

Indian Act Philanthropy: Why are Community Foundations Missing from Native Communities in Manitoba, Canada?

Craig Blacksmith, Dakota Plains Wahpeton Oyate

Keshab Thapa, Mino Bimaadiziwin Partnership

Tayzia Stormhunter, University of Manitoba

ABSTRACT

Could a philanthropic model aimed at community development enforce colonial policy rather than providing equitable economic opportunity? This research analyzes the transcripts of 20 public webinars on philanthropy and the Indian Act and maps the 54 community foundations in Manitoba, Canada. All 54 community foundations in Manitoba service only settler-dominated cities and municipalities, with none on Native communities. As community foundations serve only their specific geographical areas, the community foundations in Manitoba effectively concentrate wealth in settler-dominated cities and municipalities, taking away needed resources from Native communities. In excluding the poorest communities in Manitoba, this philanthropic model further entrenches marginalization, poverty, and health risks for Native people on Native communities.

RÉSUMÉ

Un modèle philanthropique axé sur le développement communautaire serait-il en train de renforcer les politiques coloniales plutôt que d'offrir des bénéfices économiques équitables? Cette étude analyse les transcriptions de vingt webinaires publics sur la philanthropie et la Loi sur les Indiens et évalue les 54 fondations communautaires établis au Manitoba, Canada. Ces 54 fondations servent seulement les villes et municipalités des colons—il n'y en a pas une seule dans les communautés autochtones. Comme elles ne desservent que leurs régions géographiques spécifiques, les fondations communautaires au Manitoba concentrent la richesse dans les villes et municipalités dominées par les colons, accaparant des ressources qui pourraient aider les communautés autochtones. Ce modèle philanthropique, en excluant les communautés les plus pauvres du Manitoba, renforce la marginalisation, la pauvreté et les risques de santé dans les communautés autochtones.

Keywords / Mots clés: Indian Act, Native people, Native communities, human rights, community foundations, philanthropy / Loi sur les Indiens, autochtones, communautés autochtones, droits de la personne, fondations communautaires, philanthropie

INTRODUCTION

Community foundations in Canada are a “philanthropic movement working across sectors to help Canadians invest in building strong and resilient communities” (Community Foundations, 2018a, p. 2). Community foundations are endowments or trust funds designed to foster development in the community. Their goal is to “improve the quality of life in our community today and forever” (Community Foundations, 2018a, p. 1) and should support the neediest communities. But do they? This article explores whether community foundations and the third sector meet the needs of Native communities dealing with deficient infrastructure, no hospitals, inadequate housing, unsafe drinking water, and limited bandwidth (Adegun & Thompson, 2021; Hoyer, 2020; Palmater, 2020; FNIGC, 2018; Statistics Canada, 2020a; Hill, Bonnycastle & Thompson, 2020). This article asks if community foundations serve Native communities in Manitoba.

In Manitoba, infrastructure and services are significantly worse for Native communities compared with non-Native communities (Blacksmith et al., 2021; Blacksmith, 2021; Joseph, 2018; King, 2019). Interventions are needed. Inadequate roads, houses, health services, water, and food on Native communities lead these communities to rely on philanthropic organizations for necessities that the government fails to provide. Spinu and Wapaass (2020) criticize the structural inequities of Native communities during the COVID-19 crisis:

Important to look beyond the current [COVID-19] crisis and not lose sight of the broader socio-economic inequalities facing Native communities—particularly remote communities. These include severe housing shortages, limited healthcare services and resources, and poverty—all of which disproportionately put Native communities at risk. If we do not address these inequalities, we will continue to find ourselves treating the symptoms and not the causes of vulnerability to pandemics (para. 2).

Do community foundations address these systemic issues in Native communities? This article discusses the existing barriers and opportunities that community foundations pose for the economic prosperity of Native people in Canada. First, this article explains why the term “Native people” rather than “Indigenous” or “Aboriginal,” or “Peoples” is used. Second, the methodology is explained. The results map community foundations in Manitoba to show who benefits from their wealth. Finally, this article explains how community foundations are rooted in Canadian colonial policies and the role of the Indian Act. The Indian Act does not recognize Native people as humans (Government of Canada, 2021) nor Native governments as full governments (Blacksmith, 2021). Webinars on philanthropy in Native communities and the Indian Act are used to illustrate the impact of colonial policies on community foundation development on reserves.

DECOLONIZING TERMS

To apply decolonizing terms, the authors followed the instructions of Dakota leader Orville Smoke. Smoke used the term “Native people in Canada,” or identified people by their language group, such as the Dakota, Nehiyew, Anishinaabe, Haudenosaunee, and Dene etc. For a more general term, the authors apply the non-divisive, human-based term “Native people” and Native communities, rather than using the terms of “Indigenous” or “First Nations”. Native people is applied to contrast the designation of “not a person” and “wards of the state” status of Indians legislated in the Indian Act, as opposed to peoples. People refers to a group of humans but “Peoples” refers to distinct ethnic groups.

The authors avoid problematic terms imposed by the colonial governments of Canada, Australia, New Zealand, and the United Nations (Blacksmith, 2021). These terms are heavily embedded in the doctrine of discovery and not what Native people call themselves. Application of a blanket term, like “Indigenous Peoples” or “Aboriginal Peoples,” in a legal construct is a colonial and divisive approach (Blacksmith et al., 2021). Thus, each of these colonial terms has its controversies and fosters confusion and so will not be applied in this article.

“First Nation” is a confusing term as no Native community has any nation-state powers under Canada’s jurisdiction. Also, “First Nation” has no legal definition. Internationally, “First Nations” have no speaking rights in Canada’s House of Commons or at the United Nations (UN) and are not considered nation-states. At the UN, “First Nations” can only speak if sponsored by a nation-state endorsed under the UN’s definition of “governments.” Native people in Canada do not have a seat at the UN. The UN recognizes the colonial state government in Canada but not the Native governments in Canada at any level (King, 2019), whose Native land the Canadian state occupies.

“Indigenous” is a generic term that has been in use for many years. The UN description of Indigenous refers to different interchangeable terms used around the world: “In some countries, there may be preference for other terms including tribes, first peoples/nations, aboriginals, ethnic groups, *adivasi*, *janajati*. Occupational and geographical terms like hunter-gatherers, nomads, peasants, and hill people also exist and, for all practical purposes, can be used interchangeably with *indigenous peoples* ” (UN Permanent Forum on Indigenous Issues, 2004, p. 2). The UN’s terminology of Indigenous is outdated, confusing, and offensive, saying the term “Indigenous” is interchangeable with hunter-gatherers, nomads, or hill people (UN Permanent Forum on Indigenous Issues, 2004). In India, Bangladesh, and Nepal, some Native people are called *Adivasi* and *Janajati*, meaning Aboriginal and Indigenous, respectively. The nation-states imposed these terms and their criteria to dehumanize and create division among Native people who had lived harmoniously for generations (AIPP, 2009; Blacksmith, 2021).

METHODOLOGY

The authors considered transdisciplinary perspectives to research how philanthropy has benefited or can benefit Native communities in Canada. We map community foundations in Manitoba. (Blacksmith, 2021). The authors analyzed 22 webinars that featured experts on community foundations and the Indian Act to analyze the impact of colonial policies on community foundation development. Guidance in the analysis were provided by Dakota Leader Orville Smoke and Dakota member Craig Blacksmith, as chief and chief executive officer of Dakota Plains Wahpeton Oyate.

ArcGIS Pro was used to locate the community foundations in Manitoba in relation to Native communities. The authors extracted the postal codes for all the community foundations in Manitoba from the Endow Manitoba website (Winnipeg Foundation, 2022). These community foundations were overlaid with the location of Native communities from Open Data Canada (Natural Resources Canada, 2017) in ArcGIS, version 3.24.3. Analysis of the spatial distribution of community foundations in relation to Native communities was done. The accuracy of key findings from the map was verified via public webinars with a representative from the Winnipeg Foundation.

The authors organized 22 webinars to discuss the state of Indigenous philanthropy in Canada and the United States, considering the role of the Indian Act in community development. Some Native communities are publicly available on YouTube (Indigenous Philanthropy, 2020) and all the webinars are publicly available on Facebook (Mino Bimaadiziwin Partnership Facebook, n.d.). Key messages from the experts promoting Indigenous philanthropy in Canada and the United States were extracted from these webinars. The authors also analyzed how the Indian Act hinders prosperity and self-determination.

FINDINGS

Locating Community Foundations

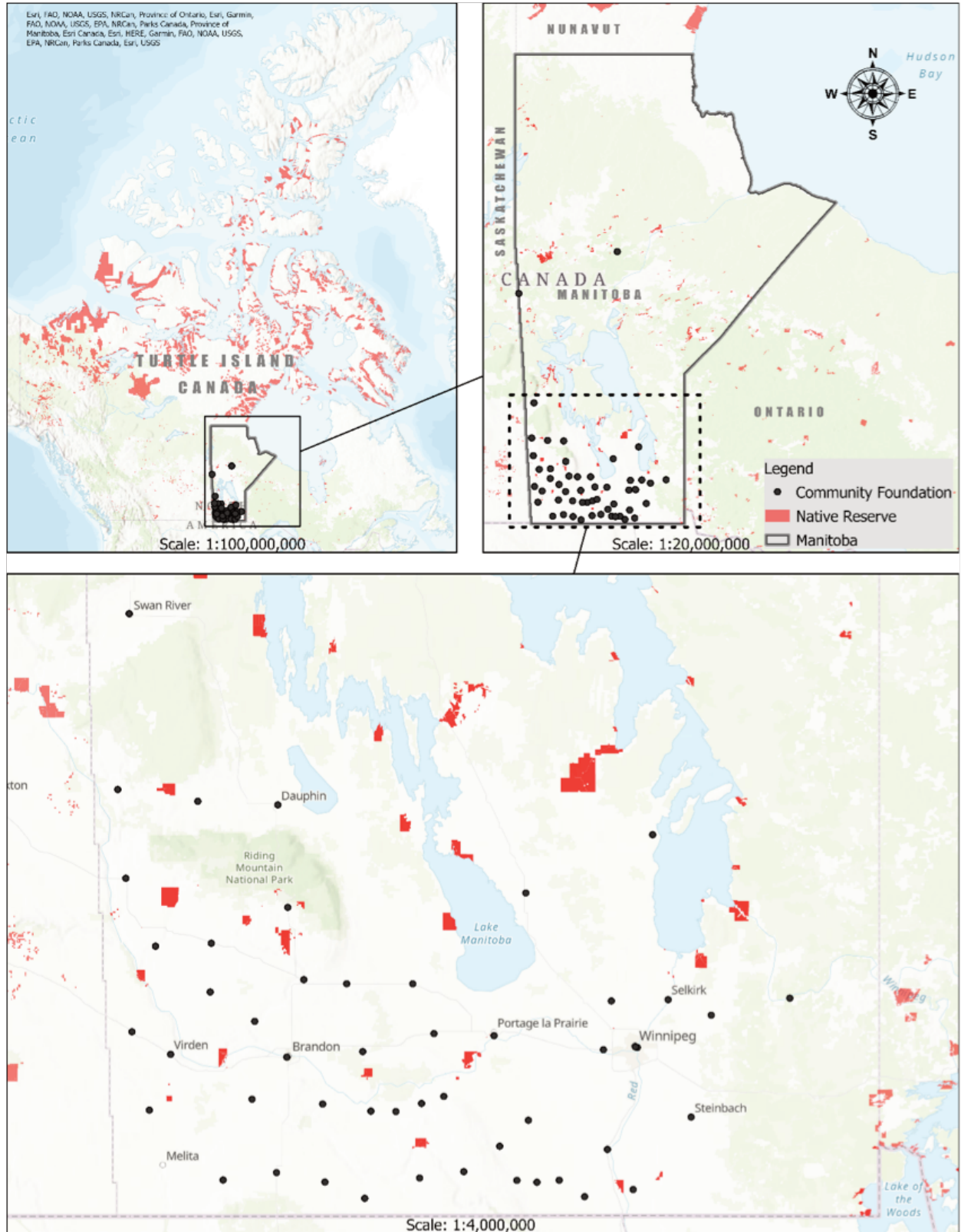
Map 1 juxtaposes community foundation locations with Native communities in Manitoba. Map 1 shows that all the community foundations are off-reserve and in colonial settlements. Manitoba has the largest number of community foundations of any province in Canada yet has none on Native communities. Most of the community foundations operate in southern and western Manitoba, with a few in the Interlake area and one in the northern settler hub of Thompson. As community foundations can only serve the specific geographical area where they are located, these off-reserve community foundations bring their wealth to settler cities and municipalities.

The lack of any on-reserve community foundation in Manitoba was confirmed by Alan Goddard, the Director of Endow Manitoba (Mino Bimaadiziwin, 2020b). Native communities are separated geographically from non-Native communities to enforce federal control (Joseph, 2018), so Native communities do not benefit from community foundations off-reserve. Segregation of Native people from settlers towns and cities is Canada's colonial policy to dispossess Native people from their traditional lands and occupations (Joseph, 2018). Section 49a of the Indian Act enforced the removal of Native settlements to further segregate Native people to remote areas. Section 49a states "an Indian reserve which adjoins or is situated wholly or partly within an incorporated town or city having a population of not less than eight thousand" could be removed without the inhabitant's consent if it was "having regard to the interest of the public" (Indian Act, 1911, s. 49a). This Act was applied to a small group of Dakota Oyate. The Dakota purchased fee-simple land in Portage la Prairie, Manitoba, and prospered in farming and other industries to remain independent of the government treaty, "not recognizing the Crown as a sovereign God" (Mino Bimaadiziwin, 2020). In 1911, the Crown used an amendment to the Indian Act to economically sanction and forcibly remove a Dakota community to an Indian reserve, despite the Dakota purchasing the land title.

In addition to the lack of community foundations on Native communities, Goddard (2020) shared that no Native-led or Native-run foundations exist in settler communities in Manitoba. In the same webinar, Dakota Leader Orville Smoke and Dakota member Craig Blacksmith asserted that the key barriers to successful Native-owned community foundations are colonial policies embedded in the Indian Act and the Income Tax Act.

Canadian charity law is governed by federal tax regulations in Canada. A charitable foundation" is defined as a trust that exclusively operates for charitable purposes funding qualified donees such as registered charities but is not a charitable organization carrying out its charitable activities (Income Tax Act, 2022, sec. 149.1(1)). Charitable purpose has a broad meaning, including distrib-

Map 1: The 54 Community Foundations in Manitoba with none located on Native communities in 2021



Source: Thapa, K, 2022

uting funds to other registered charities for charitable activities. Charitable funds cannot benefit any proprietor, member, shareholder, trustee, or settlor of the foundation. Charitable foundations and charities are established for specific social causes and approved by the Canada Revenue Agency (CRA) to be exempt from tax (Government of Canada, 2006). One must have a qualified donee status issued by the CRA to receive donations. However, most Native communities in Canada have no charities and without qualified donee status cannot receive donations from charities.

Native governments today receive an annual budget from the federal government that has not increased since 1984. Unlike in the settler-run cities and municipalities, Canada froze the annual funding for Indian reserves in 1984, which Orville Smoke and Craig Blacksmith note. Each band signs a contribution agreement with the federal government of Canada to perform government functions for that funding. This annual funding requires they provide water, education, health, roads and infrastructure, and other community development activities. It is impossible for any government or organization to function on 1984 funding levels, yet Indian reserves are subjected to these inadequate funding levels, which the general public is not aware of.

Bridge (2020) identified that the qualified donee mechanism under the Income Tax Act of Canada is a barrier for Native communities. Native governments and organizations need to apply for qualified donee status to receive funding from any charity or funding organization in Canada. Other governments in Canada automatically receive a CRA registration. Unlike every other level of government in Canada, Native reserves are not considered governments by the CRA, creating barriers to receiving and collecting funds. Under the current Canadian government system, without CRA, Native governments cannot receive donations from donors under the rules and regulations of Canada. Every other government but Native governments (e.g., Indian bands, tribal councils) are automatically recognized as qualified donees. Bridge (2020) reveals how Ulnooweg was instrumental in overcoming CRA barriers in 34 Native communities in the Atlantic region while noting that these barriers were discriminatory.

The webinars often show on screen and read verbatim the Indian Act and other government policies to reveal the racist language and meaning. This government statement sums up Canada's colonial rule over Native people and racist laws: "Our Indian legislation generally rests on the principle, that the aborigines are to be kept in a condition of tutelage and treated as wards or children of the State" (Department of the Interior, 1877, p. 14). The Canadian government continues to keep Native people in a "condition of tutelage" by controlling their land and finances through the Indian Act and other colonial policies, including the Canada Revenue Act.

Every government, including local government, is automatically considered a qualified donee except for Native governments, including Native bands and tribal councils. Canada treats Native governments as non-governments, for running charities, which mirrors Native people being treated as wards of the state, not legally being a person under the Indian Act (Indian and Northern Affairs Canada, 1969). The qualified donee rules for charities are unjust, like the discrimination in the Indian Act, which the government acknowledges in its 1969 statement on Indian policy: "Canada cannot seek the just society and keep discriminatory legislation on its statute books" (p. 11).

The National Aboriginal Economic Development Board recommends dismantling the legislative barriers that impede Native communities' control over Indian money, stating: "Indian money should be in the hands of First Nations, not the Government of Canada" (NAEDB, 2017, p. 3). Crown control over Native band revenues is belittling: "The current financial arrangement with Ottawa is similar to having to ask your parents in advance for every dollar that you spend" (Bryan as cited in Bakx, 2021).

Call for fundamental change in philanthropic institutions

Raymond Foxworth (2020) from the First Nations Development Institute in the United States highlighted that philanthropy in the United States is undermining Native priorities. By operating under western values and capitalism, philanthropy perpetuates white supremacy and anti-Native values and needs to shift (Foxworth, 2020). Native people need to be at the forefront of any development in their land and traditional territories, according to the webinar series speakers. Foxworth asks for Native-led community development as "when Indigenous communities are in the decision-making for their community and development, better things happen." Foxworth underlines that the system of philanthropy in Native communities must center on Native communities, their land rights, priorities, needs, leadership, language, and values. Foxworth calls for a fundamental change in how philanthropy institutions operate.

DISCUSSION

Native bands must be on the list of qualified donees maintained by the Government of Canada to receive funding from any donor. A Native band must apply and get approval from the CRA to form a registered charity organization. Until recently, it was almost impossible for a Native band or community to become a qualified donee, which undermined Native people's right to self-determination. This lack of qualified donee status is a denial of the Native government. This lesser systemic Native-specific racism status in philanthropy is similar to Native people's human rights under the Indian Act, which reads: "A person means an individual other than an Indian" (Indian Act, 1876, sec. 12). This designation of First Nations allowed the Canadian government to control their land and assets as wards of the state (Blacksmith, 2021; Joseph, 2018; King, 2019; Lightfoot as cited in King, 2019).

Community foundations in Manitoba amass wealth for settlers through trusts controlled by settlers. These endowment funds are trusts, with interest spent annually, mirroring the Indian Act control by the Crown over Native land and resources. To see whether philanthropic organizations reflect the racism and colonialism of the Indian Act, the role of the Indian Act land trust discussions in the webinars were analyzed.

Indian Act as the main barrier to Native people's prosperity

Rules for community foundation trusts were demonstrated to mirror the Indian Act trust in the webinars. The CRA rules for philanthropy have the same effect as the Indian Act, putting wealth under non-Native control and benefit. The similarities start with the Indian Act legislation being created and enforced by the Government of Canada in a way that "inhibits development on Native reserves." The Statement of the Government of Canada on Indian Policy, 1969, explains the control of the Indian Act land trust by the government undermines Native development on reserves:

Administrative control and legislative authority are, however, vested exclusively in the Government and the Parliament of Canada. It is a trust. As long as this trust exists, the

Government, as a trustee, must supervise the business connected with the land. The result of Crown ownership and the Indian Act has been to tie the Indian people to a land system that lacks flexibility and inhibits development. (Indian and Northern Affairs Canada, 1969, p. 11)

The Indian Act is a land trust as Europeans declared that Indians were not humans and therefore could not own the land by European property standards. The Indian Act legalized the continued dehumanization of Native people and made it law. The fact that Native people were never considered human in the first place was made irrelevant and, as supposed beneficiaries, were being taken care of. This colonial policy of the Indian Act matches the views of the doctrine of discovery and *terra nullius*. Pope Alexander VI on May 4, 1493, issued the Papal Bull "Inter Caetera," sanctifying the seizure of "discovered" (McAdam, 2016, p. 2) lands and enslavement of Native peoples. As a direct result of the doctrine of discovery, "colonial laws, policies and outright theft" (p. 2) erased Native people and caused genocide. That the CRA makes Native reserves invisible to philanthropy is another erasure that perpetuates the same harms as the Indian Act and the Roman Catholic Church's decree.

The government and charities are focused on settler communities. Neither are prioritizing meeting the basic needs of people in Native communities. Many Native communities in Manitoba and Canada still lack necessary services- running water, sufficient housing, and access roads. These communities also face underemployment challenges and many other crises due to Canada controlling Native land and the natural resources which include funding.

The *Indian Act* virus: A legal framework mirrored by the CRA

Community foundations and other charities mirror the Indian Act by not recognizing the governments in Native communities and the humanity of Native people. Rather than increasing equity in Manitoba, community foundations are increasing the inequity to keep Native communities underdeveloped and economically poor (Hill, Bonnycastle & Thompson, 2020). This inequity follows the trail of the Indian Act trust over Native lands financing the forcible confinement of 150,000 Native children in Indian residential schools, child welfare agencies, jails to incarcerate Native people, and the Sixties Scoop (Parker et al., 2019; TRC, 2015). Claims by many that Indian residential schools provided a charitable educational service to Native children go against the findings of the Truth and Reconciliation Commission (TRC) (2015). The TRC (2015) found every manner of genocide in residential schools, according to the United Nations definition:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. (United Nations, 1948b, article 2)

CONCLUSION

The pathway to the economic prosperity of Native communities in Canada is counter to the existing philanthropic model. The present model discriminates, so community foundations benefit non-

Native communities and not Native reserves. As a result, philanthropy in Manitoba is largely controlled by settlers and benefits settler communities. The existing philanthropic model further entrenches inequality by diverting needed charitable funding away from Native reserves, to non-reserve settlements. Community foundations are solely in non-reserve communities in Canada due to the CRA not recognizing Native governments for automatically qualified donee status.

The community foundation model follows the colonial system, denying Native governments agency, governance, and resources. If philanthropic organizations uphold human rights and equity and meet essential needs in Canada, why is no community foundation or women's shelter on Native reserves in Manitoba? Many reserves are in economic poverty, and 51 percent of people on reserves in Canada are food insecure (FNIGC, 2018). More, not less, philanthropic activity is needed to overcome the systemic discrimination against Native communities.

Community foundations not only should be in Native communities but also should confront the systemic racism against Native communities in the Indian Act. The Indian Act entrenches the marginalization, poverty, and health risks already experienced by Native people in Canada (Hill, Bonnycastle & Thompson, 2020). Why is no charity or other third-sector organization focusing on abolishing the Indian Act, which defines Native people as unequal? As the philanthropic sector does not challenge CRA rules, the philanthropic sector participates in the systemic discrimination of non-Native communities. The CRA regulates the rules for philanthropic organizations, resources, and finances, which blocks wealth from flowing to Native communities. This inequity is similar to the Indian Act land trustee withholding resources and land from First Nations.

By the philanthropic sector not challenging CRA rules, the philanthropic sector participates in the systemic discrimination of non-Native communities. The CRA regulates the rules for philanthropic organizations, resources, and finances, which blocks wealth from flowing to Native communities. This inequity is similar to the Indian Act land trustee withholding resources and land from First Nations. This complicity of the third sector in systemic racism against Native communities needs to be addressed to allow money to flow to Native communities for needed programs. However, settler community foundations or other third sector organizations are not mobilizing to address this systemic racism and continue to benefit from CRA rules where all community foundation dollars go to Manitoba's settler communities.

Systemic discrimination against Native communities and thus Native people by the CRA and the Indian Act is incompatible with a just state. The CRA does not recognize Native governments, which demonstrates CRA and philanthropy institutions' inequitable practices. That no charitable organization in Manitoba challenges the Indian Act's inequity and human rights contravention is a show of support for the CRA's systemic discrimination and the Indian Act's poisoning of the human, economic, and land rights of Native people in Canada.

Outside of Manitoba, Native organizations, such as the Ulnooweg in Atlantic Canada, bring attention to inequities to benefit Native reserves. According to the United Nations (2019), Human Rights Declaration, and the Canadian Constitution statements on human rights equality apply to everyone in Canada, both in Native and non-Native communities. The UN Human Right Declaration is also applicable to the Government of Canada, the CRA, and the philanthropic sector. Nevertheless,

Native communities are discriminated against by the lack of recognition as governments for automatically qualified donee status by the CRA and by Native people's status as "wards of the state" (Blacksmith, 2021). Equality and inclusion in community foundations and the philanthropic sector require dismantling the Crown's systemic barriers, including the Indian Act and CRA barriers. Presently the systemic racism against specifically Native communities is not abiding by the equality statement in Section 36(1) of the Canadian constitution.

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ABOUT THE AUTHORS / L'AUTEURS

Craig Blacksmith is Chief Executive Officer, Dakota Plains Wahpeton Oyate. Email: dakotaoyate1492@gmail.com

Thapa Keshab is Research Director, Native Land Mapping, Mino Bimaadiziwin Partnership. Email: rusticbeat@gmail.com

Tayzia Stormhunter MBA, Human Resources Training and Development Manager, Fishing Lake First Nation. Email: stormhut@myumanitoba.ca