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FIRST NATIONS CHILD WELFARE:
UNDERSTANDING CANADA'S STANCE ON EQUITABLE FUNDING

By

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Abstract

To understand how the Government of Canada interprets equality for First Nations peoples, I examine an argument used by Canada to combat accusations of discrimination before the current Canadian Human Rights Tribunal. The tribunal's focus is on the discrepancies in funding that on-reserve children receive in comparison to non-Aboriginal children. Canada has dismissed a straight comparability argument. In doing so, Canada has made it clear that not all citizens can expect equal funding for services. This essay focuses on understanding the denial of a straight comparability argument and its implications for First Nations peoples. I examine Canada's stance on equality in the face of discrimination. I explore how a liberal egalitarian orientation inhibits reflexivity in policy. I review the history of colonialism, the roots of Canada's child welfare funding models, and the continuities of colonialism in current policy and debate. Also, I review recent changes to Ontario's funding policies in order to analyze the maintenance of a two-tier child welfare system. In examining how funding relates to the question of citizenship and equality for First Nations people, ties between distribution and outcomes are examined. Michael Walzer's work on complex equality and different societal spheres is drawn upon to frame my analysis of the regulation of the welfare sphere. I argue that the maintenance of inequalities cannot be narrowly tied to economics. To explore complex equality and the critique of the autonomy of social spheres, I take an interdisciplinary approach. This helps me open up the discussion about the concept and practice of comparability more completely, beyond its focus on simply monetary considerations.

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Introduction

On February 26, 2007, representatives of the First Nations¹ community launched a human rights complaint against the Government of Canada. They protested funding practices for on-reserve children that they believed to be discriminatory (Blackstock, 2010). This motion stemmed from a year 2000 review of First Nations child and family services which found that the youth they care for receive 22 percent less child welfare funding, than other children in Canada (McDonald & Ladd, 2000). The human rights complaint was pushed forward after a near-decade of under-implemented and ignored policy recommendations that were meant to address the gap (MacDonald & Wilson, 2013). Combined with a young², steadily growing population³, and the over-representation⁴ of Aboriginal children in state care, the patterns underline the need to address government funding practices that deny First Nations children the same opportunities as all other Canadian children (Blackstock, 2010).

Despite the efforts of First Nations leaders to ensure that on-reserve children have access to the same benefits as other Canadian children (Blackstock, 2010), the Government of Canada has spent 6 years and millions of dollars attempting to have the Canadian Human Rights Tribunal case halted (First Nations Child and Family Caring Society of Canada, 2013). They even took what has been called retaliatory measures against those who launched the case (FNCFCS, 2013). Most recently the Government has been chastised by the tribunal for

1 First Nations for the purpose of this article refers to the members of Indigenous peoples in Canada who are considered status Indians under the Indian Act.

2 Children aged 14 and under make up 28% of the 851,560 members of Canada's First Nation (Statistics Canada, 2011). For those of non-Aboriginal descent in Canada children make up 16.5% of the population (Statistics Canada, 2011).

3 Since 2006 the percentage of people reporting Aboriginal identity has risen 20% (Campion-Smith, 2013).

4 Aboriginal children account for 14,255 of the 30,000 children in state care. 4% of Aboriginal children are in care compared to 0.3% of non-Aboriginal children (Kirkey & Woods, 2013).

withholding 50,000 documents that were considered "prejudicial to its case and highly relevant" (Payton, 2013), setting the tribunal off course and into "a mode of damage control," riddled with more delays ("Federal government's conduct...", 2013).

While the actions of the Government of Canada to derail the tribunal proceedings are of great concern, the heart of their defense against charges of discrimination in funding have had a profound impact on how equality for First Nations peoples in Canada is understood today. The federal government "has advanced the argument that their funding is equitable," more specifically, "among all First Nations children on reserves" and that "comparisons to provincial child welfare funding for other children is irrelevant" (Blackstock, 2011).

To challenge the Government of Canada's dismissal of the comparability argument, I examine the history of funding for Aboriginal⁵ child welfare up to the present tribunal case. I will develop an explanation for why a comparability argument between First Nations and non-Aboriginal children is indeed relevant.

In looking at how funding relates to equality and citizenship in a nation built on colonial power, we can better understand what the comparability argument means for First Nations people. I draw on the work of Michael Walzer in *Spheres of Justice*, as well as recent critiques of his arguments. I reflect on why the Canadian government has sought to place First Nations affairs within a separate social field. I also map the ties between distribution and equal citizenship. In doing this we can identify the disconnect between government policy and on-reserve reality, all while developing a clearer understanding of how Canadian egalitarian ideals manage to sustain inequality for First Nations children.

5 Aboriginal is used to describe both status and non-status Indians as defined by the Canadian government.

Finally, considering that the insights offered into this complex topic are provided by such disciplines as history, social work, and political science, this essay will lay out how essential it is to utilize an interdisciplinary analysis in order to develop a more comprehensive and complex understanding of state neglect, as it relates to First Nations peoples. This interdisciplinary orientation is needed to root the necessity of the comparability argument within the broader landscape of Canadian equality. My goal is to contribute to a better understanding of the Aboriginal condition in Canada while bringing light to the ongoing segregation of the First Nations population.

The Need for an Interdisciplinary Analysis

To understand what the Government of Canada's position on equality means for First Nations peoples, this essay will begin broadening the discussion of inequitable funding for child welfare beyond the economic argument. More than just an expression of monetary discrimination, inequality of funding points us towards the concept of equal citizenship for all Canadians. This orientation brings to light the necessity of moving beyond the sphere of welfare and politics. It asks us to gaze across numerous spheres to gain a more complete understanding of the roots and maintenance of inequalities for Aboriginal peoples. To demonstrate the value of the comparability argument is to develop a more comprehensive picture of funding equality for all citizens.

Allen Repko laid out a series of criteria that could be used to assess if an area of research would benefit from an interdisciplinary analysis. First and foremost, demonstrating the complexity of a problem is paramount. Insights into a topic need to have been generated across disciplines by their shared interest in a problem, with no one discipline having been

able to provide a comprehensive explanation (Repko, 2008, pp.151-153). This holds true for developing an argument for the justification of comparability. The interest in First Nations equality in relation to child welfare has been primarily the focus of political science and social work. Other disciplines though, such as history, social policy, sociology, race and gender studies, have all offered relevant insights into this topic.

Repko also stated that any findings would need to be open to integration through a “common interest in a particular problem” and offer a focus “on unresolved societal needs and practical problem solving,” (2008, pp.153-154). To prove the relevance of comparability it is necessary to draw on insights from more than one discipline to address longstanding inequalities.

The goal of this essay is not complete integration but rather it is to draw attention to the ways of knowing that can help interpret the Government of Canada's stance. In taking an interdisciplinary orientation I will make “space for multiple partial perspectives” while “paying attention both to areas of overlap and areas of dissonance” (Hirsch, 2012). In doing this I will orientate child welfare funding through the lens of power and inequality, which takes the stance that “public processes are rarely if ever neutral” (Hirsch, 2012). Furthermore, these processes are both “shape(d), and are shaped by, the exercise of power” (Hirsch, 2012). In understanding the relationship between power and funding inequality, while addressing questions of equal citizenship, we can better understand how the comparability between First Nations children and non-Aboriginal is relevant.

Canada's Funding of Aboriginal Child Welfare and the Issue of Comparability

For First Nations peoples in Canada, taking control of on-reserve child welfare services has been an ongoing struggle. Funding is tightly controlled by the federal government through policy. This arrangement is unique within Canada. The federal government does not take the responsibility or the control of funding of social services for any other group (Kozlowski & Sinha, 2013). The provinces are expected to manage social service resources independently for all other individuals, as everyone accesses the same services under provincial standards (Kozlowski & Sinha, 2013).

It has been argued that the federally controlled “funding regimes” which are in place “directly regulate and shape the way in which Aboriginal peoples (and Aboriginal child welfare agencies) can care for their children” (Blackstock & Trocmé, 2005, p.14). This ongoing division between funding for mainstream agencies and Aboriginal agencies continues the colonial tradition of creating a two-tier welfare system in which Aboriginal peoples are subjected to inferior conditions. Understanding the role of the federal government in this practice is integral to arguing for the allowance of comparability to ensure equality for all Canadians.

The residential schooling system is well known for its history of assimilation tactics that brutalized and separated First Nations children from mainstream society. But it was also considered for many years to be a “general welfare resource for the care of children” (Armitage, 1995, p.113). The residential schooling system began to be phased out in the 1940s but it remained the only child welfare service provided to the Aboriginal community until the mid-1950s (Blackstock & Trocmé, 2005, p.15). From here a new orientation towards

equality of services for all Canadians took root. It was believed that modern policy and structure would be a pathway of integrating First Nations people into Canada (Armitage, 1995, p.79). The concept of integrating First Nations peoples into mainstream society through equal access to services was born from the stance that the Canadian way to do things is the best way (Blackstock & Trocmé, 2005, p.14). This orientation reflects the history of colonial thought that supported only “*legitimate* [original emphasis] knowledge of the child welfare system,” which devalued Aboriginal ways of caring for children in favour of a Eurocentric understanding of the nuclear family (Blackstock & Trocmé, 2005, p.14).

Additionally, beneath the veneer of the best interest of the child orientation (a central tenet of the mainstream child welfare system) there is an acknowledgment that the high cost of serving First Nations communities has continued to offer attractive funding incentives for child welfare workers (Armitage, 1995, p.114; Daubs, 2013). Shortly after children's aid societies started to serve on-reserve children it was found that “once the provinces were in charge and were guaranteed payment for each Indian child they apprehended, the numbers of Aboriginal children (in care) skyrocketed,” (Native Women's Association of Canada, 2002, p.26).

This period was known as the Sixties Scoop⁶. It marked a dark period in Canadian child welfare history finding “white social workers follow(ing) in the footsteps of the

6 The Sixties Scoop refers to a period following the transition to shared child welfare services that found social workers struggling to deal with the unique needs of First Nations communities stemming from years of forced assimilation and the resulting familial breakdown (Native Women's Association of Canada, 2002). The psycho-social orientation that is central to the child welfare system meant that First Nations parents were seen as exhibiting characteristics of “individual deviance” when they could not provide for their children (Armitage, 1995, p. 117). This view of neglect when taken into communities with few resources, culturally different ways of knowing, often remote locations, and high rates of poverty meant that social workers removed huge numbers of children from their communities as a first resort, rather than a last (Armitage, 1995, p.117).

missionary, the priest and the Indian Agent to "save and protect" Aboriginal children,"

(NWAC, 2002, p.28). This crusade was supported by federal funding. It resulted in a spike in crown wards that peaked in the mid-1960s with one in four status Indian children being taken by social workers (NWAC, 2002, p.26).

The move of the federal government to decentralize child welfare services for First Nations children and to move the responsibility for service provision to the provinces was in many ways a reflection of the Canada's 1969 White Paper. This document was an attempt by the federal government to divest itself of responsibility for First Nations people by repealing the Indian Act. While the White Paper was swiftly rejected by First Nation representatives the Department of Indian Affairs and Northern Development (DIAND) moved forward with the goal of integration that was central to the ideals contained within it. In doing so they embraced "the objective of assimilation (that) remains deeply rooted in Canadian Indian Policy". This is despite the fact that they formally continue to use the Indian Act as a basis for policy (Armitage, 1995, p.80).

Since the 1980s there has been a push from the First Nations community for Aboriginal self-governance to address the numerous socio-economic issues plaguing reservations (Armitage, 1995, p.123). Additionally, it has been recommended that the control of funding for child welfare be turned over to bands to support self-determination (Armitage, 1995, p. 126). Despite the federal government permitting some autonomy for bands, the monies they provide only allow bands to exercise "a limited form of self-government" and come with numerous stipulations that "entail the development of extensive accountability mechanism(s)," (MacDonald & Wilson, 2013 June).

While commentators in the media are quick to lay the blame on First Nations leaders for the poor conditions on reservations (“Accountability...”, 2013), Bands do not control how they spend their child welfare money (MacDonald & Wilson, 2013 June). What money they do receive is subject to yet another form of “bureaucratic management” that focuses on federal “command and control over spending authorities” (MacDonald & Wilson, 2013, p.30). Since the 1951 Ottawa decision to make the jurisdiction of First Nations welfare primarily a matter of the provinces (NWAC, 2002, p.26) they have ensured that all services and programs provided at the provincial level are subject to the limitations of what the federal government is willing to pay for (Armitage, 1195, p.102). This combined with a lack of transparency surrounding the governance of Aboriginal policy and structure, difficulties gathering data on a decentralized child welfare system and no publicly accessible funding agreements, make it extraordinarily difficult to hold the government accountable for their actions (Kozlowski & Sinha, 2013).

Numerous evaluations have shown federal underfunding of child welfare services on-reserve makes meeting the needs of First Nations children difficult (Kozlowski & Sinha, 2013). Jurisdictional issues between First Nations leadership, the provinces, and the federal government have created “complicated structures built around accountability and responsibility” that prevent equitable services from being delivered (MacDonald & Wilson, 2013). This issue is not something in the past. Ontario is currently launching a new funding scheme to deal with the “pervasive incentives” (Daubs, 2013 March) that were embedded in the most recent model for distributing funds to child welfare societies. The incentives focused on maintaining “activity” levels to keep funding (Commission to Support Sustainable Child

The new formula currently being implemented in Ontario will focus on capping expenditures by children's aid societies (CASs) based on a population profile of regions to move inline with fiscal realities (CSSCW, 2011). This direction is already challenging overdrawn CASs and has raised concerns about the agencies that serve high-demand Aboriginal communities (Gamble, 2013). For those few Aboriginal CASs in the province, the creation of a new funding scheme for them is under development and is expected at some point in 2013/14 (Ontario Association of Children's Aid Societies, 2012, p.40). Considering that this proposal has been recommended for years, it is uncertain if this time frame will be realistic (Office of the Auditor General of Canada, 2008).

Until a new funding scheme is created by the Ministry of Child and Youth Services (MCYS), on-reserve First Nations children will be divided from the new Local Needs-Based Funding Model meant to allocate funds among agencies through an Aboriginal share factor. This Aboriginal share factor uses population statistics provided by the 2006 census and Indian and Northern Affairs Canada (INAC) to attempt to create a picture of how many Aboriginal people live in a given CAS service area. For agencies that do not share a service area with an Aboriginal CAS and have at least a 5% Aboriginal child population they will receive an Aboriginal share. This share “increases the agency’s child population by 25% of the total Aboriginal child population.” So for instance, “if a CAS has 2,000 Aboriginal children in its catchment area representing 8% of its total child population, then an additional 500 children will be added to the agency's child population” (CSSCS, 2011, p.26).

This may appear satisfactory, but due to the high number of Aboriginal children in

state care an increasing on-reserve population⁷, and problems with the accuracy of government Aboriginal population data⁸, this may result in additional shortfalls beyond what is already being recorded by child welfare agencies⁹. This is doubly true as policy makers are aiming to keep budgets on track and are discouraging any “post-formula adjustments,” (CSSCW, 2011, p.25) reminding child welfare societies that they are expected to remain within their budgets and “accommodate changes in funding levels that arise from changes in the provincial economy,” (CSSCW, 2011, p.7).

Another concern is that this Aboriginal share has another purpose besides “the best interests of the children and families served by designated Aboriginal CASs”, and that is to prevent the “inclusion of the designated CASs in the Local Needs Based Funding Model (as it may) have the effect of distorting the allocation results for mainstream CASs,” (CSSCW, 2011, p.43). This move to distance Aboriginal CASs from mainstream agencies becomes primarily a cost measure so as not to “undermine the overall sustainability of Ontario's child welfare system (CSSCW, 2012, p.30).

This separation of mainstream CASs from Aboriginal CASs on the basis of sustainability raises questions about how the futures of Aboriginal CASs are seen. Currently there is a push to dismantle the “small, low-capacity” Aboriginal CASs that serve communities (CSSCW, 2012, p.76). This is troubling as the smallest Aboriginal CASs often serve the most remote communities. Targeting of small Aboriginal CASs combined with the

7 Between 1995 and 2001 the number of First Nations children living on reserve increased by 71.5% (Blackstock & Trocmé, 2005, p.13)

8 Research endeavours such as the *Toronto Aboriginal Research Project* (TARP) have identified large population discrepancies between government data and independantly gathered data which directly affect funding for welfare service providers (Cidro, FitzMaurice, & McCaskill, 2011).

9 A shortfall of \$67 million was recorded by Ontario Children's Aid Societies in September of 2012 (Ontario Association of Children's Aid Societies, 2012, p.13).

2% cap on social service funding¹⁰ for reserves points to additional difficulties for those serving on-reserve children (OACAS, 2012).

We need to compare the support of child welfare service for on-reserve youth to that which all other children in Canada receive. It is relevant and necessary when it becomes apparent that one group carries a greater burden than all others. With all children being funded by the same provincial entities and all children's welfare societies sharing the same provincial policies, it is strikingly clear that the Government of Canada oversight of Aboriginal funding policies is the key difference. At this point any discrepancies of funding then become a matter of discrimination as differences “are unrelated to legitimate service factors” (Blackstock, 2011). This reality calls into question Canada's meaning of equality.

Understanding the Government of Canada's Stance on Equality

In denying the applicability of the comparability argument, the Government of Canada has sent a clear message to Canadians that not all citizens can expect to receive the same funding for services. How can the government then justify that the funding for First Nations children is equitable?

In liberal democracies such as Canada, there is a taken for granted belief that all citizens have the right to be treated as equals. Basic equality is closely tied to norms of morality which dictate that every human deserves a “minimum of concern and respect,” and that there should be “at least some commitment to satisfying people's most basic needs,” (Baker, Cantillon, Lynch & Walsh, 2009, p.23). Liberal egalitarianism expands this

¹⁰ The 2% funding cap for social services on reserves has been in place since 1996. There is also a designated 2% per year increase in funding to offset inflation costs that is not set by need or population growth (OACAS, 2012).

minimalist idea to assume that there will always be some inequalities between citizens within a given nation and that governments must find a “fair” way to manage these inequalities (Baker et al., 2009, p.25). The effort to equalize through policy is reflected in the government's decision to provide the mainstream child welfare services to First Nations peoples.

This sort of equality represents a denial of “the accumulated evidence of irreducibly diverse social interests between people in favour of standardizing public policy treatment of individuals,” which makes it increasingly difficult to address the complex preexisting relationships of colonised citizens with their nation (Dunleavy, 1989, p.214). It additionally ignores that the distribution of social goods, such as welfare, on a collective basis can actually amplify relative inequalities (Dunleavy, 1989, p.246).

When only one dimension of distribution is considered, such as economics, it “can produce worsening inequalities of supply” (Dunleavy, 1989, p.246). This economic “narrow focus on material inequalities” and monitoring of outgoing money that the Canadian government insists on highlighting in their discussion of equality “marginalize(s) discussion of inequalities which do not centre on the economic” (Armstrong, 2002, p.70).

When the Government of Canada focuses on creating guidelines of formal equality where policies address the perceived collective financial needs of a group, they absolve themselves of the responsibility of “outcomes” (Dunleavy, 1989, p.222). They instead end up focusing on “outputs” to measure how effective their policies are (Dunleavy, 1989, p.222). What takes priority for the government then is a distortion of the practice of a “commitment

to 'social equality' in the sense of recognizing the equal public status of all citizens and of tolerating individual and group differences, so long as they respect basic rights," (Baker et al., 2009, p.26).

The insistence on the 'equal public status of all citizens' ideal denies that "Canada is an evolving colonial entity created by colonial interests," and it reinforces the "mythological history" that allows for the insistence on the equality of all citizens even in the face of inequality (Green, 1995). This mythological history insists that the "Indian identity" is neutral when it is not (Lawrence, 2003). To this day the Indian identity is tightly regulated and remains tied to the colonial system of "classification and control" (Lawrence, 2003) that was designed to "isolate" and "prevent a united resistance" by tying on-reserve residency to the 'benefits' associated with Indian status (Million, 2000).

Tolerating differences speaks to reinforcing impartiality and to managing a country so that public and private affairs do not clash when egalitarian challenges are brought forward. The public/private spheres are ideally meant to be separated in the eyes of the government, but in cases such as Canada, with a history of colonisation, it becomes much more difficult to withdraw from the management of one group's private sphere due to intergenerational trauma caused by longstanding assimilationist policies and the continuing segregation of First Nations peoples through the reserve system. Because liberal egalitarianism "has paid little attention to minimum standards" the assumption that some inequalities just exist is a slippery slope (Baker et al., 2009, p.30). It does not challenge the differences being institutionalized for two groups of citizens .

Michael Walzer's work on complex equality and different societal spheres offers insight into how the sphere of welfare is regulated. Additionally his work lends greater understanding of the benefits of broadening the focus from the government's concept of equality focused on "abstract individuals" to one that "situate(s) it in the context of concrete and historical relationships," (Armstrong, 2002, p.68).

"In formal terms, complex equality means that no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good" (Walzer, 1983, p.19). Basic equality and liberal egalitarianism do not adequately address the "complexity of distributions" that comes from understanding the complicated relations that exist between people which are set on mediating the division of social goods within given spheres and across spheres (Walzer, 1997, p.305). The concept of complex equality helps us frame the inequality of First Nations peoples in the political sphere, by understanding how their limited self-government is an exercise of an open exchange. Walzer envisioned a "system of blocked exchanges" where one's standing in say the political sphere would not give them an advantage or disadvantage in another sphere, say welfare (Hooghe, 1999, p.211). In analyzing the impact of First Nations peoples imposed limited self-government on their ability to provide welfare we can connect how their unequal standing in the political sphere directly impacts their ability to provide funding to those in the welfare sphere.

While Walzer emphasized the importance of "spherical autonomy" to achieve complex equality Walzer's critics were not keen on the proposition of aiming for maximum autonomy (Trappenburg, 2000, p.346). It was suggested that the vision of sphere autonomy

could be used as a “critical normative principal” (Trappenburg, 2000, p.347). It offers the ability to identify when boundary crossing happens so that one can address the inequalities generated.

Amy Gutmann's understanding of equality of membership (as equal citizenship and dignity of persons) is insightful. It expands on Walzer's view that “need cannot serve as the distributive principal” for welfare goods because “clearly we can't meet, and we don't have to meet every need to the same degree or any need to the ultimate degree” (1995, p. 115). For Gutmann equality of membership is not sphere specific, as Walzer implies, but rather it is a “moral consideration that spans many spheres” (Gutmann, 1995, p.115) Furthermore, to sustain a citizen's membership is to recognize that one's needs must be balanced across the spheres (Gutmann, 1995, p.115).

To adequately challenge the Government of Canada on their child welfare funding practices a comprehensive and complex comparability argument must be developed. This cannot be done from the sole lens of social work where “goods are distributed according to 'socially recognized needs,'” (Trappenburg, 2000, p.344). Nor can it only be done from a political standpoint, where economic considerations and an ideal of impartial policy reign. Rather, an interdisciplinary approach needs to be undertaken that can link unequal funding practices to the First Nations struggle for equality of citizenship, which reaches out across spheres.

Conclusion

Denying the Canadian community a chance to review funding agreements and

standards is to block citizens from evaluating their government. It is to step away from accountability and leaves those in the First Nations community sifting through documents looking for threads of information that confirm the lived experience of discrimination against their people. These threads have been topics of interest across disciplines attempting to create a more accurate picture of the Aboriginal condition.

The inequalities faced by First Nations people are complex and point to deep rooted ideologies and myth-making practices that deny the reality of the part that Canada currently plays in maintaining inequality in on-reserve communities. I drew upon an interdisciplinary analysis that took the insights from various disciplines to build a more complete argument for comparability. This action will challenge the federal government's move to hide behind a shield of equality that cuts all ties from the reality facing First Nations peoples. It is at this point that we can create a more cohesive picture of the citizenship of Indians within Canada and fully critique the government's practices for distribution in the sphere of welfare.

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