Aboriginal self-government is a reoccurring issue in Canadian politics. The basis for this issue can be found in the history of colonization of the Aboriginal peoples by the Canadian nation-state. The legitimacy of the claims to Aboriginal self-government are derived from the fact that the Aboriginals were the first peoples of pre-colonization Canada and were alienated from the formation of the state and its Constitution. Since the institutional recognition of an Aboriginal inherent right to self-government by the 1982 Constitution Act, the Chrétien government in 1995, and the 1996 Royal Commission on Aboriginal Peoples, the discourse on what model of Aboriginal self-government to adopt has developed into a highly contested topic with several proposals and objections (Abele and Prince 576-577). I will explore the possible models of self-government, the applicability of these models, as well as their legitimacy. It will be argued that the only legitimate and just, yet fundamentally inapplicable, form of Aboriginal self-government is obtained through a model of “treaty federalism” where the Aboriginal peoples' relationship to Canada is one of nation-to-nation (Turner 8).
One of the possible models of Aboriginal self-government involves the recognition of Aboriginal bands and tribes as municipalities. This municipal model of Aboriginal self-government has been adopted in some Aboriginal communities in British Columbia and in Métis settlements in Alberta (Rossiter and Wood 360; Abele and Prince 573). These Aboriginal communities have gained greater autonomy in their domestic affairs as the power and policy making is no longer be dictated by the Indian Act. Aboriginal municipalities, “provide a range of services to relatively small populations, use a representative electoral system, possess a modest power of taxation, and own source revenues” (Abele and Prince 572).

However, this model of Aboriginal self-government is not a legitimate end point because it fails to recognize any distinct status of the first peoples. A municipal model does not change the structure that has been detrimental to the Aboriginal peoples since colonization. In this scenario, the federal and provincial governments would continue to delegate all powers to the municipality. Therefore, the municipality still exists within the institutions that perpetuate the assimilation focused “White Paper Liberalism” (Turner 12). The introduction of Aboriginal municipalities would also change the power dynamics of Canadian constitutionalism. Aboriginal municipalities will likely face a similar struggle to the one that emerged in the federal-provincial relationship, where the provinces sought to be more than municipalities themselves.

Where this “solution” has been attempted, implementation was illegitimate as was the case with Aboriginal municipalities in British Columbia. The implementation of this model was the result of a referendum on provincial treaty negotiations, yet many Aboriginal groups refused to recognize the legitimacy of the referendum and organized a boycott. The result of the boycott was the participation of only one-third of the eligible voters who were predominantly non-Aboriginal and an overwhelming vote for the municipal
model (Abele and Prince 573; Rossiter and Wood 359-360). The referendum process ignored the Aboriginal voice and their inherent right to self-government. The only voice that did count was the voice of the predominant middle class, white, Canadian citizen.

The concept of Aboriginal municipalities is not a legitimate end point for self-government; however, it could be a possible starting point for the Aboriginal peoples. Aboriginal municipalities would allow bands and tribes to gain experience and knowledge in areas of taxation and resource management that will be instrumental for the future governing of their people. A temporary municipal model would also provide time for Aboriginal communities to “empower their people so they could negotiate from a position of greater strength” (Boldt 137). Nonetheless, this model of Aboriginal self-government in its non-temporary state moves towards an illegitimate end because it fails to address and remove itself from the colonial practices of the past. This model also denies any distinct status of the Aboriginal peoples by governing them under Canadian policies as solely Canadian citizens. This allows the federal government to move away from the rather controversial policies of the Indian Act.

Another possible model of Aboriginal self-government that has been pursued is one primarily based on territory and resources. This model led to the creation of Nunavut and a smaller Northwest Territories in 1999 (Abele and Prince 574). The applicability and viability of this model is limited in the sense that few Aboriginal communities have the land base and population to constitute a new territory. This model of Aboriginal government may be pursued by groups such as the Inuit in Nunavik, the Inuvialuit in the Northwest Territories, and some of the larger Métis settlements (Abele and Prince 575). It is interesting to note that all residents of such territories, regardless of race or ethnicity, share the same rights and responsibilities. In Nunavut, the Inuit population constitutes 85 percent of the
This possible model of self-government is becoming increasingly relevant to provinces like Saskatchewan and British Columbia that have a vast, growing Aboriginal population and is introducing a new dimension to treaty politics. The example of Nunavut and its 85 percent Inuit population prompts the questioning of this model as its requirements remain unclear. To what extent must the Aboriginal peoples constitute the majority of a province in order for territory negotiations to take place between the province and the federal government? Can a large portion of a province be expropriated to an Aboriginal majority of that area? These are the types of questions that the Canadian federal government may be faced with in the distant future concerning territory in Quebec, the Northwest Territories, British Columbia and Saskatchewan.

The idea of all Aboriginal nations in Canada banding together to become a single province has also been introduced. This would create a province unlike any other where there is not one land base but multiple and scattered territories. This model would be significantly difficult to achieve and to govern. It would also limit the several distinct and varied Aboriginal nations, and their differing concerns, to one voice within Canadian politics. This model of Aboriginal self-government thus fails in applicability; nor would it be able to represent the different voices of the various Aboriginal nations. The fractured model of Aboriginal self-government is illegitimate for the same reason as the municipal model: it still exists within the structures and institutions that allow federal power over the Aboriginal peoples of Canada.

The federal government does have its own vision of Aboriginal self-government within Canada. This model of self-government involves the creation of “a third Aboriginal order of government gradually taking its place alongside the provincial and federal orders in the Canadian system” (Abele and Prince 576). It would be based around creating new institutions and modifying existing ones within
Canadian federalism. This third order model would give the Aboriginal order of government jurisdiction over issues that concern the Aboriginal peoples as well as give them the opportunity to be more self determined than in previous models of Aboriginal self-government. This idea of Aboriginal government existing alongside the provincial and federal governments was primarily introduced by a special committees report known as the Penner Report (Boldt 88). The 1980 Penner Report highlighted “that First Nation governments may have implicit legislative powers that are now unrecognized and an inherent right to self-government expressed in the Royal Proclamation, 1763, and guaranteed in the Constitution Act, 1982” (Abele and Prince 576). These suggested legislative powers under this model of self-government would allow the Aboriginal governments to have jurisdiction transferred to them from provincial and federal levels upon negotiations. This Aboriginal jurisdiction would allow their governments to “have full legislative and policy-making powers in such areas as social and cultural development, revenue raising, economic and commercial development, justice and law enforcement... and that they should have full control over their territory and resources” (Boldt 88). The Penner Report represented a strong move away from the “White Paper Liberalism” and colonial practices of the past, as seen in the Penner Report’s recommendation of the reordering of Canadian federalism and its suggestion that Aboriginal peoples “by themselves should, by free choice, determine the form and structure of government they desire” (Turner 12; Boldt 90). The recognitions by the federal committee and the Penner Report created the base on which third order government was founded. Aspects of the Penner Report were included in the Charlottetown Accord that was ultimately voted down by Canadian citizens in the 1992 national referendum (Abele and Prince 577). The reasons for this vote are disputed but it mainly was the result of few people knowing what this model of government meant for Canada and
what it would evolve into. The Chrétien government took notice of this model of Aboriginal government proposed by the Penner Report and formed its own modified version. However, the modified version excluded the most fundamental aspects of the Penner Report. The proposed model by the Chrétien government would allow the Aboriginal peoples to “govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages, and institutions, and with respect to their land and their resources” (Canada 1995 3-4). However, the Chrétien government ignored the recommendation from the Penner Report that the Aboriginal peoples “by themselves should, by free choice, determine the form and structure of government they desire” (Boldt 90). Chretien’s modified version of the Penner Report stipulated that Aboriginals would not have full jurisdiction on law making and that they would be subject to the Canadian Constitution, the Canadian Charter of Rights and Freedoms, and strict standards of accountability imposed by the federal government (Abele and Prince 577-578; Pointing and Henderson 64). The Chretien model for Aboriginal government reverts back to previous policy that is “consistent with historical attempts to colonize indigenous peoples” (Pointing and Henderson 64). The Chretien model seems to express “that the Aboriginal right to self-government is contingent, rather than inherent... the Aboriginal right to self-government must be negotiated, rather than unilaterally exercised by Aboriginal nations as part of their inherent sovereignty” (Pointing and Henderson 65). This view of a delegated right to self-government is nothing short of neo-colonialism, represents a different form of federal control over the Aboriginal peoples, and is ultimately illegitimate.

Furthermore, the proposed model of the Chretien government is contradictory to the provisions concerning the jurisdiction of Aboriginal governments in matters internal to their people. The
Aboriginal people have a unique communal culture (which even the Chrétien government recognized) that defines values, justice, law, power, and rights differently than the discourse of the Canadian state that is dominated by liberal individualist view. Beneath the surface of this model, there is the presence of a neo-colonial agenda that seeks to eliminate any Aboriginal status. The goals of this agenda are identical to the goals of the 1969 White Paper, which had been introduced by Chrétien when he was the Indian Affairs Minister under the Trudeau government (Turner 16). Aboriginal scholar Meno Boldt asserts that the, “ultimate goal is the elimination of all institutional arrangements that set Indians apart from Canadians... to ‘civilize’ Indians” (Boldt 79). The purpose of such elimination is to end the Indian problem and rid Canada of the white man’s burden by removing any distinct legal status of Aboriginal peoples. The increasing vulnerability of the federal government, in regards to implementing Aboriginal policy, has made the eventual dismantling of the Indian Act a pressing necessity. The adoption of Chretien’s model would integrate Aboriginal peoples into the existing form of Canadian federalism. This integration into the Canadian federation leads to Aboriginal peoples being governed by Canadian policy and no longer the controversial policies of the Indian Act. The stipulation of Aboriginal peoples being subject to the Canadian Charter of Rights and Freedoms under this model speaks to the federal government’s intentions of dismantling the Indian Act. Currently, Aboriginal peoples who are governed by the Indian Act are not covered under the Canadian Charter of Rights and Freedoms. If the Aboriginal peoples were currently subject to the Canadian Charter of Rights and Freedoms, the federal government would be in direct violation of the UN Charter. The reserve system in Canada would be defined as apartheid (Jacobs 11). The proposed Liberal model of an Aboriginal order of government turned its back on the recommendations of the Penner Report which was a
constructive effort to giving Aboriginal peoples a voice in Canada. The Chretien model of an Aboriginal order of government, as it has been proposed, is illegitimate because it is not compatible with Aboriginal culture and because it is a reiteration of Canada’s colonial past.

The aforementioned models or paths to Aboriginal self-government, excluding the recommendations of the Penner Report, are illegitimate. This illegitimacy stems from “the concept that the existence of the Canadian state is not a given in the legal and political relationship” and that “Canadian citizenship is something that was eventually given to Aboriginal peoples, not something they asked for, wanted, or even accepted” (Turner 37; Abele and Prince 581). This concept of citizenship is what defines the relationship between the Aboriginal peoples and the Canadian state in the “treaty federalism” model (Turner 8). In treaty federalism model the relationship is one of nation-to-nation where the Aboriginal people do not join federalism but exist as a separate and sovereign nation. The relationship between the two nations would be defined by negotiated treaties (Abele and Prince 579). The treaty federalism model would extend complete control to Aboriginal peoples to determine both their form of traditional government and their relationship to the Canadian state. This model is often symbolized by the Kaswentah’s traditional Two Row Wampum where the two rows of shells represent the two separate entities with separate values travelling down separate but parallel paths. These two rows are connected by three beads that represent peace, friendship and respect (Turner 45-48).

The 1996 Royal Commission on Aboriginal Peoples strengthened the legitimacy of treaty federalism by implying that the political relationship between Canada and the Aboriginal peoples should be one of nation-to-nation (Turner 8). It is the only legitimate model of Aboriginal self-government because it is the only way Aboriginal peoples can regain or recover their traditional powers and righteousness. Mohawk scholar
Taiaiake Alfred expresses that all other models of Aboriginal self-government “will simply replicate non-indigenous systems... intensifying the oppression (because it is self-inflicted and localized) and perpetuating the value dichotomy at the root of our problems” (Alfred 3). In order for the Aboriginal peoples to recover as a whole, they must attempt to regain their traditional culture for the basis of their politics and government and this traditional culture and government is inseparable from the land of Aboriginals (Alfred 48).

The probability and applicability of this model is what undermines it as a legitimate form of Aboriginal government. It is important to understand that these undermining factors are products of colonization. It is unclear if the majority of Canadian citizens will accept the questioning of Canadian sovereignty as the situation of Quebec has shown. It is also unclear whether the majority of Canadian citizens understand that “Indigenous peoples do not seek to destroy the state, but to make it more just and to improve their relations with the mainstream society” (Alfred 53). This ambiguity was present in the 1996 Royal Commission where the relationship of nation-to-nation was defended. However, in the terms of the commission report the relationship became understood as a relationship of government-to-government (Abele and Prince 588).

The building of infrastructure and institution would be a daunting task for Aboriginal peoples under this model. Taxation amongst distinct self-determined models of Aboriginal government and off-reserve Aboriginals would be among the most difficult initiatives to achieve. If the implementation of the infrastructure and institutions was successful, the Aboriginal peoples would still remain oppressed by colonialism. The band style governments that have institutionalized Aboriginals has created an environment of corruption and unaccountability amongst Aboriginal elites who are benefactors of the colonial mindset and perpetuators of the various social ills currently facing Aboriginal communities across Canada.
Therefore, Aboriginal peoples would be faced with the task of regaining their traditional culture in the gaze of modernity while being subject to the impossibility of decolonization. Though this model is the only legitimate and just form of Aboriginal self-government, it cannot be implemented and maintained in a legitimate and just manner.

The models of Aboriginal self-government examined here pose different challenges and criticisms that the Aboriginal peoples and the Canadian government face when searching for a solution to right previous wrongs that have put Aboriginal peoples in a position of isolation and degradation. Aboriginal self-government implemented as municipalities, territories, and as the Chretien third order of government are illegitimate because they do not empower Aboriginal peoples and they do not exist outside of the colonial structures and institutions that have created the current situation for Aboriginals. The recommendations of the Penner Report represent a model that promises legitimacy and also stands in stark contrast to the three models of Aboriginal self-government opposing the nation-to-nation relationship. The Penner Report is also more legitimate than Alan Cairns’ Citizen Plus model where Aboriginals are benefactors of Canadian citizenship as well as extra Aboriginal rights. The Penner Report, unlike Cairns’ Citizen Plus model, if implemented would allow Aboriginals to be exempt from aspects of Canadian citizenship (i.e. Canadian Charter of Rights and Freedoms, Canadian Criminal Code) that do not complement their unique traditions and culture (Boldt 89). The nation-to-nation model is the only legitimate and just form of Aboriginal self-government, but the improbability of Canada straying from its attachment to national interest and individualism keep this model from becoming a reality. The difficulties on the path to Aboriginal self-government will not be overcome easily and will likely exist when the future generations of Aboriginals are struggling to find meaning and attachment to a culture lost in time.
Works Cited


