similarities.

##### *The Evolution of Native Education Policy in Canada*

The British North America Act (1867) and the Indian Act (1876) gave the federal government jurisdiction over Native education (Longboat, 1986), a domain normally a provincial responsibility. This legislation and a series of treaties signed with various Indian groups between 1871 and 1923 placed the federal government in the position of having to "find some way of discharging its responsibilities in administering matters it did not normally handle" (Burnaby, 1980, p. 37). Subsequently, in attempting to fulfil this mandate, the federal government's actions have passed through a number of distinct phases.

##### Phases in Canadian Federal Native Education Policy

The first such phase, referred to as "segregation for protection" (INAC, 1982), was implemented through the creation of the now-infamous residential school system. Under this regime the federal government entered into agreements with various religious denominations, whereby, as Miller (1987) points out, Native children were often sent "far from home to 'industrial schools' conducted by Christian denominations with government funding where they would learn useful trades and acquire the ways of Euro-Canadians" (pp. 4–5). This structure remained the mainstay of federal Native education policy until after World War II, when the federal government used other methods to meet its legal obligations to provide Native people with educational services.

The era after World War II, marking the beginning of a second phase in federal policy, emphasized integration of Native children into provincially operated school systems. The passage of a new Indian Act, in 1951, permitted the federal government to enter into agreements with the provinces to enable Native children to attend provincially operated schools. The results were substantial, as the percentage of Native children attending provincial schools rose from 27% in 1963 (Frideres, 1983) to 56.3% in 1979 (INAC, 1988). This trend toward provincialization, however, encountered increased resistance by Native people in the wake of the release of the federal government's *Statement of the Government of Canada Policy on Indian Policy* (Government of Canada, 1969), which proposed that "the governments of the provinces . . . take over the same responsibilities for Indians that they have for other citizens in their provinces" (p. 6). The National Indian Brotherhood rejected this proposal as an attempt by the federal government to abandon its obligations toward Native people. The Native Indian Brotherhood responded with its own position paper, entitled *Indian Control of Indian Education* (1972), in which it asserted Native people's inherent right to control their children's education. In response to this opposition the federal government made another significant (at least in appearance) shift in its Native education policy. This policy change was announced by the Minister of Indian Affairs in 1973 and formalized in the *Indian Education Paper Phase One* (INAC, 1982). The new policy "emphasized both the need to improve the quality of Indian education and the desirability of devolving control of education to Indian society" (p. 2).

Since this policy was adopted, the percentage of Native children enrolled in federal schools has declined from 24.7% in 1985 (INAC, 1988) to 8.7% in 1991 (MacPherson, 1991), while enrolment in First Nations-operated schools increased from 26% to 44% over the same period. These figures, however, reflect enrolment trends among only status Native children living on reserves and do not take into account the growing number of Native people who live in urban settings. As Urion (1992) noted, "the overwhelming majority of the 220,000 eligible to attend school have no access to Native operated schools. In total, that means that approximately 75%–80% of First Nations children in Canada attend non-Native schools" (p. 3).

#### *The Evolution of Native Education Policy in the United States*

Although the history of the relationship between the United States federal government and that country's Native people differs from the Canadian experience, a closer examination of U.S. federal Native education policy reveals that many policies adopted by that nation are similar to those of the Canadian federal government over the same time period.

### Phases in U.S. Federal Native Education Policy

Reyhner (1992) has identified five phases in U.S. federal policy: (a) missionary activity and paternalism, (b) government control and dependency, (c) moves to reform Indian education, (d) the termination era, and (e) moves toward self-determination. Each of these phases is significant because whereas the details of specific policies differed and time lines varied, the overall policy approach to U.S. Native education taken during these periods closely paralleled developments in Canada.

One such similarity was the use of direct federal government fiscal support to missionary organizations as a mechanism for the provision of educational services. As Kickingbird and Charleston (1991) noted,

[there] was no clear distinction between the separation of church and state with respect to Native education in the early days. In fact the government negotiated with the various sects and divided the country into jurisdictions. (p. 8)

Furthermore, both Canada and the United States favoured the residential boarding school system as the mechanism for providing educational services to Native people, residential schools that operated in a depressingly similar manner and shared a common goal: the eradication of all traces of Native culture from their charges.

An additional parallel can be drawn between what Reyhner (1992) refers to as the “moves to reform Indian education” period in the United States and the post-war provincialization phase in Canadian policy evolution. Although the policy of enrolling Native children in state-operated public school systems started in the 1890s, it gained impetus with the release of the *Meriman Report* in 1928. That report found serious deficiencies in schools operated by the Bureau of Indian Affairs (BIA). The release of this report, and other studies, resulted in the passage of the Johnson O’Malley Act in 1934, under the terms of which the Secretary of the Interior was granted authority to “enter into contracts with states or territories to pay them for providing services to Indians” (Reyhner, 1992, p. 51) in much the same manner as the Minister of Indian Affairs could enter into agreements with the various provincial governments for the same purpose in Canada.

A further parallel exists between what Reyhner (1992) referred to as the “termination era” in the United States and the policy the Canadian government proposed in the ill-fated *Statement of the Government of Canada Policy on Indian Policy* (more commonly referred to as the “White Paper”) in 1969. The U.S. experience was characterized by the Congress enacting legislation that “terminated the special relationship between specifically named Indian tribes and the United States” (Kickingbird & Charleston, 1991, p. 16). As a part of this process the states were to assume responsibility for educating Native children

through their public systems in much the same way the Canadian “White Paper” had proposed the transfer of responsibility for Native education to the provinces. As in Canada, this attempt by the U.S. federal government to evade its legal obligations was opposed by Native leaders. As Reyhner (1992) noted:

Over the years, through education, involvement with federal programs, and generally increased experience working with white America, Indian tribes had been developing a core of leadership capable of telling the federal government what the tribes wanted. This leadership was almost unanimous in opposing termination. The alternative put forward was self-determination; letting Indian people through their tribal governments determine their own destiny. (p. 54)

This opposition, plus such studies as the *Indian Education: A National Tragedy, a National Challenge* report by the United State Senate in 1969, led to the passage of legislation ushering in the final stage in the evolution of federal Native education policy in the United States, that being recognition of the principle that Native people should have control over their educational institutions.

The Indian Education Act (1972) made a number of significant changes to how educational services were delivered to Native people. Among the Act’s more significant elements were provisions that: (a) encouraged the development of culturally relevant curriculum materials, (b) required the establishment of local Native parent committees to be enlisted in the development and oversight of programming developed for Native children, and (c) for the first time, extended the mandate of federal Native education funding to include urban Native children. The trend toward self-determination was furthered with the passage of the Indian Self-Determination and Educational Assistance Act (1975). This Act directed the Bureau of Indian Affairs, and other federal government agencies, to contract out the delivery of many services they provided to Native governments.

#### NATIVE EDUCATION LEGISLATION IN CANADA AND THE UNITED STATES

Although the federal governments of both Canada and the United States recognized (at least in theory) the principle of Native control of Native education at approximately the same time, the question remains: Have these policy developments actually resulted in meaningful systemic reform, or have these initiatives produced a result more illusionary than substantive? To examine this question from a broad perspective, it is necessary to examine the legislative framework affecting Native education in both countries.

##### *Federal Native Education Legislation in Canada*

MacPherson’s (1991) assertion that federal Native education is “skeletal, incremental and lacking in coherently articulated foundations or premises” (p. 12)

grows out of the fact that Native education occupies a unique niche in Canada's constitutional framework. That policy framework is complicated by the conflicting aspirations of the parties involved. Responsibility for the education of status aboriginal people living on reserves or in remote communities in Canada lies squarely with the federal government. Whereas the British North America Act (1867), the Indian Act (1876), and various treaties obligate the federal government to provide educational services to Native people (the extent to which such services must be provided is a subject of intense dispute between the government and various Native organizations), none of these documents provide a legislative framework for the operation of an education system. As the Assembly of First Nations (1988) has stated, "Sections 114–123 of the Indian Act (1951) provide very generally for the education of Indian children. These provisions are minimal when compared to provincial government provisions for education" (Vol. 2., p. 118). In fact, much of the legislation with the greatest influence on Native education takes the form of various Orders in Council, Treasury Board Minutes, and provisions of the Financial Administration Act, legislation on the expenditure of public funds not specific to Native education. This lack of specific legislation contrasts starkly with the situation in the United States, where a considerable body of federal legislation directly affects Native education.

#### *Federal Native Education Legislation in the United States*

Like their Canadian counterparts, Native people in the United States occupy a unique position in that nation's political and judicial culture. This relationship is codified through a series of treaties signed between the federal government and various Indian nations between 1794 and 1871. These treaties (120 of which contain education provisions) constitute, according to Mueller and Mueller (1992), "a promise to provide educational service" and thereby "invoke a legal obligation that does not exist for other groups" (p. 69). This obligation has been met, in recent years, through the passage of a number of pieces of federal legislation.

Although several programs supply educational services and funding to Native people, three pieces of legislation are key to this article. As previously discussed, the provisions of the Johnson O'Malley Act (1934), the Indian Education Act (1972), and the Indian Self-Determination and Education Assistance Act (1975) have significantly affected the funding and delivery of educational services to Native people. Overall, this legislation has provided for the financing of Native-specific programming in state-operated public schools, extended the scope of Native programming to meet the needs of urban-based Native people, and mandated the participation of Native parents in developing and delivering such programs. Furthermore, the Indian Self-determination and Education Assistance Act (1975) gave legislative weight to the concept of Native control of Native education by requiring the Bureau of Indian Affairs and other agencies to contract out the services they provide to Native governments.

On the surface, at least, the U.S. federal government seems to have developed a more extensive legislative framework supporting the delivery of educational services to Native people than has its Canadian counterpart. The key question, however, remains: Has this legislation resulted in significant systemic reform, the type of reform that leads to increased levels of control by Native parents over their children's education?

#### NATIVE CONTROL OF NATIVE EDUCATION: CAN IT BE LEGISLATED?

Any attempt to compare how much control Canadian and U.S. Native people have gained over their educational institutions is complicated by two questions: (a) the difficulty of ascertaining how much real control Native people have over schools currently operated by non-Native governments, and (b) the nature of control possible under existing arrangements for devolution of responsibility for education to status Indian persons living on legally recognized Indian reserves. The latter being a somewhat less complex issue, I will examine it first.

#### *Native Parents and the U.S. Public School*

Wells' (1991) survey of 511 U.S. Native tribal leaders indicated that as many as 92% of Indian children in that country attend public schools operated by non-Native governments. These figures are comparable to those in an earlier article by Tippeconnic (1984), who placed the same figure at 80.5%. Whichever figure is correct, for the vast majority of Native parents, their ability to influence their children's education is directly linked to their ability to influence decision making at the school board level.

Although the Indian Education Act (1972) requires the establishment of parental oversight committees, the legislation does not provide for parental input into the wider decision-making process by mandating direct Native school board representation. Although 55% of the tribal leaders Wells (1991) surveyed indicated that their tribal members were represented on local school boards, 34% replied that they constituted a minority of the boards' membership even when Native children constituted a majority of the school district's enrolment. As Wells (1991) stated:

This is both a political and legal problem which must be resolved before Indian communities can exercise some degree of local control over the education of their children. Even where there is opportunity to elect Indian school board members, many Indian people do not exercise their franchise out of habit, fear, or ignorance. (p. 3)

This situation is not dissimilar to that facing Canadian Native parents whose children attend public schools operated by provincial governments. Although, as I will discuss later, a number of provinces have made statutory provision for the

representation of status on-reserve Indian parents on boards of education, these provisions have not always given Native parents a meaningful voice in their children's education.

*Canadian Native Parents and the Provincial School Systems*

As long as a significant number of Native children continue to attend provincially operated public schools, Native parents' ability to gain a meaningful voice in their children's education will continue to be linked to their ability to gain representation on provincial and territorial school boards. As in the case with their U.S. contemporaries, Native parents in Canada often face systemic barriers to their representation on local boards of education.

Results from an AFN study (1988) indicated that five of the ten provincial governments have not made provision for Native representation on local boards of education, and that Native representation was inadequate even in those provinces that have legislated such representation. The AFN (1988) found:

It is noted that there is some provision for First Nations representation on school boards in some provinces, however, across Canada First Nations representation on school boards is very limited. Even where there is some provision, the number of First Nations representatives is two, regardless of the number of First Nations students. (Vol. 1, p. 65)

Furthermore, it is entirely possible for Native representatives to constitute a minority of a board's membership even though Native children comprise a significant minority or even a majority of the board's enrolment. Paquette (1986a) summarized the situation well:

At best, the current representation of Native people on provincial boards of education is a limited and flawed presence. . . The representation . . . provided . . . is typically only that of a weak minority voice in the political fabric of board decision making. (p. 11)

Native parents living in urban settings, and this represents a growing percentage of Native people, are even more limited in their ability to gain access to decision making at the board of education level. This is, to a large extent, a result of the mechanics of the electoral process. As noted elsewhere (Brady, 1992):

In the case of boards that elect trustees through the at large system of election, Native representation is often difficult to attain. Unless Native people constitute a majority of the voters within a board's boundaries, the mechanics of the electoral system precludes them from attaining any meaningful representation. . . . Native parents residing within the boundaries of boards using the ward system (single or multi-member) fare little better. Unless the Native population of a board is concentrated in sufficient numbers to constitute



the majority of the ward's voters, their chances of securing the election of a Native trustee are as slim as in the at large system. (pp. 69–70)

Consequently, Native parents in both Canada and the United States are often limited in their ability to influence their children's education, particularly when their children attend schools in non-Native education systems. The key to Native control of Native education would therefore appear to lie in having Native children attend educational institutions controlled by Native people (for Native people living in non-Native communities, however, such a proposition invites the ascription of stigma with the label of being either involuntary segregation or voluntary apartheid). That situation, of course, has proven difficult to achieve.

*Native Control of Native Schools: Fact or Illusion?*

Native people's demand to control their own educational institutions gained impetus in both Canada and the United States during the 1970s and 1980s. In many cases, however, the transition from federal to local control has proven more illusory than real. Stuart (1990) identified several aspects of the public policy process that have influenced this transition of control. Two of these aspects, which Stuart refers to as fundamental problems and procedural problems, serve as a useful framework for further discussion of this issue.<sup>1</sup>

Stuart (1990) examines what he refers to as the "fundamental problems" associated with Native self-determination as it applies to the transfer of authority in the area of Native education in the United States. He believes that, regardless of provisions of the Indian Self-Determination and Education Assistance Act (1975), the legislation simply "does not provide for a transfer of operating authority from the federal agency to the tribe" (p. 17). Furthermore, the "relevant federal agency retains the power to identify problems, design programs to address the problems, and define criteria for success" (p. 7), thus leaving considerable control over Native educational policy in the hands of the federal bureaucracy. Such a situation leaves Native governments in the unenviable position of being responsible for delivering a variety of services without having complete control over many parameters directly affecting delivery of the very programs they have contracted to deliver.

Such "fundamental problems" are not unique to the United States as they, probably more than any other factor, constitute the largest single obstacle to Native control of Native education in Canada. The Canadian experience is unique, however, in that much of the legislative framework necessary to Native control has yet to be developed.

Although only a few sections of the 1951 Indian Act (sections 114 to 123) deal with education, they serve to limit a First Nation's community's authority over its schools. As Longboat (1986) points out,

there is nothing in the Indian Act that could give a community any leverage in gaining control over its education. . . . Legally control is concentrated in one person: the Minister of Indian Affairs and Northern Development. (p. 33)

In other words, whereas the federal government may have agreed with the principle of Native control of Native education, it has done little to transfer legislative control over education to First Nations government. As the AFN (1988) recognizes, “for the most part, jurisdiction over First Nations education remains with the federal, provincial and territorial governments” (Vol. 2, p. 158). The result is that the term “band controlled” somewhat misrepresents reality. A more accurate description, as Hall (1992) describes it, would be “federally controlled, band operated school” (p. 57). As long as legislative and legal authority continues to reside in non-Native legislative bodies, Native people’s ability to control their children’s education will be, to all intents and purposes, severely restricted.

Perhaps one of the best examples of such “fundamental problems” is the financing of Native education in both countries. At the heart of this issue lies a fundamental conflict between two traditions: the longstanding desire of Native people to control their own institutions and the equally longstanding tradition of parliamentary accountability. Paquette (1986a) summarized this conflict:

Some hard facts greet the would-be architect of meaningful change in aboriginal education (and general) governance. None is harder than the strength of the tradition of parliamentary accountability for funds appropriated . . . there can be little likelihood of political feasibility in any plan which seeks to deny some measure of parliamentary control over the funds it appropriates. (p. 75)

As previously mentioned, in Canada Native education is financed by appropriation of general revenues through the Treasury Board according to the terms and conditions of the Financial Administration Act. As the AFN (1988) points out,

Parliamentary control is maintained through approval of the annual estimates using a vote system. . . . Parliament maintains controls over these funds by not allowing the transfer of funds between votes without Parliamentary approval through the Supplementary Estimates procedure. (Vol. 2, p. 132)

Given the current atmosphere of fiscal restraint, and increased public demands for accountability in the expenditure of public funds, it is highly unlikely that parliament will be willing, in the near future, to surrender this responsibility. Furthermore, it is unlikely that First Nations communities will have, in the foreseeable future, the resources to become fiscally independent. As Paquette (1986a) observes:

The vast majority of aboriginal communities in Canada have, after all, neither an average income level nor real property wealth sufficient to make local taxation conscionable, even

if Native people were favourably disposed toward surrendering their tax-exempt status to support Native governance. (p. 29)

Such circumstances are not limited to Canada, as financing of Native education in the United States makes self-determination an equally if not more elusive goal.

With notable exceptions, many Native communities in the United States lack the fiscal resources to fund fully their own education systems. As Stuart (1990) notes, “financing is a significant part of the problem in achieving tribal self-determination” (p. 12). This observation is astute when applied to education. It could be argued that Native governments in the United States are even more restricted in their ability to control their own education systems than are their Canadian counterparts, for two reasons: (a) a political philosophy that resulted in significant spending reductions on Native education, and (b) a convoluted system of financing educational expenditures that seriously undermines the principle of local control.

Whereas the Indian Self-Determination and Education Assistance Act (1975) may have lent legislative credence to the concept of Native control of Native education, the intention of this legislation has been seriously undermined by the political philosophies of subsequent administrations. As Stuart (1990) found:

A significant element in the thinking behind the self-determination policy on the part of some administration figures if not the Congress, has been the notion that true self-determination implies financial independence. In this view, Indian tribes will be dependent and will suffer from the effects of paternalism as long as the federal government is funding them. Thus President Reagan, in his 1983 Indian message, stated that tribes must provide a greater percentage of the costs of self-government, reducing their financial dependence on the federal government. (p. 4)

The result has been that the U.S. federal government has significantly reduced funding. Brescia (1991) found that, when adjusted for inflation, BIA spending on education fell by 4.21% for the period 1975–1991. Stuart’s (1990) figures show an even more significant reduction: between 1981 and 1988 Indian Education Act grants fell by 34.6%. Overall, this policy and its resultant expenditure reductions has negatively affected local control of education. Brescia (1991) summarized the situation succinctly:

Native education systems need a massive infusion of capital so that real decisions can be made about students’ education. As in choice programs, if all the choices are bad, then you have no choice. If Native communities have no opportunity to direct the education of their children, then there is little reason to expect improvement in student outcomes. . . . If economic conditions on reservations are not improved by restructuring and expansion of the tax base, there is no reason to expect that any educational restructuring will be successful. The two are inseparably linked. . . . The current system of programs causes

tribes to see each other as adversaries and to continually seek a diminishing amount of funds. (p. 22)

The resource dilemma is further complicated by a financing system that concentrates control in the hands of the federal bureaucracy. Schools operated directly by the BIA are funded directly by the federal government, and as the AFN (1988) notes, "the Secretary of the Interior controls curricula and administration and only peripheral local input is in effect such as locating geographic boundaries of schools" (Vol. 3, p. 138). Tribal Contract Schools, funded by the federal government but managed by Native governments, do not fare much better. The AFN found that:

The real control is with the B.I.A., because of funding arrangements. The schools must make expenditures, then wait to be reimbursed by B.I.A.; as a result, construction is sometimes halted, pay cheques are stopped and it is difficult to hire teachers. The schools face high finance charges in a convoluted accounting system. The employees are hired at the district rather than local level and employees are unaware of local needs. In short without Native control of funding, there is no control of education. (Vol. 3, p. 138)

As demonstrated, these restrictions on self-determination imposed by the funding mechanisms in both countries aptly exemplify how "fundamental problems" affect Native people's attempts, in both countries, to gain control of their educational institutions.

In addition to "fundamental problems," Stuart (1990) examined what he referred to as "procedural problems" associated with Native self-determination, problems arising from the federal bureaucracy's reluctance to devolve its authority to Native governments. As Kickingbird and Charleston (1991) describe the U.S. BIA resistance to the devolution process:

the government, however, has not facilitated the transfer to Native community control. Instead, it has turned up stumbling blocks wherever possible. The B.I.A. is not committed to self-determination and fights hard to keep from entering into contracts with local Native communities. (p. 25)

Native people in Canada have also experienced "procedural problems" in their quest to gain control over their educational institutions. Whereas the Minister of Indian Affairs officially recognized the principle of Native control of Native education in 1973, like its U.S. counterpart, INAC (Indian and Northern Affairs Canada) has demonstrated less than wholehearted enthusiasm toward its implementation. The federal government has, as Ward (1986) points out,

insisted that it retain ultimate responsibility but enter into agreements with Bands "capable" of control. Further, there would have to be controls on quality to meet provincial standards. . . . Furthermore, the government would be able to define which Bands were "capable of control." (pp. 12-13)

Moreover, the process of devolving administrative authority over education from federal to Native control has contributed to the problem. As Hall (1992) concluded:

In most cases the transfer process, termed devolution by the federal government, had been quick, poorly planned and ill conceived. . . . Self-determination is a term used by federal authorities to disguise their efforts to dump as much responsibility as possible for Indian education while convincing Indians that such an occurrence is in the Indian's best interest. (p. 57)

Such reluctance on the part of both federal bureaucracies to divest themselves of control over Native education, when coupled with the aforementioned "fundamental problems," has proved a serious impediment to devolution. As long as legislative and legal authority continues to reside in non-Native legislative bodies, Native people's abilities to control their children's education will be severely restricted.

#### DIFFERENT POLICY APPROACHES: DIFFERENT RESULTS?

As I have described, federal Native education policy in Canada and the United States has followed strikingly similar patterns. There is, however, a major difference between the countries in their fundamental approach to the development of that policy. Whereas the U.S. federal government has consistently used a variety of legislative initiatives to reform Native education, the federal government in Canada has just as consistently eschewed the legislative option. As such, the fundamental question remains, have these different approaches yielded substantially different results? The answer, at least within the parameters of this article and bearing in mind the existence of a wide range of local variations, appears to be a tentative no. Neither the proactive approach of the United States nor the passive approach of the Canadian government has led to significant change, or at least reform substantive enough to alter the locus of control over Native education from the federal to Native governments. This is due, in part, to the fact that neither approach has dealt with two important factors inhibiting reform efforts in both countries: (a) a substantial majority of Native children in both countries continue to attend schools operated by public education authorities, and (b) the federal government bureaucracies, in both countries, retain their de facto control over the education of Native children residing on legally recognized reserves regardless of what policy approach is taken by their political masters.

Legislation such as the Indian Education Act (1972) and the Indian Self-Determination and Education Assistance Act (1975) has led very few U.S. Native parents and communities to have greater influence in educational decision making. This lack of influence can largely be attributed to the fact that the overwhelming majority of Native children in the United States are currently

enrolled in non-Native education systems. As Kickingbird and Charleston (1991) point out:

Native community and tribal involvement in public education is very limited. The Native parent advisory committees required by some of the federal programs in the Department of Education have very limited impact on public school decision making and administrative practices. In many cases, the requirements are ignored by both the public schools and the federal agencies as being impractical to implement. (p. 25)

Canadian Native parents do not fare much better. As previously mentioned, Native representation on provincial school boards in Canada is determined by provincial statute and local board policy. In many cases Native parents are under-represented or not represented at all, a circumstance often resulting from the very nature of the democratic process as currently practised in Canada and the United States. Paquette (1986a) writes that:

As in so many areas, the issue of protecting any presumed rights of off-reserve status-Indians as a group in the area of education has run headlong into the dominant tradition in western jurisprudence that the law exists to protect individuals rather than groups. In terms of their lack of specific representation in provincial governance forms, then, off-reserve status Indians are on a par with their non-status and Metis counterparts, that is, on precisely the same footing as non-aboriginal parents. . . .

. . . Native people of all legal categories who do not live on a reserve and are not recognized as residents of a school board are completely disenfranchised from a voice in the governance of the schools that educate their children. (pp. 10–11)

This is primarily due to the fact that, as Humphreys and Lawton (1986) note, “education is inherently political in that it must reflect the needs and interests of parents and other elements of the attentive public” (p. 7). In most public education systems in Canada this means being responsive to the needs and interests of the most politically influential clientele, the suburban middle class.

Although these comments are about the relationship between Native people and public education systems in Canada, they are equally applicable to the United States. Until the question of group versus individual representation is resolved, Native parents will be limited in their ability to have a voice in their children’s education, if those children are enrolled in non-Native educational institutions.

The second domain in which neither the Canadian nor the U.S. approach to reform has met with success is in dealing with what Paquette (1986b) refers to as the “bureaucratic veto.” This a situation where the bureaucracy can “effectively determine whether a policy will result in any concrete policy outputs whatsoever and have the power to reshape these outputs in any way they think is to their advantage” (p. 70). In the case of Native education, in both countries,

this “bureaucratic veto” has proved successful in delaying Native people from controlling their own education systems.

As previously discussed, the Indian Self-Determination and Education Assistance Act (1975) was intended to transfer delivery of educational services from the federal to Native governments. This transfer of authority has been, in many ways, more illusory than material. As Champagne (1983) points out,

the limited capability of tribal governments to assume administration over the full range of BIA programs, and the absence of BIA capability to provide the necessary technical assistance to the tribal governments have all hampered the transfer of administrative control of BIA programs to the tribal governments. (p. 23)

The key words in this passage are “administrative control,” as the machinations of the federal bureaucracy and a dependence on federal financing have seriously reduced Native governments’ ability to control their own affairs. Jorgensen (1986) aptly describes the position of Native governments: “their decisions could be vetoed by the Secretary; their public funds withdrawn by legislation or even by foot-dragging agencies . . .” (p. 9). In other words, for many Native communities, the movement toward self-determination has meant little more than accepting the chore of program delivery management without being given the administrative control necessary to complete the task effectively.

In contrast to its U.S. counterpart, the Canadian federal government has not attempted to provide a legislative basis for Native self-determination in education. Although the Minister accepted the principle of Native control in 1973, the INAC bureaucracy has effectively wielded the “bureaucratic veto” when it has come to implementing the policy. The INAC bureaucracy, according to Ward (1986), has

continually forced Indians to respond to government proposals and government policies with little or no Indian input or consultation. By diverting Indian energies to responses, the government had not provided a climate conducive to self-determination of Indian education by Indian people. (p. 19)

Furthermore, the federal government has consistently declined to make those amendments to the Indian Act necessary to transfer authority over education from the federal government to Native education authorities. Ward (1986) states:

The government viewed these proposed revisions to the education section of the Indian Act as a dangerous relinquishment of its control over education for Indian people and responded negatively. The Department insisted that it should retain ultimate responsibility but enter into agreements with Bands “capable of control.” (pp. 12–13)

The federal governments of Canada and the United States have pursued different legislative approaches for delivery of educational services to Native

people. Whereas U.S. federal authorities have attempted to reform Native education and to recognize the right of self-determination through legislation, Canadian authorities have taken the opposite approach. Apart from the Indian Act (1951), Canada has little federal legislation dealing with Native education. This situation has resulted in a patchwork quilt of agreements between the federal government and various Native groups (in a variety of organizational configurations) dealing with the transfer of authority over education to Native governments. Furthermore, neither the ad-hoc approach of the Canadian government nor the U.S. approach of legislating program after program has led to significantly superior results. Attempts to reform Native education in both countries have failed for similar reasons.

First, both countries have traditionally based their legal and political cultures on the basis of recognizing and protecting individual rather than collective rights. Therefore, the governance mechanisms of both nations' public education systems continues to represent the interests and needs of its politically influential clientele. Given this situation, the parents of Native children who chose (and it would be unthinkable to interfere with such a choice) to enrol their children in non-Native educational institutions face the same circumstance as do the parents of other minority group children: their ability to influence their children's education is limited.

Second, neither country, notwithstanding declarations to the contrary, has transferred legislative, legal, and fiscal control over Native education to Native governments. Despite Ministerial pronouncements and individual pieces of legislation, legal authority and control over fiscal resources remain firmly rooted in the federal legislative bodies and bureaucracies of both countries, which situation has the potential to, and frequently does, frustrate Native aspirations to control their educational institutions.

Finally, regardless of the approach taken, Native people in both countries (Government of Canada, 1986; Reyhner, 1992) continue to have some of the lowest rates of educational attainment, to have some of the highest dropout rates, and to occupy the lowest positions of socioeconomic status. Until many "fundamental" and "procedural" problems discussed in this article (and many others that have not been discussed) are resolved, opportunities for meaningful reform in Native education will be seriously diminished.

#### NOTE

- <sup>1</sup> Stuart (1990) defines "fundamental problems" as "limitations built into the concept of self-determination . . . and into the relationship between tribes and the federal government as it has evolved since the nineteenth century. 'Procedural problems' are problems of administrative implementation" (p. 5).

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