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How federal non-intervention shapes First Nations custom governance

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Topic and importance

The second of two parts, this paper analyzes the Canadian federal government's intervention in First Nations leadership disputes. Over half of First Nations select their leaders using custom governance systems. Custom, here, refers to leadership selection processes based on First Nations' own rules and traditions. This form of selecting leaders is contrasted by the Western-style elections provided for under the Indian Act.

Using little-known administrative and financial tools, the federal government is able to manipulate First Nations leadership disputes in order to protect its legal, political, and economic interests. The most notable of these interests are resource extraction and the government's civil liability. The paper looks at the examples of the Lubicon Cree in Alberta and the Algonquins of Barrière Lake in Québec to illustrate the use of those tools.

Main arguments

- The official government policy of non-intervention is a hollow interpretation of the recognition of First Nations self-governance. The government selectively declines to intervene, which fails to uphold the First Nations' self-governance.

- The federal government uses facially neutral administrative tasks (like maintaining membership lists, archiving custom governance codes, and certifying election results) to influence which faction within a First Nation gains legitimacy and control over funding. It also uses more extreme tools to override custom governance systems.

- The federal government is shown in key examples to capitalize on internal divisions to recognize factions aligned with their interests. This facilitates the government's access to First Nations land for resource extraction, disrupts complex land claims negotiations, and reduces the government's legal and political liability.

Conclusion and additional considerations

The Indian Act's paternalism limits the quality and scope of First Nations self-government. Federal reforms fail to improve on this problem because they attempt to force First Nations to adopt Western democratic styles of government that do not take custom into account. For members of First Nations, this leads to increased division, higher poverty, and more limited access to electricity, healthcare, and education.

The authors suggest an intentional implementation of the United Nations Declaration on the Rights of Indigenous Peoples to create tailored, local

governance systems. The federal government must genuinely support First Nations in this goal and refrain from acting in its own self-interest.