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GROUP RIGHTS, DEMOCRACY AND THE PLURAL SOCIETY:

THE CASE OF CANADA'S ABORIGINAL PEOPLES

Hiroaki Kato

A Dissertation Presented to the Faculty of
Graduate Studies and Research of Carleton University
in Partial Fulfillment of the Requirements for
the Degree of Doctor of Philosophy

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THE CASE OF CANADA'S ABORIGINAL PEOPLES"

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ABSTRACT

A theory of consociational democracy, which explains political stability of plural societies, has received scholarly concern by political scientists in the past. A number of studies indicate that Canada is regarded as one of the 'democratic plural societies' in the world. A major concern of the applicability of this model in Canada, however, remains as a study of the relationship between English Canada and French Canada. Other minorities or aboriginal peoples are not included in many cases. In other words, consociational democracy in Canada usually implies political accommodation between the two major linguistic communities or regional interests. This thesis intends to introduce a new perspective on the study of consociationalism by examining relationships between the aboriginal peoples and the majority of Canadians. In this context, the contribution of this thesis is twofold: first, this work identifies a theoretical framework for Canada's aboriginal issues and second, it analyzes this subject theoretically and comparatively. Chapter 1 examines aboriginal policies in advanced western nations and sets a comparative overview.

Chapter 2 introduces a two-dimensional model (pluralism-assimilation and equality-domination) in order to establish our theoretical basis. As a result, four types of inter-group relationships are identified: the consociational, melting-pot, control and assimilatory models. By

using the two-dimensional model, historical, administrative, political and constitutional aspects of the aboriginal-white relationships are discussed in Chapters 3 to 6 respectively.

Chapter 3 reviews the historical transformation of the relationships in North America, and it is clear that interactions between the aboriginals and Europeans were complex and diverse. Chapter 4 identifies the administrative aspects of the relationships, and the complexity that exists in the process of program delivery. Political aspects of the relationships are discussed in Chapter 5 and the strengths and weaknesses of the aboriginal peoples in the Canadian political process are pointed out. Chapter 6 attempts to clarify meanings and political implications of aboriginal rights. Also it is pointed out that there is a philosophical gap between the native Canadians and the majority of Canadians concerning the idea of sovereignty.

Chapter 7 evaluates our model as a whole, and identifies the advantages and shortcomings of the two-dimensional model. The issue of group rights for aboriginal peoples in liberal democracies such as Canada and the United States is also discussed. Finally, the author suggests six options for aboriginal self-government.

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CHAPTER 1

I. Introduction

Recently, various ethnic, racial, linguistic, religious and cultural groups' political aspirations have attracted social scientists' scholarly concern. Approaches to this subject are numerous as some of the following titles indicate: Global Mini-Nationalism,¹ Ethnicity and Nation-Building,² The Future of Cultural Minorities,³ Ethnic Autonomy,⁴ Ethnic Resurgence in Modern Democratic States,⁵ The Fourth World,⁶ National and Ethnic Movements,⁷ Politics of Race,⁸ Politics of Separation,⁹ Ethnic Conflict in the Western World,¹⁰ Ethnic and Political Nations in Europe,¹¹ Ethnicity in an International Context,¹² Ethnic Conflict in International Relations,¹³ Nations Without a State,¹⁴ Nonstate Nations in International Politics,¹⁵ and Multilingual Political Systems.¹⁶ This subject has been studied from the standpoints of "nationalism," "mini-nationalism," "autonomy," "separation," "conflict," "nation-state," "non-state actor in international relations."

There seem to be two subjects which particularly draw political scientists' concern. These are "politics of inter-group relationship" and "political regimes of plural societies." The first subject, for instance, is examined by J. Rothschild, Ethnopolitics, and seven types of "ethnopolitics" are presented.¹⁷ Similarly, A. Rabushka and K.A. Shepsle's work, Politics in Plural Societies, identifies four kinds of inter-group relationships (majority

dominance, minority dominance, fragmented society, and balanced competition).¹⁸ The second issue is the nature of political regimes in plural societies. Perhaps one of the well-known analyses is A. Lijphart's fourfold typology which is based on two criteria -- the structure of society (plural or homogeneous) and the behavior of the political elites (coalescent or adversarial).¹⁹

The main theme of this thesis is a theoretical evaluation of Canada's aboriginal issue and the political system that deals with that issue. How are these conceptualizations useful in Canada? In this thesis a theory of consociational democracy will be examined as a basis of our work. The second theme of this thesis is an evaluation of a plural society and liberal democracy. Some scholars indicate that "group rights" are incompatible with liberal democracy. Since modern liberalism is based on "individualism," "group rights" of aboriginal and ethnic groups have no relevant position in liberal democracy.²⁰

This thesis is composed of seven chapters. Chapter 1 will examine the aboriginal issues in western democracies comparatively. Three subjects are chosen here for our inquiry: definitions and demography of the aboriginal peoples; basic government policies toward the aboriginal citizens; and international aspects of aboriginal issues. Chapter 2 will examine a theoretical framework of the thesis -- critical review of existing models and introduction of our model. In addition, 12 conditions for Chapters 4, 5 and 6 will be presented. An historical overview of inter-group

relationships between the aboriginal people and the European population in North America will be discussed in Chapter 3.

The point of argument is both patterns and causes of inter-group relationship. Chapters 4, 5, and 6 will deal with

specific issue areas, respectively -- administration, politics and constitution. Based on 12 conditions

introduced in Chapter 2, each aboriginal group will be examined comparatively. Chapter 7 will summarize the thesis and findings initially and then discuss Canada's plural society in relation to liberal democracy.

II.. Aboriginal Peoples: Definition and Demography

The study of indigenous peoples has been mainly carried out by anthropologists who were able to have a primary contact with these peoples. Since the main aim of this thesis is to examine the political status of Canada's aboriginal peoples comparatively, this chapter will review other democratic nations' policies toward their indigenous citizens. How do governments define these peoples? How are the indigenous groups treated by the host societies? The main attention is given to North America, Australia, New Zealand, Scandinavian countries, and Latin America.

How can we define the aboriginal peoples? According to The Encyclopedia of Anthropology, "indigenous peoples" are defined as follows:

Persons who are born in, and reared in and inhabit a specific country are called indigenous (in contradiction to immigrants and temporary sojourners). Indigenous people are defined in terms of the law of individual countries.²¹

For a student of inter-group relationships, it is important to know that indigenous peoples tend to maintain their distinctive way of life, socio-economic conditions, and political identities which are very different from a non-indigenous society. This is one reason why anthropologists have been so fascinated by the existence of indigenous groups.

A basic similarity common to the indigenous peoples is that non-aboriginal peoples such as Europeans settled places where the indigenous peoples had lived for a long time, and inevitably, both distinctive groups began to establish a primary contact. As a result, as long as the two maintained

different systems, coexistence between them became difficult. In many cases, the indigenous people were incorporated into a non-indigenous host society, and the host society defined the relationship between the two. In this sense, as the previous definition indicates, the indigenous peoples are "defined in terms of the laws of individual countries."

The aboriginal peoples themselves attempted to define this term in 1974:

The term indigenous people refers to people living in countries which have a population composed of differing ethnic or racial groups who are descendants of the earliest populations living in the area and who do not as a group control the national government of the countries within which they live.²²

As D.E. Sanders points out, the size of group is not the point, and the main focus is on the political situation of these peoples. Some Latin American countries (especially Guatemala and Bolivia) have large native populations, yet these native groups remain as a weak minority.

Consequently, they define themselves according to the political status of their position; i.e., "indigenous populations who do not control their political destinies."²³

To count the number of the indigenous peoples in a country is not an easy task for various reasons - lack of formal recognition and intermarriages of indigenous and non-indigenous populations. Among advanced western nations, it seems safe to say that four definitions can be applied to identify indigenous populations: refusal to recognize its native peoples as in Japan - the Ainu or Utari; indirect formal recognition as in Norway and Sweden; limited

recognition of a part of indigenous peoples as in Canada and the United States; and full recognition based on self-declaration as in Australia and New Zealand.

Why is a definition important here? Primarily because it can reflect a government's policy toward the indigenous groups, and government services are provided to them according to this definition. In other words, a definition can tell us the nature of group rights, and how a government sees this group. This is the main reason why we are going to review various definitions and the size of native populations one by one.

Referring to the first definition no official census on the Ainu population of Japan is available. According to M.I. Hilger's work, while the 1920 national survey intended to enumerate the Ainu for the first time in Japanese history, it was considered as a discriminatory measure taken by the Japanese majority, Wajin, and the enumeration was cancelled. Therefore, no formal data exist in Japan.²⁴

According to estimates made by an Ainu leader, the Ainu are said to be 50,000 to 60,000 living on the northern island, Hokkaido.²⁵

The second type of definition can be found in Sweden and Norway. In Sweden, a Sami is defined "on the basis of his occupation"²⁶ (the breeding of reindeer). On the other hand, in Norway, a Sami is determined "on the basis of his descent."²⁷ Do these definitions cover the entire Sami population in two countries? The answer is negative, especially in the case of Sweden, because a Swedish Sami cannot be defined simply in terms of occupation. According

to an official document on the Swedish Sami, only one-sixth of them (600-700 households) were directly or partially engaged in reindeer breeding in 1976.²⁸ In other words, they are engaged in different kinds of economic activities: sea Sami living on the Norwegian coast; mountain Sami whose main occupation is reindeer breeding; and forest Sami of Finland and the USSR who are engaged in "hunting, trapping, inland fishing, and farming as well as reindeer hunting."²⁹ Like Japan, Sweden and Norway have no formal census on their Sami populations. All we can do is to estimate the number of Sami based on anthropological studies. It is reported that there are populations of about 21,000 in Norway, and 11,000 in Sweden (1975).³⁰

Canada and the United States fall within the third type of definition. That is, in spite of the existence of the indigenous peoples as socio-economic groups, only a limited number of the native populations are formally recognized. In the United States, there are at least two kinds of Indians. The first one is identified through the national census; i.e., self-identification of ethnic origin. According to The Statistical Abstract, fifteen ethnic groups are listed (White, Black, American Indian, Aleut, Eskimo, Chinese, Filipino, Japanese, Asian Indian, Korean, Vietnamese, Hawaiian, Samoan, Guaminian, and others), and one of them may be claimed by a respondent.

The concept of race as used by the Census Bureau does not denote any clear-cut scientific definition of biological stock. Since the 1980 census obtained information on race through self-identification by respondents, the data represent self-classification by the people according to the race with which they identify.³¹

The self-identified Indians are found in almost every state. Including the Inuit and Aleut in 1980, there were 1,420,400 Americans who classified themselves as Indians.³² Administrative definitions are, however, narrower and more rigid.

To be designated as an Indian eligible for basic Bureau of Indian Affairs services, an individual must live on or near a reservation on or near trust or restricted land under the jurisdiction of the Bureau, be a member of a tribe, band, or group of Indians recognized by the Federal Government, and, for some purposes, be of one-fourth or more Indian descent. By legislative and administrative action, the Aleuts and Eskimos of Alaska are eligible for programs of the Bureau of Indian Affairs.³³

According to this definition, three conditions must be met. These are residency, tribal membership, and biological requirement. This appears very rigid; however, tribal membership is determined by a tribe's criterion and the biological requirement may not always be satisfied. As T.W. Taylor writes, "Tribal membership, in some instances, may include persons with very little Indian blood."³⁴ His excellent study indicates that the number of eligible Indians, or "Indians in Federal Service Area," was reported as 734,895 in 1980.³⁵

Who are the rest of federally non-recognized Indians? The answer is as follows: "The remainder consists of members of Federally recognized tribes who live off reservation, or Indian people who are not members of any Federally recognized tribe, or those who claimed Indian ancestry."³⁶ Here, we must see two important points. First, due to historical reasons, it is assumed that there are no Indians in the eastern part of the United States from the

Mississippi River to the Atlantic. Only in the western part of the Continent are there Indians who are entitled to Bureau of Indian Affairs (BIA) services. Second, if an eligible Indian leaves his reservation, the situation becomes complicated. Those Indians who are living in urban centres no longer receive the BIA services. In order to solve this problem, a special program, the Model Urban Indian Center, was set up in some cities such as Los Angeles, Minneapolis and Fairbanks in the late 1960's.³⁷

In Canada, there are four categories of aboriginal groups - status Indians, Métis, non-status Indians and Inuit. According to a government document, "no special legal definitions" are available, yet "a general description of each group" can be summarized as follows:

Status Indians: A status Indian is a person registered or entitled to be registered as an Indian according to the Indian Act. About a half of status Indians are treaty Indians.

Métis: In a narrow sense, Métis are those of aboriginal ancestry descended from the historical community of Western Canada, and in a wider context, it refers to simply those who identify themselves as Métis.

Non-Status Indians: Those Indians who have lost their right to be registered due to various reasons.

Inuit: The original inhabitant of northern Canada living in the Arctic, northern Quebec and Labrador.³⁸

With regard to the Métis, further explanation may be necessary. According to Jennifer S.H. Brown, "métis" is an old French word meaning 'mixed',³⁹ whereas "Métis" is not a

generic term for all persons of this biracial descent but refers to a distinctive sociocultural heritage, a means of ethnic self-identification, and sometimes a political and legal category, more or less narrowly defined."⁴⁰ In other words, "biological race mixture (French, *métissage*) by itself does not determine a person's social, ethnic or political identity."⁴¹

To be an eligible Indian, the following conditions had to be satisfied until June 1985, according to the Indian Act:

1. any male person of Indian blood reputed to belong to a particular band,
2. any child of such person,
3. any woman who is or was lawfully married to such person.⁴²

Needless to say, this definition emphasized a principle of patrilineal descent and it was understood to imply "that only those persons of native ancestry who can trace descent through the male line to a person originally entitled to be registered are Indians for purposes and benefits of the Indian Act."⁴³ The Inuit are classified as "Indians" for administrative purposes after a federal supreme court decision of 1939.⁴⁴ While various questions concerning the definition of "who is an Indian in Canada?" will be discussed later, the Métis, non-status Indians and Indian women who married non-Indian males are said to face serious problems.

According to the 1981 census, an effort was made to identify the number of aboriginal peoples.⁴⁵ At that date there were 491,460 aboriginal persons: 292,700 status Indians; 98,260 Métis; 75,110 non-status Indians; 25,300 Inuit. While nationally the aboriginal populations constitute 2.0 per cent of the total, regionally the aboriginal populations are not evenly distributed: the Maritime provinces and Quebec, less than one per cent of each province's population; Ontario, 1.3 per cent; Manitoba, 6.1 per cent; Saskatchewan, Alberta and British Columbia, more than 3 per cent; Yukon, 17.5 per cent; and Northwest Territories, 58 per cent.⁴⁶

Professor V. Valentine's study, however, shows a bigger population estimate of the Métis and non-status Indians. (He has obtained data from the Native Council of Canada.) Although survey years are different, the number of Canadians who were classified as the Métis/non-status Indians in 1981 is relatively modest (173,370) in contrast with Valentine's estimation (798,250) in 1977. However, as he indicates in his paper, it is very difficult to identify the number of the aboriginal peoples in Canada.⁴⁷

In June 1985, Bill C-31, an Act to amend the Indian Act, became law in spite of the opposition by many native organizations.⁴⁸ The Bill was intended to correct discrimination based on sex and some discriminatory treatments due to enfranchisement. From a legal point of view, it was pointed out that some provisions of the Indian Act, especially section 12(b)1, were against section 15(1) of the

Constitution Act, 1982. In addition, Canada's position was criticized internationally because of the discriminatory clause of the Indian Act. In July 1981 the United Nations Committee on Human Rights supported Mrs. Sandra Lovelace (a non-status Indian in New Brunswick) in her claim that Canada was in contradiction of section 27 of the Covenant on Civil and Political Rights.⁴⁹

While the federal government intends to grant Indian status to some of non-status Indians, those who newly obtained the status will have to apply to his/her band in order to get band membership. Because Indian status and band membership are not identical, and it is necessary to obtain the two separately, it is possible that some bands may turn down applications for band membership. The number of people who could be reinstated by the federal government was estimated to be about 46,000 in 1985.⁵⁰

Australia, New Zealand, and to a lesser extent Finland, recognize their indigenous populations in a wider context. In Australia, after the 1967 national referendum, the Commonwealth government became responsible for its native populations. The official definition is as follows:

a person of Aboriginal or Torres Strait Islander descent who identifies himself as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he lives.⁵¹

Here, two conditions should be met; i.e., self-identification and communal recognition. In 1981, 144,665 Australians identified themselves as Aboriginals and 15,232 as Torres Strait Islanders. The total indigenous population in Australia is 159,897.⁵²

In New Zealand, the Maori Act of 1955 defined a Maori in the following way:

a person belonging to the aboriginal race of New Zealand, including a half-caste and a person intermediate between half-caste and a person of pure descent from that race.⁵³

In 1974, the Maori Affairs Amendment Act was enacted, and a wider definition was introduced: "all persons of Maori ancestry who wished to be considered members of the Maori race."⁵⁴ Like the U.S. census definition, a Maori can be determined by self-declaration. It is interesting to note that this identification does not need any proof or document at all.

He may do so for some purposes and not for others: his choice is not absolute and may be reversed. And whatever decisions he makes, he is free to change his mind without question or penalty.⁵⁵

In 1981, 280,380 New Zealanders were identified as Maoris of "half or more Maori origin," and 385,210 peoples indicated "some degree of Maori origin."⁵⁶ While the declaratory definition is now used, the degree of Maori blood was questioned at the time of the 1980 census. In this sense, the newly-defined Maori population is bigger than that of the previously-defined Maori.

Finland, unlike other Nordic countries, does recognize its Sami population officially. Here, persons are identified as Sami if "at least one of the grandparents learned Sami as the first language."⁵⁷ The language is the determining factor of Saminess in Finland. This Sami population is listed on a "Sami Registry". There were 5,500 Sami in

1979.⁵⁸ At the time of the national census, each person's mother tongue was recorded, and in 1980, 1,343 Finnish persons indicated that Sami was their mother language.⁵⁹

In the past, indigenous populations usually had a possibility of extinction, but now, due mainly to improvement in health conditions, the size of these populations is gradually increasing. Therefore, it may be wrong to call them a "disappearing or vanishing nation." While our data are not perfect, it is noticeable that numbers are increasing. In Canada, there were 160,937 aboriginal people who comprised 1.4 per cent of the national total in 1941; forty years later, in 1981, there were 491,460 Canadians who were identified as aboriginal, or 2 per cent of the national total.⁶⁰ In New Zealand, the 1945 census reported 98,744 Maoris who constituted 5.9 per cent of the total population; and in 1981, the Maori numbered 280,380, or 8.8 per cent of the total.⁶¹

Among other nations, the USSR is reported to have had a northern native population of about 897,000 in 1970. These were Komi, Yakuty, Karely, Nentsy, Evenki, Chukchi, Khanty, and twelve other minorities including Inuit and Aleuts.⁶²

As far as the circumpolar Inuit are concerned, they live in four countries. Approximately 30,000 live in Alaska, 42,000 in Greenland, 1,500 in the USSR, and 25,000 in Canada. The total Inuit population in this region is thus about 100,000 (1983).⁶³

The situation in relation to Latin American Indians is far more complicated than in other western nations, and

reliable primary sources are hard to obtain. For instance, intermarriages between different groups have made the distinction between who is an Indio and who is not very difficult. Not only Mestizo (White-Indian) but also Mulatto (White-African) and Zambo (Indian-African) appeared through interactions of three racial groups in the past. As a result, a precise definition is not easily presented. Even in countries like Peru, where Indios constitute the majority of the population, it is said to be very hard to determine who is an Indio and who is not.⁶⁴ According to C. Young's work, there are large Indian populations in Bolivia (67 per cent), Guatemala (53.6 per cent) and Peru (46.7 per cent), while in other nations such as Argentina, Costa Rica, and El Salvador the Indian population is less than one per cent.⁶⁵

III. Government Policies in the Western Democracies

To review each nation's government policy is similar to the search for definitions, not so easy. Here, only a brief overview on aboriginal policies in the advanced western nations will be discussed. Australia, New Zealand, the United States and Canada will be examined first, for these countries have maintained special government programs. Then, situations in the Nordic countries, Greenland, and Japan will be studied. A brief overview will be presented on Latin American countries.

In Australia, at the time of the creation of the Commonwealth government in 1901, state governments were given powers to regulate internal matters of each state - "the population within each State, however, irrespective of race or country of origin (Aboriginal, European or other) was a matter of State concern."⁶⁶ Therefore, unlike North America, the administration of indigenous peoples was carried out by the state governments. However, due to the possibility of massive immigrant entry into Australia from China, India, and Afghanistan, the Commonwealth government was given a mandate to regulate immigration matters. This was defined in Section 51, sub-section xxvi of the Commonwealth constitution: the Federal Parliament was allowed to make laws with respect to the 'people of any race, other than the Aboriginal race in any state, for whom it is deemed necessary to make special laws.'

Further explanation may be needed to clarify the meaning of 'other than Aboriginals.' While this population

was different from the European majority, they were treated in the same way as majority Australians.

They were the original Australian race, and being Australian-born were British subjects and members of one or other of the states. If special laws were required in this case, the states alone were concerned. This explains why they were excluded from the power of the Federal Parliament to make special laws with respect to the people of any race.⁶⁷

In 1911, the South Australian Government gave up administration of the Northern Territory, and it was handed over to the federal government. As a result, since the majority of the Aborigines lived in this area, those who lived there were directly administered by the central authority.⁶⁸

In May 1967, a national referendum was conducted on whether or not the Commonwealth government should take up responsibility for all Aborigines living in Australia.⁶⁹ The result was to approve this change (83.8 per cent of eligible voters approved), and Section 51 of the constitution was thereby altered by omitting from sub-section xxvi the words 'other than the aboriginal race in any race,' and Section 127 was repealed as well.⁷⁰

Since then, state and federal governments have become responsible for Aboriginal matters. The Department of Aboriginal Affairs, or DAA, was created in February 1968, and land claims settlement devices such as the Aboriginal Land Trust and the Aboriginal Land Council were set up. Perhaps the most interesting example is the introduction of the National Aboriginal Consultative Committee, or NACC, in 1973.⁷¹ Under the initiative of the Labour government, an

advisory and representative body, NACC was created, and its members (41) were chosen by an election of all Aborigines and Torres Strait Islanders. While its role might have been limited, it was considered a new experiment. In 1977, the Committee was transformed into the National Aboriginal Conference (NAC) under the instruction of the Liberal-Country coalition government. The NAC's members (35) were chosen by election, and in 1980, one member was added in order to represent Tasmania.

In 1976, the Aboriginal Land Rights (Northern Territory) Act was enacted in order to solve a question in the Territory. "It created Aboriginal land trusts to hold title to Aboriginal land; granted to the trusts inalienable title to the Northern Territory Aboriginal reserves and some other"⁷² As a result, 29,000 Aborigines in the Territory own 32 per cent of the territorial land (428,127 km²).⁷³

In New Zealand, the Maoris retained four Parliamentary seats. Until the introduction of universal male suffrage in 1879, a property qualification was required. Since the majority of Maori lived on a tribal or communal basis, only a few Maori could vote. "The seats were therefore intended, as a temporary expedient to guarantee Maori some Parliamentary representation until their landholding could be converted to individual title."⁷⁴ This Maori seat system was introduced in 1867.

After 1879 the Maori could vote equally as Europeans did at the time of elections, but separate Maori seats have

been maintained. The Labour Party was and is showing signs of support and sympathy, and all Maori seats have been held by Labour Party candidates. Some Maori MPs were also given cabinet posts in the past.⁷⁵

How does the New Zealand government define Maori and non-Maori (European) voters? Three types of voters were classified in 1956.

The Electoral Act 1956 made a threefold distinction between those who were 'more than half Maori,' whom it directed to enrol on the Maori electoral roll, those who were 'less than half Maori,' whom it directed to enrol on the general roll, and 'half-castes,' who might choose to enrol on either.⁷⁶

"According to the biological degree, three options were identified by the government. The Electoral Act of 1975, however, adopted a wider definition of Maori citizenship which was originally enacted by the 1974 Maori Affairs Amendment Act. It provided that "all adult Maori so defined be given the right to choose whether they wish to vote on the Maori or general electoral enrolment forms distributed at the time of the census."⁷⁷

In the general election of 1981, the Mana Motuhake, or the Maori Self-Determination Party, emerged as a new force, although the party was defeated by the Labour Party candidates.⁷⁸

On the administrative side, the Department of Maori Affairs, or DMA, was created in 1869, and in the 1870's, "it was amalgamated with the Defence Department, and at another time was part of the Justice Department."⁷⁹ At first the main task had to do with Maori lands, then, more recently, "the field of social welfare administration with particular

emphasis on youth has become more important."⁸⁰ While in 1968 the DMA merged with the Department of Island Territories, after April 1975 the overseas functions of the Island Affairs Division of the DMA were transferred to the Department of Foreign Affairs. However, "the Department retained responsibility for the welfare and housing needs of Pacific Island people resident in New Zealand."⁸¹ Now with the cooperation of other departments such as Education, Labour and Justice, the DMA is expected to "assist the Maori and Pacific Island Peoples, particularly in social, economic and cultural matters."⁸²

What are Maori land rights in New Zealand? "By the Treaty of Waitangi (1840) the right to purchase land from Maoris was reserved to the Crown."⁸³ In 1865, the Maori Land Court was established in order to "safeguard the rights of the Maori land owners."⁸⁴ This court's main task was "to determine who were the owners of Maori land and to record their customary title to the land in a form which would be recognized by the general law."⁸⁵

The Maori Affairs Amendment Act of 1974 encouraged the use of Maori language, and "authorized steps to encourage its learning and use within and without the Department of Maori Affairs and in particular to extend Government Departments and other institutions information concerning and translating from or into Maori language."⁸⁶

In the United States, eligible Indians are accorded certain services from the Bureau of Indian Affairs (BIA) of the Department of Interior. If an Indian is of half or more

Indian blood, he or she is entitled to free education. The federal government is responsible only for Indians who are officially recognized. Some state governments, however, take care of some Indians, while other states do not recognize them at all. According to I.W. Taylor's work, we can point out at least three types of Indian administration in the United States. The first is found mainly in the eastern part of the continent where no eligible Indians are identified by the federal government. Here, self-claimed Indians at the time of census are to be treated as ordinary state citizens. In other words, they are citizens of each state, and the federal government does not provide any special service to them. Twenty three states are classified in the first group. The second type is the opposite of the first one. In Arizona and New Mexico, only the BIA takes care of eligible Indians. The third type stands in between the first and second types; i.e., both state and federal government provide services to Indians. The percentage of administrative cost sharing between two levels of government runs from high federal burden (99 per cent BIA, and one per cent state, North Dakota) to high state burden (9 per cent BIA, and 91 per cent state, North Carolina). Including North Dakota and North Carolina, there are 24 states which operate Indian administration. The state of Alaska's breakdown of cost sharing is not identified.⁸⁷

In 1924, American Indians were granted their voting rights and approximately 125,000 Indians obtained U.S. citizenship. However, due to voluntary service in the armed

forces, there were 250,000 Indians who already had voting rights. State voting rights were granted differently according to each state's decision. Not until 1948 did the final two states that had denied voting rights to Indians (Arizona and New Mexico) remove this restriction.⁸⁸

In 1946, the Indian Claim Commission was created by the federal government. It was "authorized to hear and determine claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska."⁸⁹

In 1971, the Alaska Native Claims Settlement Act, or ANCSA, was signed by President Nixon. This was the first attempt to solve the indigenous populations' claim issue in American history. Alaska's Indians were disturbed by various government policies and decisions, and they decided to organize their protest movement in the 1960's. The Alaska Federation of Natives, AFN, was created in 1967 and the issue of land claims was raised.

The ANCSA's main goal was to provide "grants of land and money to Natives in return for the extinguishment of all claims based on aboriginal rights."⁹⁰

Section 12 of ANCSA provided that 38 million acres of land be made available for selection by the Natives.... The cash settlement provided by ANCSA (section 6) totalled 962.5 million.⁹¹

To implement the claim settlement, about 200 village corporations, 13 regional corporations, and a special system for those Indians living in urban centres were created. It is interesting to note that while these corporations were

Introduced for the sake of land and cash management units, they also became political units. Leaders of the native claims settlement movement of the pre-1971 era became managers of capitalistic corporations.

While economic in form and purpose, the Native corporations have also gained new political influence in their regions. They control current and potential resources that are of overwhelming importance to their communities; many of their officers were regional association leaders during the land claim movement. In fact, in all Native regions of the state except the North Slope, the regional corporation has become the premier political organization for Natives.⁹²

A regional corporation of Northern Alaska, the Arctic Slope Regional Corporation works together with the North Slope Borough government, which is "the only Native-controlled regional government in the United States operating under a state's constitution and laws."⁹³

The significance of borough formation on the North Slope is that it has resulted in increased Native power at the regional level. And the regional corporation, which participates in borough government through membership on the borough assembly and interlocking relationship with borough administrations, is a partner of the borough in the enterprise of Inupiat self-government.⁹⁴

The other current example is the Maine Indian Claims Settlement Act of 1980. Based on the treaty of 1791 between Maine Indians and the Commonwealth of Massachusetts and the later transfer of Indian land to the state of Maine, the Maine Indians asked the federal government in 1972 "to sue the state of Maine on the basis that the treaties and agreements had never been approved by the federal government."⁹⁵ According to the Trade and Intercourse Act of 1790, any transfer of Indian land ownership had to be approved by the central authority. The point raised by the

Maine Indians was that their relationship with Maine needed federal approval in principle, yet in the past no Federal involvement had taken place. Therefore, the Government of Maine could be sued by the Indians for lack of federal recognition or violation of the Trade and Intercourse Act. All parties, including the Maine Indians, the state of Maine, and the executive and legislative parts of the federal government decided to negotiate a conclusion rather than waiting for a long time for an expensive court judgement. As a result, on October 10, 1980, the Maine Indian Claims Settlement Act was signed by President Carter. Like the Alaskan case, the Passamaquoddy and Penobscot Indians agreed to extinguish their "aboriginal land title," and a money compensation was promised: the Maine Indian Claims Settlement Fund (\$27 million) and the Maine Claims Land Acquisition Fund (\$54.5 million).⁹⁶

In Canada, the task of Indian administration is carried out by the Department of Indian Affairs and Northern Development, DIAND, which was created in 1967. The Indian Affairs branch was previously attached to several other departments, such as Resources and Mines, Citizenship and Immigration, and in 1967, it became a part of the newly-created department, DIAND.⁹⁷

The British North America Act of 1867 (Section 91, sub-section 24) gave authority to the federal government to legislate in relation to "Indians" and "land reserved for Indians." The Indian Act defines the details of Indian administration such as registration and land administration.

On the other hand, there is no "Inuit Act" as such at all. It is the Northern Affairs Act that regulates issues of northern development.

The life and welfare of Métis have been regarded historically as a provincial responsibility. Métis and non-status Indians have spoken in favor of a federal responsibility rather than a provincial one. But in the past, Ottawa has refused to expand jurisdiction over Métis and non-status Indians.

However, Canada has confirmed a special status of not only Indians and Inuit but also Métis in her new Canadian Constitution Act of 1982. Section 35 of the Act refers to Canada's aboriginal groups as follows:

- 1) The existing aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed.
- 2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.⁹⁸

Since any substantial definition of "aboriginal rights" and "treaty rights" is not clearly defined, Section 37, sub-section 2 of the Act promised further discussion on this matter. In fact, in March 1983, March 1984, and April 1985, three constitutional conferences were attended by the Prime Ministers, provincial premiers, heads of two territorial governments, and aboriginal peoples, to address the question.

In 1975, in order to compensate for damages arising from construction of hydro electric dams in the James Bay

area, an agreement was reached among the federal government, the province of Québec, and Inuit and Indian organizations of this area. (This subject will be discussed fully in Chapter 5.)⁹⁹

In Finland, in spite of the small size of the Sami population, they were allowed to establish the "Sami Parliament" in 1973. Like the Australian HACC and HAC, this Sami Parliament only advises the Finnish government and does not have any administrative and political power. The Sami Parliament consists of 20 members, whose terms are for four years, and they are chosen by election. Those who can vote are "all Sami adults in designated northern communities, but not Sami people living elsewhere in Finland." The Sami elections have been held three times in the past (1972, 1975 and 1979) and electoral participation was between 60-75 per cent.¹⁰⁰

This Finnish experiment seems to be an interesting one and Norway and Sweden may adopt a similar system in the future. At this moment, both Norway and Sweden have established bodies to deal with matters concerning their Sami populations: the Norwegian Lapp Council and the Swedish Commission on Lapp Affairs. According to L. Müller-Wille's analysis, this can be explained by the nature of the political culture of Finland.

This difference in developments might be related in part to Finland's already being a bilingual and bicultural nation state granting specific rights to the Swedish speaking minority, which today represents circa 6% of the population. Another ethnic group which is increasing acceptance in Finland is the sizeable gypsy population.¹⁰¹

In three Nordic countries, a special privilege is provided for the Sami in relation to reindeer breeding. In Sweden, as the Swedish definition shows, reindeer breeding is preserved for persons of Sami descent.

The nomadic life of the reindeer breeder requires very large areas for grazing. From ancient times the Sami have had the sole right to use the "Lappmarker" or Lapp grounds. In Sweden traditional rights gave them all the land in the mountain country above the cultivated areas. Limits in Norway were set by the government, but on the basis of the areas which by custom were used for reindeer grazing.¹⁰²

In Finland, the situation is slightly different from the other two countries. There is no restriction on the business of reindeer breeding. Therefore, not only Finnish Samis but also Finns can be engaged in this economic activity.¹⁰³ However, recently some restrictive measures have been taken. The northern part of Finland has been reserved for reindeer grazing by law.¹⁰⁴ "In Norway similarly both Lapps and Norwegians breed reindeer, but in separate regions."¹⁰⁵ As a whole, about 15 per cent of the Nordic Sami are engaged in reindeer breeding.¹⁰⁶

In Greenland, a referendum was taken in January 1979 concerning whether the people of this island would accept home rule or not. Seventy per cent of eligible persons voted in favor of home rule, and political control by the Greenlandic Inuit has been exercised since then.¹⁰⁷ Under the home rule system, Greenlandic language (Inuit language) is recognized as a principal language of the island, and the first election of Landsting (Greenland Parliament) was held April 4, 1979. Of the total of 21 seats, 13 of them were occupied by the Siumut Party (moderate socialist party) and

eight remaining seats were taken by the Atassut (conservative party).¹⁰⁸ As the majority of the Parliament could form the Greenland cabinet (Landsstyre), Mr. Jonathan Motzfeldt, the leader of the Siumut Party, became President of the Landsstyre or Greenland's Premier. The Inuit-controlled government of Greenland was then formally introduced on May 1, 1979. The second election was held in April 1983, and a rather unstable government was established. Among 26 total seats, both the Siumut and Atassut parties took 12 seats evenly, and two seats were awarded to the Inuit Ataqatiliit (socialist party).¹⁰⁹ A coalition of Motzfeldt's Siumut Party and Inuit Ataqatiliit formed the majority of the House (14 seats) as a result. Six cabinet members including Premier Motzfeldt took over power of the Landsstyre.¹¹⁰

From Greenland's point of view, membership in the European Economic Community (EEC) does not produce a positive result at all, especially for the fishery. If Greenland joins the EEC, fishermen of EEC member countries will be able to exploit the ocean territory that is now preserved only for Greenland fishermen. Of course there are other reasons, but this fishing issue is the most serious concern among the Greenland population.

An unexpected third election was held in June 1984. Due to the issue of the EEC-Greenland relationship, the coalition government was forced to call another election. Both the Siumut and Inuit Ataqatiliit parties have taken an anti-EEC side, and the Atassut party is pro-EEC. The result is again interesting: Siumut, 11; Atassut, 11; and Ataqatiliit, 3.

Like the second election, the two socialist parties decided to enter another coalition government.¹¹¹

While the home rule government seems to have a greater power than before, the Ministry of Greenland of the Government of Denmark in Copenhagen is still in charge of the administration of Greenland to a large extent. The relationship between the home rule government and the Ministry of Greenland is said to be similar to that of the Territorial governments of the Yukon and North West Territories (NWT) and the DIAND in Canada.¹¹²

As original inhabitants of Japan, the Ainu or Utari had lived in the central part of the Japanese main island, Honshu, but they were forced to move to the northern part of Honshu and then to the northern island, Hokkaido. Since Hokkaido remained as a "frontier" to the Japanese, colonization of the island took place after the Meiji Restoration of 1868. The relationship between the Japanese and Ainu was similar to that of the American situation, and various relief measures were taken by the Japanese government. The Ainu Relief Act of 1887, and the Protection of Former Natives of Hokkaido Act of 1889 were enacted, for example. The latter law granted 12.25 acres of land per Ainu family in order to support poor Japanese native groups. It is said that this act was very similar to the General Allotment Act of the United States (1887). However, this policy to change hunter Ainu to farming Ainu was not successful. Today, the Hokkaido Utari Kyokai, or the Hokkaido Native Association, is given financial assistance

from the Hokkaido prefectural government, "which provided approximately one hundred thousand yen (\$2,800 U.S. at the 1972 exchange rate) per year."¹¹³ Even today, "the Protection of Former Natives of Hokkaido Act" remains in force, but many problems seem to remain unsolved.

In Latin America, according to Lee Swebston's study, three kinds of Indian administration are identified: strong central government bodies which control nearly all the administration; advisory or supervisory central bodies which monitor departments and agencies; and government branches where no Indian administration exists at all.¹¹⁴

In Brazil, Peru, and Costa Rica, "strong central bodies control or carry out most of the activities connected with their indigenous populations." For instance, in Brazil, the National Indian Foundation (FUNAI) is attached to the Ministry of the Interior and takes care of nearly half of its 200,000 Indians. In 1967 the FUNAI replaced the Indian Protection Service which had been established in 1910, and by 1972 the FUNAI had a staff of 841 and a budget of over \$4 million.¹¹⁵ In Peru, the National System of Support for Social Mobilization (SINAMOS) was established in 1972, and the SINAMOS is responsible for Peruvian Indians. In Costa Rica, the year 1973 saw the establishment of the National Commission for Indigenous Affairs (CONAI).

The second type of Indian administration is found in Paraguay (the National Indian Institute, INDI, established in 1975), and Mexico (the National Indian Institute, INI, created in 1948). The INDI and INI's role is "to supervise

and coordinate activities relating to the indigenous population but undertake few operational activities themselves." Other countries have a similar system. In Panama, it is the Ministry of Government and Justice (Local Government and Indigenous Policy Section). Argentina and Colombia have this government branch as well. Bolivia and Ecuador have no mechanisms in place to administer to their Indian populations (the third type of administration).

Do Latin American Indians have reserves as do the Brazilian Indians? Four other Latin American nations maintain special land reserves for Indians; i.e., Argentina, Colombia, Costa Rica, and Paraguay. In addition, Indians of Panama and Peru "inhabit special reserves or live on lands under other types of title."¹¹⁶ The kinds of reserves or Indian lands differ from country to country.

Are their "aboriginal rights" constitutionally entrenched as in Canada? Both Brazil and Panama recognize "Indian rights" in their constitutions. The Brazilian constitution (article 198) defines these as follows:

Lands inhabited by forest-dwelling aboriginals are inalienable under the terms that federal law may establish; they shall have permanent possession of them, and their right to the exclusive usufruct of the natural resources and of all useful things therein existing is recognized.¹¹⁷

The constitution of Panama reads:

The State shall give special attention to rural and Indian communities in order to foster their economic, social and political participation in the national life. (Art. 113)

The State guarantees to indigenous communities the reservation of necessary lands and the collective ownership thereof, to ensure their economic well-being. The law shall regulate the procedures to be followed for this purpose, and the boundaries within which the private appropriation of land is prohibited.¹¹⁸ (Art. 116)

IV. International Aspects of Aboriginal Issues

As we have seen in the previous sections, there are various types of relationships between the aboriginal peoples and their host societies. In addition to the domestic situations of aboriginal peoples, this section will study three aspects of indigenous international development - indigenous international organizations, international support groups, and involvement of the United Nations.

From analytical and practical points of view, the international community does not seem to possess an effective device to protect minorities. According to J. Fawcett, "international protection of minorities" is not very promising.

1. the bare existence of the international conventions and declarations on human rights has a political force serving the interests and protection of minorities;
2. integration in generally just social order had taken the place of separation and special treatment as the desired goal of international and national protection of minorities;
3. if the international protection of particular minorities is made a goal or instrument of foreign policy of governments, acting alone or in association, little is achieved by public declarations; and that more is achieved by pressure or coercion in private diplomatic exchanges or negotiations.¹¹⁹

In spite of this evaluation, why is the issue of international development included here? There are at least three reasons for this. First, no matter how ineffective the international community may be perceived to be, attitudes are gradually changing to that of recognition

and indigenous international development has been instrumental in this change. Immediate policy changes may not be imminent at this time, but a more receptive posture on the part of the international community may be useful in the long term.

The second and third reasons are more specific. The second reason is as follows. It would be fair to say that Canada's contribution to indigenous international development is visible and positive compared to that of other countries; both their native organizations and federal governments. As we will see later, Mr. G. Manuel of British Columbia was a main architect of the establishment of the World Council of Indigenous People in 1975. One should also note that the Canadian federal government's concern and financial assistance to Canadian and international indigenous organizations are important as well. The Department of External Affairs established "an Indigenous Affairs Desk" in September 1983¹²⁰ in order to "assist indigenous groups in pursuing their international objectives."¹²¹

The third reason is pointed out by D. Sanders. "The tactic of international accusations serves both the short-term goal of applying pressure on the nation-state and the long-term goal of developing international standards."¹²² This type of tactic was successful when Canadian Indians attempted to influence the British Government and several British MPs in order to obstruct patriation of the BNA Act in the early 1980's.

We know that Prime Minister Margaret Thatcher warned Prime Minister Trudeau that the Canada Act could be in trouble in the British Parliament if the Canadian government pressed against the strong domestic opposition that existed in 1980-1. The 'Indian sections' in the final constitutional package without question made the Canada Act easier to sell in the British Parliament.¹²³

International indigenous organizations are based on the cooperation of national indigenous organizations. In the Nordic countries, the Nordic Sami Council (Sweden, Norway and Finland) was established in 1953 and official recognition and financial assistance were given to the Council in 1957. It is now recognized by the Nordic Ministerial Council. Two other inter-Nordic Sami organizations are formally approved; i.e., the Sami Conference and the Sami Institute. The Conference was created in 1953, and it was granted official status in 1960. While the Sami Council consists of delegates from three nations (Finland, 18; Norway, 30; Sweden, 24), the Sami Conference is expected to provide a public forum in a wider context. The Nordic Sami Institute was established in 1973, and the office is located in Kautokeino, Norway. This institute deals mainly with cultural and economic aspects of the Sami population.¹²⁴

Four major issues were pointed out by the Nordic Sami Council. The first one is a definition of Sami itself; a new definition is sought based not on occupation but on language. "A Sami should be a person whose parents or grandparents -- or one of them -- had spoken or spoke the Sami language as their mother tongue. This definition would include all Samis; not just the reindeer breeders."¹²⁵ The

other issues are recognition of historic rights, legislative acknowledgement of Sami land and water rights, and revitalization of Sami culture and education.¹²⁶

It is interesting to note that the Nordic Sami Council's application for membership in the Nordic Council (observership) was rejected in 1970 and 1974. The applications were refused because if Sami membership were accepted, it would have become a dangerous precedent. If the Sami wish were fulfilled, similar requests could be expected from other ethnic, language or national minorities in the Nordic countries. The number of non-Nordic immigrants is considerable, particularly in Sweden and Denmark.¹²⁷

In the Circumpolar North, Inuit of Canada, Alaska and Greenland established an international organization in 1973. It was called "Arctic People's Conference" and 40 delegates from various countries gathered in Copenhagen, Denmark. Based on this, the first meeting of the Inuit Circumpolar Conference, ICC, was held in Barrow, Alaska, June 13 to 18, 1977. The second ICC conference was held in Nuuk, the capital of Greenland, June 28 to July 1, 1980. The third conference met in Frobisher Bay, Northwest Territories, Canada, July 25 to 31, 1983. The agenda of the third conference included language, culture, transportation, health, education, environmental protection and so on.¹²⁸

In Latin America the Inter-American Indian Institute (III) was created in 1942 and in 1953 it was attached to the Organization of American States. The main effort is devoted to research and publication, and any direct political

Involvement seems to be carefully avoided, because of the international official status of the III.¹²⁹

A more active inter-Latin American Indian organization was created in 1980 by the native population of South America. This was called the "Indian Council of South America" and meetings were held in Cuzco and Ollantamba, Peru, from February 27 to March 3, 1980.¹³⁰

A larger international indigenous organization, the World Council of Indigenous People, or WCIP, was established at a meeting held in Port Alberni, British Columbia, Canada, October 27-31, 1975. The first meeting of the WCIP was attended by 52 delegates from various countries, and a Canadian Indian leader, Mr. G. Manuel was chosen as the first president of the WCIP. The roles of Mr. Manuel and the National Indian Brotherhood of Canada were said to be critically important in the formation of this international forum.¹³¹ The second conference met in Kiruna, Sweden, August 24 to 27, 1977.¹³² The third conference was held in Canberra, Australia, from April 26 to May 2, 1981.¹³³ The fourth conference was held in Panama City, September 20 to 30, 1984, and a Saskatchewan Métis leader, Mr. Clem Chartier was chosen as its third president.¹³⁴

Based on the cooperation of various groups such as the WCIP, the National Indian Brotherhood, the Federation of Saskatchewan Indians, and the National Congress of American Indians (USA), "the World Assembly of First Nations" was held in Regina, Saskatchewan, from July 18 to 25, 1982. This was the first world-wide meeting of indigenous

groups.¹³⁵ According to the business agenda of the conference, "health," "sport and recreation," "social community development," "economics," "indigenous political development and international law," and other subjects were discussed.¹³⁶ About 20,000 indigenous people attended the meeting, and more than 90 per cent of them came from North America. Some government observers also attended the meeting.¹³⁷

There are several international support groups. The Survival International and the Minority Rights Groups are located in London. The International Work Group for Indigenous Affairs, or IWGIA, which is located in Copenhagen, has been very active.

Finally, an international forum on indigenous rights is now being set up. Internationally, several measures are available although the direct impact of such measures may be limited. First, an international declaration of human rights has been established. The United Nations, needless to say, is the main driving force - the UN Charter of Human Rights (1948), the Covenant on Civil and Political Rights (1966), the Protection of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries (1952), the International Convention on the Suppression and Punishment of the Crime of Apartheid (1975). In addition, the International Labour Organization, ILO, has also paid attention to indigenous people's labour conditions in various nations - Convention 107, "the Protection and Integration of Indigenous and other Tribal and Semi-Tribal

Populations in Independent Countries" and Recommendation 1041. Both of them came into force since 1957.

Recently, the UN and other UN organizations showed their concern for protecting the indigenous peoples of the world. One development is the Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Based on this Commission's work, in March 1982, a resolution was passed for the establishment of a Working Group on Indigenous Population. In the past, a few international Non-Governmental Organizations (NGOs) conferences were held in Geneva. Two of these were the "International NGO Conference on Discrimination Against Indigenous Population in the Americas," September 22 and 23, 1977,¹³⁸ and the "International NGO Conference on Indigenous Peoples and the Law," September 15 to 19, 1981.¹³⁹

In addition to various UN charters and covenants, several charters on indigenous people's human rights were presented: the Minority Rights Group, "International Convention on the Protection of National or Ethnic Groups or Minorities," 1972; the World Council of Indigenous People, "International Covenant on the Rights of Indigenous Peoples," 1981. In 1981, the women representatives of the WCIP sent a letter to the president of the World Conference of the UN Decade for Women in order to indicate female indigenous people's problems and demands.¹⁴⁰

The UN awarded international NGO status to the National Indian Brotherhood of Canada in 1974¹⁴¹ and the Inuit Circumpolar Conference in 1983.¹⁴²

V. Summary and Conclusion

This chapter has attempted to provide a comprehensive overview of definitions, demography, and government policies with regard to the indigenous peoples in the advanced western nations, and the issue of indigenous international development.

In the second section, an effort was made to identify and compare definitions of indigenous peoples. Here, we found four kinds of definition: no formal recognition (Japan), indirect formal recognition (Sweden and Norway), limited direct recognition (Canada and the USA), and full formal recognition (Australia and New Zealand). One of the problems arising from definition is that some parts of the indigenous population tend to be excluded from special government services, and this creates a discriminatory situation.

The third section reviewed the administration of indigenous groups comparatively. While Canada, the United States, Australia and New Zealand have established particular departments in charge of welfare and indigenous peoples, three Nordic countries provide limited services, especially to reindeer breeders. Both in Greenland and Alaska, the Inuit have achieved a certain degree of self-determination or autonomy. Unlike other western nations, Japan has no specific national policies at all.

The international aspects of aboriginal issues are examined in section four. The indigenous population began to organize international associations such as the

Nordic Sami Council, the Inuit Circumpolar Conference, and the World Council of Indigenous People. International support groups; e.g., the International Work Group for Indigenous Affairs of Denmark, provide us with information. Also, there are several international forums that discuss economic, social and political conditions affecting the aboriginal peoples of the world.

Although the international community or the United Nations is not very effective in protecting minority groups such as the indigenous peoples, we cannot simply neglect these issues: the changing attitudes of the international community and international organizations; Canada's positive contribution to the indigenous international development; and the short-term and long-term effects of the international accusation tactic.

What follows next is an attempt to establish a frame of reference for aboriginal issues. What kind of theories might be available for us? If they are not available, then, how do we conceptualize the problem? Chapter 2 will develop our frame of reference by reviewing various theories and models.

Table 1

Indigenous Populations in Selected Countries/Areas

<u>Nation/Area</u>	<u>Population (Year)</u>	<u>Definition</u>	<u>As % of the Total National Population</u>
Australia	159,897 (1981) ¹	"self-identified Aboriginals"	1.07
New Zealand	280,380 (1981) ²	"half or more Maori origin"	8.84
	385,210 (1981) ²	"some degree of Maori origin"	12.15
USA	1,420,400 (1980) ³	"self-identified Indian"	0.62
	734,895 (1980) ⁴	"eligible Indian"	0.32
	30,000 (1983) ⁵	"Inuit and Aleut of Alaska"	17***
Canada	491,460 (1981) ⁶	"total Aboriginal popula- tion"	2.04
	292,700 (1981) ⁶	"status Indian"	1.21
	98,260 (1981) ⁶	"Metis"***	0.41
	75,110 (1981) ⁶	"non-status Indians"***	0.31
	25,390 (1981) ⁶	"Inuit"	0.11
Finland	5,500 (1979) ⁷	"Sami Registry"	0.11
	1,343 (1980) ⁸	"those who speak Sami as mother tongue"	0.02
Norway*	21,000 (1975) ⁹	"Sami"	0.52
Sweden*	11,000 (1975) ⁹	"Sami"	0.13
Greenland	42,000 (1983) ⁵	"Inuit"	Approximately 82****
Northern USSR*	997,000 (1970) ¹⁰	"northern natives"	0.37
	1,500 (1983) ⁵	"Inuit"	-
	1,900 (1970) ⁹	"Sami"	-

* Estimated Population

** Professor V. Valentine's study shows a different population size:
estimated non-status Indians and Metis, 798,250 in 1977.

*** As of the total Alaska population.

**** As of the total Greenland population.

- Not applicable.

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I. Introduction

This chapter's main goal is to develop a frame of reference for Canada's aboriginal issues. In order to do this, it is necessary to introduce three basic subjects that will help us to understand problems of inter-group relationships and variations of models.

First, one may ask a question of ethnicity and political regimes; i.e., how would the inter-group relationships influence political systems? Some countries like Lebanon have enormous difficulty in order to maintain their sovereignty and territorial integrity, whereas some western nations such as Canada seem to avoid violent confrontations between any particular group and the government. From a dissolution of a nation-state to a peaceful co-existence of group diversions in a plural society, one could identify many patterns of inter-group relationship. Therefore the first section will identify the relationship between the political regimes and inter-group politics.

Second, it is essential to review some existing models and theories in order to develop a new model. Consociationalism and control models, colonialism and internal colonialism models, and theories of conflict management will be discussed briefly. The main concern for us is to consider whether it is possible or not to employ one of various models in order to analyze the Aboriginal-White relationship in Canada.

Third, some analytical problems that make our study difficult have to be addressed: intra-group unity, inter-group conflict and the case of a weak minority.

If the above-mentioned elements are discussed and identified clearly, then, what follows next is to develop a model for our inquiry. Based on two dimensions, a fourfold typology will be introduced - the consociational, control, melting-pot, and assimilatory models. Each model's main features will be identified, and operationalization of our model will also be discussed. With regard to the application of our theory, positions of the indigenous peoples in the advanced western nations will offer us some comparative illustrative cases. And from an analytical point of view, several advantages and flaws in our theory will be identified.

Section VI will summarize our presentation and set forth our theoretical frame of reference for the following chapters.

II. Political Regimes and the Inter-Group Relationship

Inter-group relationships can be analyzed from various points of view; i.e., from a descriptive analysis of a particular case to a theoretical examination of many types of inter-group relationships in a comparative sense.

When a student of inter-group relationships wishes to conduct his research, he has to decide "how many cases he intends to include" and "what kinds of theory he wants to employ in it." Therefore a number of cases and types of theories have to be considered seriously.

However, one important point needs to be added in order to understand the subject comprehensively: the relationship between regimes and the inter-group relationships. How can a regime incorporate a group into its system? If incorporation is impossible, what would happen? Therefore, besides descriptions and theoretical conclusions of the studies on inter-group relationships, it seems necessary to identify relationships between political regimes and inter-group relationships.

By relying on the existing literature on this subject, one can point out five possible characteristics: extreme domination (genocide), domination, integration, pluralism, and extreme pluralism (self-determination or separation).

As extremes, we can assume two cases. One is the elimination of a group by the other group or a government, and the other is "self-determination." The former type of inter-group relationship can be called "genocide," and this is far from a democratic form of relationship. As Leo Kuper

indicated, sometimes in the past, a certain group became a target of mass extinction: 6 million Jews from 1933 to 1945; 120,000 Hutus of Rwanda, 1962-72; 1 million Ibos, 1966-67; and 3 million Bangladeshis in 1971.¹ While these data are rather extreme illustrations, we may include genocide as one form of inter-group relationship. The other extreme is full self-determination. Suppose that there are two distinctive groups in a country, and they find that there is no way to maintain a national unity. As a solution, or forced solution, one group can claim its independence by using the theory of self-determination.² The case of India would be the best example of this kind of inter-group relationship. In 1947, India and Pakistan gained independence from the U.K., and they were mainly religious and geographical elements that divided a former British colony into two independent nations; i.e., Hindu (India) and Moslem (Pakistan). Ceylon became an independent nation in 1948 and its national religion was Buddhism. In 1972, after lengthy disputes between East Pakistan and West Pakistan, East Pakistan became another independent nation (Bangladesh).

There are three non-extreme types of inter-group relationship; i.e., domination, liberal integration and democratic pluralism. They are not so extreme because political sovereignty or unity in a country is maintained, and the cost of extremism such as genocide or national breakdown is avoided.

M.G. Smith, a well-known student of pluralism, identified his comprehensive model in 1969.³ By looking at

various modes of group incorporation and attitudes of regimes, three models are indicated - differential incorporation, consociation, and uniform incorporation. Differential incorporation refers to regimes where "one institutionally distinct section dominates the others, normally for its own advantage, and by various means which may include naked force where this seems necessary."⁴ On the other hand, the consociation model can be found in Lebanon, Switzerland, and Bwamba where "a number of institutionally diverse collectivities may be united in a single society as corporate units holding equivalent or complementary rights and status in the common public domain."⁵ The third one is regarded as the "Liberal model" because of its emphasis on individual universal incorporation. According to Smith, it is defined as follows: "This model incorporates individuals as citizens directly into the public domain on formally identical conditions of civic and political status, thereby eliminating the requirement of individual membership in some intermediate corporation, segmental or sectional."⁶ While Smith's models may not be accepted as the best by every student of inter-group relationships, he clearly identifies three types, DOMINATION (differential incorporation), LIBERAL SOLUTION (uniform incorporation), and DEMOCRATIC PLURALISM (consociation).

In Politics in Plural Societies, A. Rabushka and K.A. Shepsle identify four models of inter-group relationships: the majority dominance model (Ceylon, Northern Ireland, Mauritius, Rwanda and Zanzibar), the minority domination

model (South Africa), the fragmented society model (Lebanon, Zaire, Sudan, Nigeria and Yugoslavia), and the balanced competition model (Guyana, Belgium, Trinidad and Tobago, and Malaysia).⁷

Claire Palley, a British constitutional scholar, presents a systematic examination of plural societies.⁸ Domination devices are discussed in four areas (political, economical, cultural and public order). Assimilation approaches are manifested in constitutional and legal documents. Pluralist techniques include group autonomy, electoral laws, composition of legislatures, participation at the executive level of governments and the civil service.

Why is our argument important? What the five possible characteristics indicate is the politicized nature of inter-group relationships. One particular group could monopolize the "political," "social," and "economic" resources of a country, and the other group residing in the same nation could be dominated by that powerful group because of lack of resources. In other words, the relationship between one group and the other tends to be characterized by that of a "power relationship," or "hierarchical relationship." This is easily illustrated when we see the relationships between the White minority and Black majority in South Africa or the Jewish majority and the Arabic minority in Israel.

Obviously, reality would be far more complicated than those of five cases, and a wide variety of typologies and models are available.⁹ Having said so, one may throw

doubt upon the validity of such generalizations. Many examples discussed above are chosen randomly as in the case of Politics in Plural Societies. We have no clear criteria that make our comparative study systematic and scientific.

III. Models of Inter-Group Relationship

This section will review consociational/control models, colonial/internal-colonial models, and conflict management theories respectively. How does each model conceptualize the politics of inter-group relationships? And why is a revised model of the particular model introduced? These are questions to be discussed in the following section.

Consociational/Control Models. Consociational democracy is a theory which explains the political stability of plural societies or divided nations. A society can be fragmented by ethnicity, race, language, ideology, religion, and culture. In his original work on Dutch politics, A. Lijphart's The Politics of Accommodation finds that three segments of society have maintained distinctive socio-cultural-political units in the Netherlands while any serious conflict amongst them was carefully avoided by elites. At the political level, each segment is represented by respective parties: the Catholic Party (catholic bloc); the Anti-Revolutionary Party and the Christian Historical Union (calvinist bloc); and the Labour and Liberal Parties (secular bloc). The most critical point of consociational politics is elite cooperation -- while the mass of each segment maintains its specific identity, elites of various units would work together for the unity of this deeply-divided nation. As for students of Anglo-American democracy, a multi-party system may create rather unstable politics as we have seen in Italy and Germany during the interwar period. But the consociational model is an

interesting one because it explains democratic stability of plural societies having multi-party systems.¹⁰

In 1977, Lijphart extended his area of investigation into both developed and third world countries, and a comparative examination of consociationalism was carefully presented in Democracy in Plural Societies.¹¹ His major concern was to see various types of plural societies from a comparative perspective. He examined the following questions. How far are consociational elements relevant in nonconsociational democracies such as Israel and Northern Ireland?. To what extent does consociationalism explain political stability of plural societies in the third world countries such as Lebanon and Malaysia?. Do colonial heritages influence political stability of divided nations positively or negatively? While one may not completely agree with his analysis and conclusion in this book, his ability to examine various plural societies and to raise theoretical questions seemed quite remarkable.

What kinds of elements make consociational democracy possible? There are four consociational characteristics and some favorable conditions. Four characteristics refer to "grand coalition," "mutual veto," "proportionality," and "segmental autonomy." Among the four characteristics, grand coalition is considered as the most important element of consociational democracy. "The primary characteristic of consociational democracy is that the political leaders of all significant segments of the plural society cooperate in

a grand coalition to govern the country."¹² Favorable conditions for consociational democracy are "helpful but neither indispensable nor sufficient in and of themselves to account for the success of consociational democracy."¹³ Some of these conditions are "multiple balance of power among the segments,"¹⁴ "multiparty system"¹⁵ "size of nations,"¹⁶ and "cleavage structure."¹⁷

One criticism of consociationalism is that it cannot explain stability of plural societies where the degree of democracy is relatively low. In other words, as Lijphart clearly indicates, consociationalism is only applicable to democratic plural societies. It is I. Lustick who tries to explain the stability of Israel by looking at the Jewish-Arabic relationship in that country.¹⁸ His theory is called the 'Control Model' and has three components - segmentation, dependence and cooptation.

"Segmentation" refers to the isolation of the Arab minority from the Jewish population and the Arab minority's internal fragmentation. "Dependence" refers to the enforced reliance of Arabs on the Jewish majority for important economic and political resources. "Cooptation" refers to the use of side payments to Arab elites or potential elites for purposes of surveillance and resource extraction.¹⁹

How far can consociationalism and the control model be applied in Canada? As far as English and French Canadians are concerned, some consociational elements are pointed out by various scholars such as D.V. Smiley,²⁰ S.J.R. Noel,²¹ R. Simeon,²² R. Presthus,²³ W.A. Matheson,²⁴ and K.D. McRae.²⁵ For instance, as illustrations of consociationalism, one could point out the "accommodative nature

of Canadian federalism," "legal-cultural dualism," and "provincial autonomy."

However, we should be cautious when we think of the applicability of consociationalism in Canada. As Professor K.D. McRae indicates, a pure consociational system does not exist in the world; it is a matter of degree. So while some elements can be found, perhaps others might be missing. He is not so optimistic about the applicability of this theory in Canada because of the cleavage structure, federal system, nature of political parties, and the electoral system. One exception was the era of the United Province of Canada, 1840-1867. Here, various consociational principles were attached to the political system; i.e., double-majority rule, proportionality of cabinet and bureaucracy, and linguistic and legal dualism. Two other authors also find the accommodative nature of politics of the United Province of Canada. They are W. Ormsby²⁶ and D.V. Smiley.²⁷

The control model is examined by G. Cannon, and four eras of consociational/control models are identified: 1849-1867, consociational period; 1867-1960, control model; 1960-1976, semi-consociationalism; and 1976 to 1982, immobilism.²⁸

Colonialism/Internal Colonialism. J.S. Frideres tries to explain the relationship between the aboriginal people and the majority of Canadians in terms of colonialism.

Many social scientists have rejected the colonial analysis as misleading, claiming that our social and political patterns are significantly different from those in, for example, Africa or India. Although there have certainly been differences, however, these do not obscure the fact that the indigenous peoples of Canada

were unquestionably colonized and that their position in Canada today is a direct result of colonization process.²⁹

And seven features of the colonization process are pointed out: (1) the incursion of the colonizing group into a geographical area; (2) destructive effect on the social and cultural structures; (3) external political control; (4) economic dependency; (5) low-quality social services; (6) racism; (7) and the establishment of a colour line.³⁰

A new form of colonial interpretation, "internal colonialism," is introduced by M. Hechter, who studies the rise of Welsh and Scottish nationalism in the United Kingdom. Two contrasting models, diffusion and internal colonialism models are examined by looking at an historical transformation of the British economy: Wales and Scotland as peripheries of the U.K.

According to this model, structural inequalities between the regions should increase, as the periphery develops in a dependent mode. Individuals of the core cultures are expected to dominate high prestige roles in the social structure of the peripheral regions, as is the situation in overseas colonies. The bulk of peripheral population will be confined to subordinate positions in the social structure. In sum, a cultural division of labour will tend to rise.³¹

Three propositions on political integration and the rise of peripheral nationalism are presented as follows:

1. The greater the economic inequalities between collectivities, the greater the probability that the less advanced collectivity will be status solidary, and hence, will resist political integration.
2. The greater the frequency of intra-collectivity communication, the greater the status solidarity of the peripheral collectivity.

3. The greater the intergroup differences of culture, particularly insofar as identifiability is concerned, the greater the probability that the culturally distinct peripheral collectivity will be status solidary.³²

In 1979, he revises his theory in order to provide a more comprehensive perspective. One of the problems of the internal colonialism theory is that it can not explain other "ethnoregional" movements such as Basque nationalism because the Basque region is known as the prosperous part of the Spanish economy. If his theory is correct, it will be non-Basque regions (periphery) and not Basque (core) that can raise nationalism seriously. In order to overcome this inconsistency, he introduces another concept: segmental dimension of the cultural division of labor. The original model is explained in terms of the "hierarchical" cultural division of labor on the one hand, and the modified model is explained as "~~segmental~~" elements of that on the other hand. By making a certain region a unit of economic development, for instance, Basque nationalism could claim its political legitimacy.³³

As some comments indicate, the Hechter models tend to confirm the importance of the economic factor too much.³⁴ To some extent he recognizes this type of criticism.

Clearly, the cultural division of labor is a necessary condition for the development of ethnoregionalism, but it is also an insufficient one.³⁵

E. Page questions the Hechter models mainly from theoretical and methodological points of view. First, "the various indicators of regional inequality relate to a structural dependence" is not clearly identified. Second, "the precise difference between Hechter's model and other

models of development is not adequately defined by contrasting internal colonialism."³⁶ And finally, the data and hypotheses are not well scrutinized in his research design. Page concludes that Hechter's model is useful and insightful when we examine development of advanced countries, although three critical flaws need to be elaborated upon in the future.

Is internal colonialism applicable in Canada? One application is made by K. McRoberts, and as he shows, it seems useful to study the nature of Quebec nationalism.³⁷ Y.G. Lithman, a Swedish anthropologist who did field work on a Canadian Indian reserve, criticizes Frideres' model for two reasons: generality of the model and a thesis of 'monolithic' dominant society. In other words, Lithman thinks that the seven features of the colonizing process are not always applicable and the white society is not necessarily monolithic at all times.³⁸

Conflict Management Theories. This group of theories deals primarily with techniques of conflict management. In Conflict Regulation in Divided Societies, F. Hordlinger sees six methods of "conflict regulation": stable coalition, proportionality, depoliticization, mutual veto, compromise, and concessions.³⁹ M. Esman also discusses this in a similar way: there are four regime objectives in communal conflict management (institutional dominance, induced assimilation, syncretic assimilation, and balanced pluralism).⁴⁰ In addition, there are four conflict management techniques: refusal or neglect of ethnoregional

demands, ridicule of specific requests, repression and/or accommodation, and structural adjustment (regional autonomy).⁴¹ Other ethnic conflict management formulas are presented by Cynthia H. Enloe: divide and rule, displacement, internal colonialism, sub-machine (a version of machine politics for ethnic minorities, especially for Black Americans), consociational democracy, federalism, vanguard assimilation (selective appointment of ethnic minorities for state elites), vanguard assimilation-cum-pluralism (more subtle version of assimilation).⁴²

IV. Three Analytical Problems

If theories and models discussed in the previous sections are not appropriate for the analysis of Canada's aboriginal groups, then what is the alternative? As we have seen before, there are some analytical difficulties when we study a weak minority's political status within a country.

Intra-Group Unity. The first problem is that we tend to fail to see the diversity of the weak minority itself. By assuming that a group is homogeneous and that it has a consensus on what the group would like to pursue, we see the existence of intra-group unity. Since the aim of our analysis is to examine modes of inter-group relationships, there is no denying that groups are units of investigation. However, this is not the case with Canada's aboriginal groups. In addition to the status Indians, Métis, non-status Indians and Inuit, there are various linguistic, cultural, and economic variations within each group. For instance, some Indian reserves in Alberta enjoy modest economic prosperity. On the other hand, some Indian reserves in British Columbia are said to be suffering from poverty and malnutrition.⁴³ Even Canada's leading paper, The Globe and Mail, makes a mistake on socio-economic conditions of Inuit in the Western Arctic. By endorsing the federal government's cabinet approval on land claims settlement, an editorial goes on to say that:

A renewed sense of native nationalism and a determination to break free of the dismal conditions of backwoods ghettos has provided some of the impetus for movement.⁴⁴

Three weeks later, a critical comment on The Globe and Mail editorial was given by an Inuit of the Arctic. This reply rejected the general image expressed by the newspaper editorial, and claimed that it was wrong to see the Arctic Inuit as members of "dismal conditions of backwoods ghettos."

Also, the standard of living and net disposal income for native people in the Western Arctic is probably higher than for most small towns of comparable size in Ontario, and there are several native millionaires living here.⁴⁵

Besides the general validity of this episode, it is certain that we need not only to be cautious but also to be sensitive when we make any generalization.

Inter-Group Conflict. The second problem is that we implicitly or explicitly expect inter-group conflicts when we study this topic. This was one of the criticisms raised by those who commented on consociational democracy. For instance, Hans Daalder thought that "authors assume without detailed political analysis that social divisions are automatically translated into political conflicts."⁴⁶ Do Indians, Métis, non-status Indians and Inuit disagree with the majority of Canadians at all times? Or do they have to have a political conflict in order to establish their "group rights?" In the Northwest Territories Legislative Assembly, while its actual power is limited, it seems that it is not ethnic origin (Inuit, Indian, Métis or White) which divides the Assembly into different forces.⁴⁷ Perhaps it would be incorrect to assume the existence of inter-group conflicts at all times. For analytical purposes, however, we see some positive functions of inter-group conflicts.

The Case of a Weak Group. The third problem is "if a group is so weak that it cannot control its own destiny, who holds the key factor?" In order to answer this question, A. Lijphart tries to introduce a modified consociational model in 1980.

A different problem for the application of consociational democracy is the presence of very small minorities. For instance, for a minority of less than 1% of the total population it is difficult to claim a permanent share of executive power; a power-sharing cabinet would become unwieldy if it had to include representatives of such small groups.⁴⁸

Then, he points out five methods for the case of weak minorities.

1. power-sharing at local level if a small minority is geographically concentrated to some extent;
2. informal minority representatives at the national executive level;
3. advisory cabinet councils;
4. legislative representation at national level;
5. generous resources allocation.⁴⁹

The fourth method seems valid especially in the North, but it may not be appropriate for the case of Indian band governments because of "non-power-sharing" characteristics of Canada's Indian politics. The second and third methods would be possible, but the diversity of indigenous groups makes these methods nearly impossible. In other words, consensus will not be easily obtained from various groups.

However, similar methods have already been employed in Finland (Sami Parliament) and Australia (National Aboriginal Consultative Committee and National Aboriginal Conference).

The fourth method has also been implemented in New Zealand (four Maori seats) since 1967. The fifth method is exemplified in the establishment of the Department of Indian Affairs and Northern Development in Canada, the Bureau of Indian Affairs in the United States, the Department of Maori Affairs in New Zealand and the Department of Aboriginal Affairs in Australia. While a special historical relationship between indigenous peoples and European settlers in these countries is one reason for creation of such departments, no other minority is formally given such special departmental devices. (A Department of Black Affairs in the United States or a Department of French Affairs in Canada?).

In summary, three factors make our study very difficult; i.e., the diversity of Aboriginal groups, the question of inter-group conflict, and the relatively weak position of the groups. In order to illustrate the third point, A. Lipphart's small minority consociationalism is briefly examined.

V. A Frame of Reference for Canada's Aboriginal Issues

It was discussed in Section IV that a single model or theory of inter-group relationship would not explain the Aboriginal-White relationship appropriately. What is needed here is a kind of multi-dimensional model that allows us to deal with our complex subject.

As an attempt to develop a frame of reference for Canada's aboriginal issues, a two-dimensional model will be introduced. Then, some illustrative cases will be chosen in order to see the application of our model. Finally, we will have to consider the advantages and flaws of our model from comparative and theoretical points of view.

A Two-Dimensional Model. There will be ~~two~~ dimensions: one is PLURALISM-ASSIMILATION, and the other is EQUALITY-DOMINATION. Four types of inter-group relationship will emerge as a result: the consociational model, control model, melting-pot model, and assimilatory model.⁵⁰ One merit of this two-dimensional model is that it will allow us to identify the power configuration of different groups systematically.

Figure 1

Two-Dimensional Model

What do we mean by pluralism, assimilation, equality, and domination? Each trend is characterized as follows:

Equality: Group X has the same administrative, political and constitutional power as the other citizens of a country.

Domination: Group X is controlled by the other citizens of a country in terms of administrative, political and constitutional power.

Pluralism: Group X has its own distinctive group personality in a country: public policy, political unit and constitutional rights.

Assimilation: Group X cannot have its own distinctive group personality in a country.

Extreme forms of dominance would be that of exclusion of a group from a host society as is seen in South Africa, for example. Equality can be regarded as a conflict-free peaceful situation between groups. Assimilation would be that of denial of group identity either by choosing or,

imposition of other groups' value systems. (Voluntary assimilation and forced assimilation). Extreme pluralism may take place as forms of "separation" or "self-determination." As we have already discussed in Section II, various extreme forms of inter-group relationships were identified.

The consociational model assumes an institutionalized system of separation such as segmental autonomy, and equality among various groups. While each segment or group is allowed to maintain its distinctive identity, unity of a country is carefully maintained at the same time. The most important characteristic of this model is equality or democratic relationship between groups. In other words, the inter-group relationship is not characterized by that of the ruler and the ruled. The inter-group relationship may be competitive, but each group is free from domination by other.

The control model also presumes institutionalized systems of separation, but unlike the consociational model, the inter-group relationship is characterized by domination of one group by the other. One could point out that the Jewish majority and the Arabic minority in Israel and the White minority and the Black majority in South Africa would be the best examples of this control model.

The melting-pot model supposes equality among various groups and absence of institutionalized group distinctiveness in a society. A group may retain some features that are attached to it such as religious beliefs and physical

appearances; there is no institutionalized system of separation. In addition, each group is not dominated by the other at all. The United States seems to offer us the best example (or myth) of this melting-pot society.

The assimilatory model assumes both absence of institutionalized group distinctiveness and domination of one group by the other. Group identity would be voluntarily or involuntarily eliminated, and it is domination that characterizes relationships between the groups.

How do we "measure" the two dimensions precisely? Perhaps it will be possible to introduce various indicators in order to quantitatively measure inter-group violence, psychological perception, degree of group autonomy, minority group representation, and so on. It would be preferable if we could have a precise measurement of the dimensions based on empirical data analyses. However, power or power relationships can be determined by different elements, and can be changed according to environmental factors. In other words, the concept of power is not determined by hard facts alone. Therefore, we will attempt to measure the two dimensions based on our subjective judgement. Three criteria (high, medium and low) will be employed in the following analysis.

Now we must examine 12 conditions. How can four characteristics (equality, domination, pluralism, and assimilation) be applied in the following chapters? We have to examine Canada's aboriginal groups, three specific issue

areas, and our proposed model as a whole. We will follow the next steps in order to answer this question.

1. Based on the four characteristics, 12 conditions (C₁ to C₁₂) will be produced.

2. In the case of Chapter 4, administrative aspects of the four characteristics will be examined: C₁ on equality, C₂ on domination, C₃ on pluralism, and C₄ on assimilation.

C₁: The aboriginal people are provided the same public policies by the government as are other Canadians.

C₂: The aboriginal people are provided inferior public policies by the government, unlike the other Canadians.

C₃: A distinctive aboriginal policy is maintained.

C₄: A distinctive aboriginal policy is denied.

3. In the case of Chapter 5, political aspects of the four characteristics will be scrutinized: C₅ on equality, C₆ on domination, C₇ on pluralism, and C₈ on assimilation.

C₅: The aboriginal people have the same political power over a decision-making process like the other Canadians.

C₆: The aboriginal people are controlled by the other Canadians.

C₇: A distinctive aboriginal political unit has authority to decide its own affairs.

C₈: A distinctive aboriginal political unit is denied.

4. In the case of Chapter 6, constitutional aspects of the four characteristics will be examined: C₉ on equality, C₁₀ on domination, C₁₁ on pluralism, and C₁₂ on assimilation.

C₉: The aboriginal people have the same constitutional rights as other Canadians.

C₁₀: The aboriginal people have no constitutional rights unlike other Canadians.

C₁₁: A distinctive constitutional right of the aboriginal people is entrenched.

C₁₂: A distinctive constitutional right of the aboriginal people is denied.

5. Then, each aboriginal group's administrative, political and constitutional aspects can be examined more or less systematically.

6. Theoretically, it is possible to choose a group by group approach (vertical in chart), or an issue by issue approach (horizontal). In this thesis, the issue by issue approach will be adopted.

Figure 2

Two Approaches

Issue \ Group	Status Indians	Métis & Non-status Indians	Inuit
Administration (Chapter 4)	C ₁ to C ₄	C ₁ to C ₄	C ₁ to C ₄
Politics (Chapter 5)	C ₅ to C ₈	C ₅ to C ₈	C ₅ to C ₈
Constitution (Chapter 6)	C ₉ to C ₁₂	C ₉ to C ₁₂	C ₉ to C ₁₂

7. Based on our close examination and observation, each group's location in the four boxes (consociational, control, melting-pot, and assimilatory models) will be identified. Intra-group differences will make our conclusion difficult to some extent, but it will be possible to identify a group's location in the boxes approximately.

The main function of the 12 conditions is to allow us to compare and contrast many aspects of an extremely complex situation surrounding the aboriginal people in Canada.

Application of the Model. The aboriginal peoples in the advanced western nations were discussed comparatively in Chapter 1, and we will use our model in order to see its applicability.

The assimilatory model seems to explain the status of Japanese Ainu: a high degree of domination and a high degree of assimilation. While Japan is today regarded as a member of liberal democracies, this country is not ready to recognize "group rights" as such, unlike other western countries. Racial or ethnic homogeneity of Japanese society may have some negative implications for us. It is easy to distinguish who is a member of the majority and who is not, and as a result, it is suggested that non-Japanese populations in Japan, including the Ainu, Japanese caste class (Burakumin), and Korean Japanese/Korean residents, suffer various discriminatory treatment in this country.

The Sami in Norway, Sweden and Finland seem to avoid full assimilation into the host societies, and they seem to enjoy equality like other non-aboriginal citizens of the Nordic countries (assimilation, medium; equality, medium). The consociational model appears valid in the case of Greenland's Inuit. One of the consociational elements (segmental autonomy) is attached to the Home Rule Government, yet elite accommodation between the Inuit and the Danish political elites as such is missing here. Being far away from the Danish majority (geographical separation) may be an advantage for Greenland's Inuit for they were able to avoid direct and costly interactions with the European populations in the past. Therefore, it would be reasonable to say the Greenland Inuit's position is that of the melting-pot model (equality, high; assimilation, low). The Alaska Inuit seem to enjoy a similar status as in the case of the North Slope Borough Government although this government is just one of the municipalities in the State of Alaska.

The relationships between the Maori and the White Europeans in New Zealand and the Aborigines and the White society in Australia are characterized by both a low degree of domination and a low degree of pluralism. While systems of separation are established in both countries, the indigenous peoples of these two nations are treated as wards. In other words, the interactions between the two distinctive groups are not equal: the control model.

Indians in the United States enjoy a high degree of pluralism, but they do not fully exercise their distinctiveness in the host society. Like the indigenous peoples of New Zealand and Australia, the American Indians are controlled and regulated by the federal government, and do not enjoy a kind of segmental autonomy in reservations (pluralism, high; domination, high).

Those indigenous peoples who leave their traditional home lands and live in urban centres may suffer serious problems such as discrimination and unemployment, and may have to assimilate into the non-indigenous host societies. The assimilatory model would be applicable for such indigenous urban residents in every advanced western nation.

Figure 3

Aboriginal Peoples in Advanced Nations

Advantages and Flaws of the Model. From an analytical point of view, there are several advantages and flaws observed when we use our model. The first advantage is comparability. The existing theories of inter-group relationships seem to have two problems: some types of theories are comprehensive, but it is difficult to operationalize such theories (for instance, internal colonialism); the other types of theories tend to describe variations of inter-group relationships, but comparative or theoretical applicability is limited. J. Rothschild's ethnopolitics may be a good example of the latter.

1. politically dominant majority vs. subordinate minority
2. politically dominant minority vs. subordinate majority
3. dominant central core vs. aggregation of peripheral ethnic segments
4. bipolar balance, with one ethnic group politically dominant and the other economically dominant
5. economically strong but politically vulnerable 'pariah' ethnic minority
6. multilayered gradations by power and size
7. multiplicity⁵¹

Therefore, we can identify a dilemma here. If a model is comprehensive, then, the operationalization of the model would be difficult; if a model is descriptive and easy to operationalize, then it may be difficult to provide a comparative overview at all.

The two-dimensional model introduced in this chapter seems to avoid this basic dilemma to some extent. Dynamism and complexity of inter-group relationships can be reasonably examined in our model.

The second advantage is that we can use our model in order to see an historical transformation of inter-group relationships. For instance, the Blacks of the Deep South of the United States were segregated from the White society under a theory of "separate but equal" for nearly half a century (the end of the nineteenth century to the mid-1950's). In addition to segregation, it was the Whites who excluded the Black Americans from political processes. Several measures such as "literacy tests," "voting tax," and "gerrymandering" made the White dominance over the Blacks possible.⁵²

But in 1954, the federal supreme court denied the 1896 separate but equal thesis as unconstitutional for it justified "inherently unequal" conditions between the two races. The rise of civil rights movements, development of Black leadership, and accommodative postures of the federal government in the late-1950's and early-1960's resulted in a transformation of inter-group relationships in southern states; from the control model to the melting-pot model. The current situation may be referred to as "consociational"; i.e., mutual veto, segmental autonomy (selection of Black mayors), and proportionality (affirmative action).⁵³

As G.F. Cannon has already demonstrated in his paper, it is fruitful to analyze historical transformations of inter-group relationships by using various models or multi-dimensional models. (Chapter 3 will study historical aspects of the Aboriginal-White relationships in North America).

On the other hand, there are several problems. First, we have no clear criteria to measure degrees of pluralism, assimilation, equality and domination. In this thesis, based on our observations and subjective judgements, a tentative scale of measurement was introduced, i.e., high, medium and low. In the future it may be necessary to create a kind of mutually-agreeable scale in order to solve this problem. Second, some features of each box were described in this section. Nonetheless, precise policy implications or programs of each box were not identified. What kinds of programs would characterize the consociational, control, melting-pot and assimilatory models? We did not touch on this problem here. Third, we have assumed the existence of "inter-group conflicts," yet we did not discuss fully "domains" of such conflicts. Are they social, economic, political, cultural or legal conflicts? Analytically, can we deal with each conflict equally or is it necessary to distinguish one type of conflict from the other? In this thesis, Chapters 4, 5 and 6 will examine administrative, political and constitutional aspects of the Aboriginal-White relationship in Canada.

2

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

• VI. Summary and Conclusion

In order to establish a frame of reference for Canada's aboriginal issues, some subjects were scrutinized, i.e., the relationship between political regimes and inter-group relationships, models of inter-group relationships, the identification of three analytical problems concerning the study of inter-group relationships. And finally, our theoretical model was introduced.

In Section II, five major cases of inter-group politics were presented, i.e., extreme domination (genocide), domination, integration, pluralism and extreme pluralism (self-determination). The crucial point of this argument is that in many cases inter-group relationships are highly politicized, and it is essential to see this issue in terms of power relationship.

In the third section, some theories of inter-group relationships were reviewed in order to develop our theoretical basis; i.e., consociationalism, the control model, colonialism, internal-colonialism, and conflict management theories. The theory of consociational democracy was introduced by a Dutch political scientist, A. Lijphart, when he attempted to analyze Dutch politics where three segments were powerful and visible in this country. His contribution was that even a highly-divided society with a multi-party system could maintain democratic stability, unlike the Anglo-American systems. I. Lustick tried to modify Lijphart's model for consociationalism could not explain stability of non-democratic plural.

societies. By examining the Jewish-Arabic relationship in Israel, Lustick introduced the theory of the control model.

A new form of colonial interpretation was presented by M. Hechter which focused on disparities between a core (England) and peripheries (Scotland and Wales) where he introduced a theory of internal colonialism. Although his theory was criticized by many, it received serious attention. The theories of conflict management were reviewed as well.

Section IV examined three analytical problems of inter-group relationship - intra-group unity, inter-group conflicts and the case of weak minorities. First, a group itself may not always be homogeneous and may not hold the same policy concern and goal. This is particularly important to note when we study Canada's aboriginal peoples. Second, while we conceptualize inter-group relationships as those of "politicized" or "conflictual" relationships, this may not be correct at all times. Third, if we use consociationalism, weak minorities may not be adequately dealt with in our research. One conclusion from this section is that we have to have a multi-dimensional model that enables us to identify the diversity of Canada's indigenous groups: status Indians, Métis, non-status Indians and Inuit.

In Section V, a two-dimensional model (Domination-Equality and Pluralism-Assimilation) was introduced and, as a result, four types of inter-group relationships were identified - the consociational, control, melting-pot

and assimilatory models. In order to operationalize our model, 12 conditions were presented. It is hoped that our model and its 12 conditions will make our inquiry comparative and relevant.

With regard to the application of our model, relationships between the aboriginal peoples and the host societies in advanced western nations were studied. Our model has some advantages and disadvantages. Dynamism and complexity of inter-group relationships can be easily analyzed, and historical transformations of inter-group relationships can be identified as well. On the other hand, our model has no clear-cut criteria to measure degrees of the four types of inter-group relationships. - In this thesis, three scales will be employed; i.e., high, medium and low. The second problem is that some features of the four boxes were discussed, yet precise policy implications of each need to be elaborated upon in the near future. The third problem is that we have assumed the existence of inter-group relationships, but domains of conflict were not clearly identified.

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I. Introduction

In this chapter, an historical transformation of the Aboriginal-White relationship in North America will be examined. First, how did historians, in their scholarly analyses, conceptualize roles of the Indians? Three distinctive approaches to this subject will be briefly reviewed, and then the current status of these analyses will be summarized. Second, the historical transformation of the Aboriginal-White relationship will be studied based on our three criteria of inquiry, i.e., attitudes of colonial powers, socio-economic conditions of frontier societies, and aboriginal political power. It is hoped that such criteria will make a comparative and structural analysis of the historical transformation possible for us. Not only the Indians but also Métis and Inuit will be included in the examination. Third, the history of the administration of Indian policies in Canada and the United States will be analyzed. While Chapters 4, 5 and 6 will discuss specific subjects such as current administrative programs, politics and constitutional issues respectively, this chapter intends to review historical aspects more or less generally. Finally, images of the native Canadians are studied by examining some empirical research on this subject. Throughout this chapter, we intend to identify our topic "historically," and new interpretations or new ideas as such will not be presented.

II. The History of North America and the Indians

If we study the history of North America and Indians two subjects seem important for us: "objectivity" and "subjectivity" of historians, and the frontier thesis and its application in both Canada and the U.S. Like many other historical issues, the study of the Indian-White relationship has been discussed in many ways, and occasionally the objectivity and subjectivity of the historians were seriously investigated. Here, three basic approaches are identified.

The first is to see the subject by clearly indicating a negative impact of American civilization on their Indians. "American historians have by and large written in terms of an oppressed minority, dispossessed or destroyed by an aggressive and dominant Anglo-American society and its government."¹ The author of A Century of Dishonor, (1881), Helen H. Jackson, presents this type of perspective.² In Canada, E.P. Patterson's The Canadian Indian: A History Since 1500 (1972) examines a story of the powerful White and the oppressed minority Indian, for instance.³

The second approach could be called "a realist approach." In contrast to the moralistic tone of the first approach, the realist approach does not criticize policies regarding the Indians in particular. Rather, it emphasizes "patronizing" aspects of American civilization. A noted student of American Indian policy, Francis P. Prucha, legitimizes the realist approach in his paper entitled "Andrew Jackson's Indian Policy: A Reassessment."⁴ While

President Jackson's Indian removal policy of the 1830's gave him a poor reputation, Prucha rejects this kind of criticism entirely. At the time of Jackson's presidency, the western expansion by White settlers was irreversible, and the Indian removal policy was a rational reasonable choice for the federal government. The cost paid by the Indians was expensive, but the policy was appropriate.

In addition to the moralist and realist approaches, there are several historians whose ethnic and cultural backgrounds are those of the native Americans, and they represent another point of view. For instance, Vine Deloria, Jr., reinterprets American history and culture in a different way.

As this search has proceeded, the rejection of the old ideology of the innate inferiority of the tribal culture and the superiority of the Western European way of life has been profound and extensive, especially among the younger and more educated Indians.⁵

In Canada, there are some books produced by native Canadians, especially, G. Manuel and M. Posluns, The Fourth World: An Indian Reality (1974)⁶ and H. Cardinal's two books, The Unjust Society (1969) and The Rebirth of Canada's Indians (1977).⁷

With regard to the frontier thesis and the Indians, two points raised by Robert F. Berkhofer, Jr. deserve our special attention; i.e., an evolutionary notion of expansionism and exclusion of the Indian population.

Today not only do we deny that American expansion recapitulated the stages of human cultural evolution, but also we no longer believe in the idea of progress that is presumed by such an interpretation of human history. Second, Turner's interpretation of the frontier solely in terms of sequences of white settlement is condemned as too ethnocentric, if not racist, in its neglect of nonwhite peoples, especially the first Americans, as settlers.⁸

Obviously, it is clear that the Indians did not play a major role in North American history except in an early contact era. But it is important to note that the historians interpreted the frontier societies in the United States and Canada differently; Americanization versus European extension.

The idea of the "frontier" as an interpretive device originated with Frederick Jackson Turner; he viewed it as a process that "takes him from the railroad car and puts him into the birch bark canoe." Others, like Harold Innis, the fur-trade historian, viewed the process from an opposing perspective: Europe reached out to draw North America into its orbit.⁹

What is the current situation of the study of the Indian-White relationship? Overall, it seems certain that some historians have begun to pay attention to the role of the Indians in North American history, and such historians are relatively free from the emotional or ideological attachment of the moralist and realist schools. In other words, the Indians are being offered a fair role in the history of North America. For instance, W.E. Washburn's The Indians in America¹⁰ presents a general picture whereas G.B. Nash critically reviews several roles of the Indians and Blacks in the early period of American history.¹¹

In Canada, J.W.St.G. Walker's two review essays are useful introductory materials for us while he seems to

emphasize the negative aspects of the Canadian Indian policy.¹² There are several works which introduce new perspectives on the Aboriginal-White relationships in Canada. For instance, L.F.S. Upton's Micmacs and Colonists rejects the traditional view that regards the Indians as "sufferers, sustaining a series of traumatic shocks that they cannot avert."¹³ By identifying three basic options (accommodation, removal, and passive resistance), he analyzes interactions of the Micmac Indians and French/British colonists from 1713 to 1867.

The Indians retained a number of options in the position of having to react to the advances of others, but they did have choices to make. They had to decide whether to resist the newcomers through warfare or to collaborate with them in a mutually profitable trade for as long as possible.¹⁴

Similarly objecting to the traditional view, R. Fisher examines the Indian-White relationship in British Columbia from the late eighteenth century to the end of the nineteenth century. He classifies two types of contact (fur-trading period and white settlement era), and emphasizes the complexity of interactions.

During the fur-trading period Indians and Europeans shared a mutually beneficial economic system.... With settlement, however, new groups of Europeans arrived who were in no way dependent on the Indians and who therefore not only had no desire to accommodate to Indian demands, but also no compunction about disrupting their traditional way of life.¹⁵

G. Friesen, like Upton and Fisher, pays his scholarly attention to the native peoples of western Canada in his voluminous book.¹⁶

Another interesting trend is to see this subject in a comparative perspective. Some scholars are examining

relationships between the aboriginal peoples and the European settlers in the New World. One of the pioneer works, A.G. Price's White Settlers and Native Peoples, studies various interactions in the United States, Canada, Australia and New Zealand.¹⁷ W.R. Jacobs also does a similar analysis by looking at Australia, the United States and New Guinea.¹⁸

Although it might not be a major concern, L. Hartz attempts to conceptualize the Aboriginal-White relationship philosophically.¹⁹ H. Lamar and L. Thompson try to compare and contrast two frontier societies, North America and South Africa, in their The Frontier in History.²⁰ Needless to say, the Aboriginal-White relationship is given special attention in this book.

P

III. The Aboriginal-White Relationship in North America

The Aboriginal-White relationship in North America is of interest to historians, anthropologists, sociologists and "ethno-historians." In addition, if we study regional variations of the relationship, the amount of literature is enormous and almost endless. Why is this topic interesting for us? From a political scientist's point of view, it is important because it offers us an excellent opportunity to examine an historical transformation of the inter-group relationships. The analysis of plural societies by political scientists seems to involve classification and creation of essentially ahistorical typologies. Therefore, we intend to review various historical aspects that are not fully discussed in Chapter 2.

In this section, which is based on secondary literature, the history of the Aboriginal-White relationship will be presented. In order to examine the historical matter structurally and comparatively, three key factors of the interactions are identified - attitudes and policies of colonial powers, socio-economic conditions of frontier societies, and political power of the aboriginal peoples. The policies of colonial powers refer to legal and political concepts, religious attitudes, administrative capabilities, and aims of expansion. While this is far from a rigorous definition, it intends to identify "attitudes" of colonial powers in general; why and how had colonial powers approached the New World? The second factor has to do with the geographical location of the frontier societies; what

kinds of products could be exploited from the frontiers? Depending on the geographical nature of the frontiers, fishing, the fur trade, mining or agricultural settlement made colonial ventures profitable. The political power of the native population refers to a degree of political unity against the White settlers in order to maintain the aboriginal culture and politics. Obviously, such factors may not explain all patterns of interaction, but it is hoped that they will assist our inquiry in some ways.

Colonial Attitudes and Conditions of Frontiers. Unlike the current appeal of pan-Indianism or pan-Aboriginal unity, the Indian tribes of the sixteenth and seventeenth centuries were very much fragmented,²¹ and it was common to have Indian-White conflicts as well as inter-tribal conflicts. The Indians sometimes fought with European settlers and sometimes with other Indian tribes. By making alliances with the colonial powers, some Indian tribes tried to maximize their interests at the cost of other tribes. At the same time, the European powers attempted to maintain a friendly relationship with the Indians at the cost of the other colonial powers. In this sense, it would be safe to assume that there existed a kind of quasi-international relationship among the colonial powers and the Indians. Many works on the early contact era indicate the importance of "diplomatic measures" and the Indian military threat for the White population.²²

But the relations were not always similar. Olive P. Dickason's paper is interesting for us because it provides

comparative analysis of British, French, and Spanish policies toward the Indians.

Spaniards came as conquerors, but worried whether their actions were justified on moral or legal grounds. They institutionalized American forced labour in repartimiento-encomienda that stopped just short of slavery, yet they thrashed out the question of Amerindian rights on a scale that far surpassed that of any other European nations in the Americas.

...., but in New France the French founded their hegemony on a system of alliances, which made concession politically and socially, but not legally, such as on territorial rights.

The English came to farm, but found they had to conquer in order to stay.²³

It is true that the French maintained peaceful relationships with the Indians in New France. One of the students of American history, J.J. Le Paske, for instance, acknowledges this point.

They succeeded with the Indian, Parkman points out because the absolutist central government laid down a single Indian policy for all Canada, because French Canadians were resilient and accommodating toward the Indians and because the lucrative fur trade depended upon good relations with the natives.²⁴

Another student of French Canada, W.J. Eccles, examines the nature of the frontier society, and four types of frontier are identified - commercial, religious, military and settlement frontiers.²⁵ For the French, the fur trade was based on cooperative relations with the Algonkins and Hurons and even some French traders became indistinguishable from the Indians in seventeenth-century New France (coureurs des bois). Therefore, it was mainly a commercial frontier colony, and unlike the Anglo-Americans, the French had to keep the interactions peaceful. The Anglo-American wanted to hold lands to be cultivated although the fur trade was

important as in the cases of the Hudson's Bay and Northwest Companies. According to Eccles' term, it was the settlement frontier that the majority of the Anglo-Americans tried to occupy.

The Canadian needed the Indians to provide goods and services, they were commercial partners, but to the Anglo-American, the Indian was merely an obstacle to progress to be exterminated as quickly as possible.²⁶

So, the nature of frontier societies seems to be a critical factor of the Indian-White relationship. This is well illuminated by the case of the French in Louisiana.

If the French had been harmless peace-loving human-beings, then Indian policy in Louisiana would have been similar to that of New France. In other words, if personality or culture had been a determining factor, then, the nature of a frontier society would not have influenced the Indian-French relationship at all. The French would have had a peaceful relationship with the natives at all times. Patricia D. Wood provides us with an interesting case study on this question.²⁷ In some parts of Louisiana, there existed three tribes - Choctaw, Chickasaw and Natchez. As long as alliance systems were maintained between the British and the Chickasaw, and the French and the Choctaw (British-Chickasaw vs. French-Choctaw), the French in Louisiana were able to keep a stable relationship with the others. However, the third tribe, the Natchez, broke down the stability. The French tried to occupy the Natchez Indians' lands, and as a result, in Fort Rosalie 237 settlers were massacred by the Natchez Indians. "In the one place the French did settle near an Indian tribe, namely the

Natchez, a massacre occurred during which over 200 white people died and the Natchez nation was destroyed."²⁸ She concludes this event as follows:

Perhaps, a general assessment of these racial relations should stress not the national traits of the various Europeans who came, but rather, their intended uses of land and other resources which they found.

Involved in the development of Louisiana in the Fort Rosalie area were Frenchmen, some of whom were Canadians. Yet, these people, in attempting to farm the land much in the way the English did, caused a breakdown in Indian relations which resulted in tragedy for both sides.²⁹

Spain colonized a large part of the Central and South Americas with the exception of Brazil, and she had also established relations with North American Indians. While various Spanish Indian policies in Latin America are worthy of examination,³⁰ only Spanish colonies in parts of North America are reviewed here for our comparison.

One of these Spanish colonies was located in the southeastern part of North America. W.C. Sturtevant studies Spanish-Indian relations from the sixteenth to the early nineteenth centuries.³¹ Although his analysis is complex due to regional/time variations, it could be possible to summarize the relationship in the following ways: exploration, coexistence, mission, depopulation and diplomacy. Like other colonial powers, Spain attempted to establish not only coercive but also accommodative policies with regard to the Indians.

Another Spanish colony was in the southwestern part of North America. According to E.H. Spicer's Cycles of Conquest two types of frontiers were created - missionary

communities and Spanish towns. The missionary community was created by Spanish missions in order to introduce the Indians to Christianity. The Spanish towns were "sometimes an ephemeral mining camp, sometimes a small agricultural establishment, sometimes an army garrison."³²

Thus, the influence of the Spanish town exerted in irregular fashion, affecting some Indians like the Tarahumaras, the Mayos, and the Optas, in very profound ways, while other tribes like the Yaulis, Hopis, Zunis, Apaches, Navajos, and Yamas were far less affected and in rather different ways.³³

In addition to these programs, it is necessary to note a Spanish legal argument as well. As we have seen before, the Spanish were concerned about the legal aspects of colonization. "The Spaniards came as conquerors, but worried whether their actions were justified on moral or legal grounds."³⁴ It was Las Casas, a Spanish Dominican, who defended the Indians' rights in the sixteenth century. As an American historian who has extensively studied Las Casas, Lewis Hanke indicates recently,³⁵ that the Spanish scholar was highly respected by many. But according to one study, such a general view may not be true. First, Las Casas was not regarded as a sole defender of the Indian rights.

Americanists, on both sides of the ocean, distort the truth when they picture Las Casas as a lone and singularly passionate defender of the Indians, in both ideological and practical arenas, rather than as one of many exponents of that best and truest Spain, with its missionaries, theologian-jurists, bishops and arch-bishops, and its kings and council of the Indians.³⁶

Second, while Las Casas defended the Indians on the one hand, he approved Black slavery on the other. A slave could be accepted if he was captured in a just war or simply purchased. It was better to be a slave than to be killed by

one's enemy. In order to replace forced Indian labour, Las Casas accepted the export of African slaves to the New World.³⁷ And finally, although he and his enemy of the controversy, Juan Gines Sepúlveda, disagreed with the methods employed in the treatment of Indians, both approved Spanish colonization in the New World. The difference was whether or not they would accept the coercive Indian policy.

The political regime Las Casas proposed for America centered on Spain's Imperial rule and would have linked all the Indians directly to the Crown of Castile and Leon, with retention, if possible, of the Indian princes and caciques.³⁸

According to R.L. Trosper, American policies with regard to Indians were classified into four categories, i.e., contact, removal, welfare and autonomy.³⁹ As we know, western expansion in America was characterized by several military confrontations between the Indians and White settlers. But the Indian-White relationship in the United States was not always painted in a negative manner. One interesting case was an experiment by a group of Quakers in Pennsylvania. Inspired by pacifism and religious tolerance, William Penn and his followers tried to keep a peaceful relationship with the Delaware Indians.⁴⁰ Quaker immigrants from Great Britain arrived in the Delaware valley in the late seventeenth century.

So long as Penn's influence was strong in his colony, Indian relations remained generally harmonious, aided by the absence of competition for land and the presence of only a meagre fur trade.⁴¹

However, ironically enough, William Penn's experiment broke down as a result of his tolerant attitude. The first factor was "the arrival of waves of land-hungry and

decidedly non-pacifist European settlers."⁴² Since religious tolerance in Pennsylvania was known about by many ethnic and religious minorities in Europe, they began to emigrate to and settle down in this region gradually - the Swiss Mennonites, the German Protestants, and others.

They had been driven from their homelands by chronic economic depression and were concerned only about building a new life, centered around tilling the soil, in the remote regions of Penn's colony. To obtain land cheaply and live in a colony where they were free to practice their religion was all they asked. But they were not prepared in return to accommodate themselves to the local tribes, particularly if land speculators and government officials in Philadelphia cooperated with them in defrauding Indians of their land.⁴³

Another irony was that, like the Europeans, some Indians who had lived in other parts of the continent came to this area expecting generous treatment by the White settlers.

In the late seventeenth and early eighteenth centuries the valleys of Pennsylvania drained by the Susquehanna River became a sanctuary for a number of tribes that migrated from the south and west after hearing of the benevolent Quaker Indian policy, which they believed might offer a way out of desperate situations in which they found themselves as a result of contact with European society.⁴⁴

How then can we summarize various cases of interaction? The notion of legal equality was important in the cases of British and Spanish policies. As we will discuss fully in Chapter 6, the British authorities declared in 1763 that the Indians' rights be recognized and protected by the Crown. The French on the other hand did not acknowledge the Indians' legal rights. The socio-economic conditions of the frontier societies also defined the Indian-White relationship. Simple statements like "the Spaniards were cruel,"

"the French were peace-loving," or "the Anglo-Americans were cold-blooded" are inadequate and inappropriate if we consider the subject seriously.

Aboriginal Political Power. Finally we should note that the Indians were not always weak. Robin Fisher's paper indicates that if the native population had maintained their power against the White settlers, they could not have been conquered automatically. By examining the Aborigines of Australia, the Maoris of New Zealand, and the Indians of British Columbia, Fisher finds that the Maoris' determination saved them from White dispossession and domination.

The Australian Aborigines were either killed or shunted aside during the early settlement period. Aboriginal adaptation and resistance was comparatively limited and those that survived were relegated to the position of fringe-dwellers. The Maoris, by contrast, were vigorous and innovative in their response to the coming of the Europeans, so that their society was in a stronger position by the end of the nineteenth century.⁴⁵

The position of the British Columbia Indians was in between that of the Maoris and Aborigines. "They were not totally subjugated like the Aborigines but they asserted themselves less than the Maoris."⁴⁶ Similar patterns can be easily found in North America. The Iroquois League is well known for its highly-developed socio-political structures.⁴⁷ Because of this and the competitive nature of their political culture, unlike other Indian tribes, this group of Indian tribes seems to be successful in maintaining its distinctive identity in North America.

Métis in Canada. With regard to Canada's Métis, we must discuss briefly Louis Riel and his two rebellions.

Numerous Interpretations of his personality and historical role have been presented by many historians, social scientists and "native Canadians."⁴⁸ One of the Interpretations "viewed the resistance at Red River as the extension of the racial and religious conflict between Ontario and Quebec to the western prairies,"⁴⁹ and this idea was presented by Chester Martin and Mason Wade. A noted historian, G. Stanley, examined the Riel rebellions from the frontier thesis perspective, and concluded that the Métis struggle was a "clash between a civilized and a primitive society" although he did not undermine racial or religious factors. It was W.L. Morton who criticized the Stanley thesis in 1956 by looking at the natures of the 1869-70 and 1885 rebellions. Morton objected to seeing the two rebellions as identical events and introduced another interpretation; i.e., the use of the frontier theory was relevant in the case of the 1885 rebellion, but the 1869 Red River settlement was not "a primitive society within the meaning of the frontier thesis but had become a civilized society."⁵⁰ Instead of the civilized/primitive dichotomy,

Morton emphasized that it was "the movement of a 'unique ethnic and political reality' to secure guarantees for itself and protection in the face of a Protestant and English western expansion."⁵¹

It is interesting to note that both English Canada and French Canada understood the Riel rebellions quite differently: the latter saw Riel as a victim of English Canadian expansionism and a hero of the French.

Canadians whereas the former traditionally viewed him as the leader of the "rebellions."⁵²

Is it possible to refer to the three conditions (policies of colonial powers, nature of frontier societies and aboriginal political power) that we have already discussed? Although the federal government was reluctant, it was prepared to punish any act of rebellion, as the west was obviously the target of Canadian expansionism in the late nineteenth century. The Métis were also able to — develop their political and military capabilities. So one may conclude that clashes were inevitable, "that the Hudson's Bay Company had ceased to provide effective government and that its transfer of the northwest inhabitants violated the 'rights of man'; therefore 'the law of nations' supported the Métis right to proclaim a provisional government."⁵³

Today, the history of Louis Riel continues to attract much attention by many Canadians, and remains as the symbol of heroic survival for the Métis Canadians.

The Inuit and Northern Development. Diamond Jenness' study on "Eskimo Administration" offers us an interesting comparison of the Inuit-White relationships in Greenland, Labrador, Canada, Alaska and the USSR. He saw the Greenland case as the most successful because of the determination of the Danish government and a Christian mission (the Lutherans). On the one hand, the government was mainly responsible for trade, especially fishing; on the other, the Lutheran mission took care of Inuit education.⁵⁴

The Labrador Inuit were protected by the Moravian mission since the creation of its post at Hain in 1771, and even today this mission is in charge of health and welfare to a large extent. Unlike the Lutherans, the Moravian mission monopolized virtually every aspect of Inuit life and "until the outbreak of the First World War (the mission) held undisputed control over northern Labrador's natives, ruling them in two capacities; as apostles of a Christian civilization and as unofficial representatives of the Newfoundland government."⁵⁵ However, in spite of this, this mission had rather a low profile in Labrador due to inadequate financial resources.

The governments of Canada and the United States, according to Jenness, failed very badly to improve the Inuit's way of life.⁵⁶ In Canada, contacts between the Inuit and White were carried out by "explorers, whalers, traders and missionaries"⁵⁷ and the government's role was very limited. If a government action was initiated in the Arctic, it was because of the necessity to show Canada's presence in this region. "Only a threat to her sovereignty over the islands fringing her far-northern mainland could rouse her from her lethargy."⁵⁸ In fact, the Hudson's Bay Company (economic transactions) and Christian missions (education and health care) took care of the Inuit, whereas the Canadian government's presence in this region remained at a minimum. During World War II, the two federal governments of North America acknowledged the importance of the Arctic in defence against Japanese attacks, and began to expand their government activities extensively.

Compared with the Indians of southern Canada and the United States, the Inuit and to some extent the Indians in the Mackenzie Valley, were able to avoid direct confrontation with the European settlers. This is because the northern territories and the Arctic were not suitable areas in which to settle from an agricultural point of view. Therefore it was not urgent to remove the aboriginal residents from this region; there existed no "Inuit treaty" and the federal government failed to create Indian reserves in spite of Treaty 11.

A professor of Inuktituk linguistics and Inuit culture at the University of Ottawa, and a former MP for Nunatsiag, Northwest Territories, Mr. Peter Ittinuar, confirms the Inuit isolation.

Unlike the other aboriginal groups, we have not felt the impact of European culture and institutions until relatively recently -- until my own generation, in fact.⁵⁹

Generally speaking, because of the climate and geography of the Arctic, the Inuit have been able to maintain their distinctive culture and traditions.

IV. Administration of Indian Affairs in North America.

This section will review the history of administration of North American Indian policy; i.e., who was in charge of this administration in the past, what is an Indian policy in general and are Canadian and American policies different or similar? As we did in the previous section, several major works on this subject will be consulted. It is important to bear in mind that the amount of literature in Canada and the United States is not the same - the American Indian policy has been paid much attention by many scholars⁶⁰ whereas the Canadian program received hardly any academic concern until very recently.⁶¹

Historical Overview. The first person involved in the administration of Indian policy for the two nations was Sir William Johnson who was appointed by the British Crown as "Indian Superintendent" in 1755. He was responsible for four tasks: 1) to protect the Indians from opportunistic traders and speculators; 2) to negotiate boundary lines by treaties; 3) to enlist the Indians to the side of the British in the French and Indian war; and 4) to exercise as much control as possible over the fur trade.⁶²

When the Continental Congress was created in 1775, the Indian issue was regarded as an important problem. "The young American revolutionary government attempted to win the friendship of the Indians through treaties."⁶³ The Congress' Committee on Indian Affairs recommended the establishment of three departments of Indian affairs -- the Northern, Middle, and Southern Indian departments. Some

noted Americans such as Benjamin Franklin and Patrick Henry worked at these departments. The tasks of these Indian departments were important. "The Indian Commission acted primarily as diplomatic agents, negotiating with various Indian tribes to gain their allegiance."⁶⁴ From 1784 to 1843, the War Department was in charge of Indian affairs. In 1843, John C. Calhoun, the Secretary of War, created the Bureau of Indian Affairs, or BIA, and it was responsible for "appropriations for annuities, approving all vouchers for expenditures, administering the funds appropriated to 'civilize' the Indians, deciding claims arising between Indians and Whites under the trade and intercourse acts, and handling correspondence dealing with Indian affairs."⁶⁵ In 1849, the BIA was transferred from the War Department to the Department of the Interior. Today, the BIA still remains as a part of the Department of the Interior.

In Canada, the situation was very complex due to occasional transfers of the Indian Affairs Branch from one department to the other.⁶⁶ When the American Revolution began, the Indian Superintendent was relocated from New York to Canada, and the Superintendent General of Indian Affairs was established. This office was divided into two units - the Office of the Superintendent General and the Secretary of the Department in Montreal, and that of the Deputy Superintendent General and the Assistant Secretary in Fort George (Niagara).

In 1816, the Indian issue was "placed under the Commander of the Forces in the British North American

Provinces," and in 1830, two units were introduced - one for Upper Canada (Sir John Colbourne, the Lieutenant-Governor of the Province), and the other for Lower Canada (under military control).

When Upper and Lower Canada were unified in 1841, the offices of the Indian Affairs branches were also integrated. Like the United States, "demilitarization" of Indian affairs took place in the 1840's. According to D.C. Scott, the aim of this change was based on the Indian-White relationship of the day.

In the early days the Indians were either feared as foes or valued as allies; and as their chief importance was military their government, it was wisely felt, was safe in the hands of those who must control them in the field.

The Indian officers were no longer to be solely purveyors of presents or almoners of the crown grants; they were to be transformed into the executants of a humane and progressive plan for the civilization of the aboriginals.⁶⁷

Until 1860, the Imperial government was responsible for Canada's Indians. The Colonial Secretary, the Treasury, and the Army Commissariat were mainly in charge of this matter. After 1860 the Province of Canada was required to take care of the Indian population. The Crown Lands Department of the provincial government became responsible.

According to J.S. Milloy, the British imperial government did not control the Indians very effectively; i.e., the Indians were "de facto, self-governing." But after Confederation, the Canadian government changed this situation by reorganizing traditional Indian governments and introducing "Indian-agent-controlled models of white

government."⁶⁸ The British North America Act, Section 91 (24), and the first Indian Act of 1876 made such tight control possible.

David T. McNab also finds another interesting fact: the Imperial Indian policies were rather diverse and no single policy could explain the Imperial Indian policy. Depending on regions, different types of programs were introduced.

In the mid-nineteenth century the Colonial office bequeathed to the Dominion of Canada the legacy of an Indian policy which was regional in its approach, was characterized by "perpetual compromises between principle and immediate exigency," and which continually vacillated in its purpose and implementation in all parts of British North America.⁶⁹

Since Confederation, the Indian Affairs Branch has been attached to various departments: the Department of the Secretary of State, 1867 to 1873; the Department of the Interior, 1873 to 1880; the Department of Indian Affairs (own independent department), 1880 to 1936; the Department of Mines and Resources, 1936 to 1950; the Department of Citizenship and Immigration, 1950 to 1966; the Department of Northern Affairs and Natural Resources, 1966; and finally the Department of Indian Affairs and Northern Development, 1966 to present.

While the administration of Indian affairs in Canada and the U.S. has been peripheral except during the early period, the contrast between the two countries is somewhat puzzling. The BIA's attachment to one department has remained the same whereas the Indian Affairs Branch of

Canada has been transferred from one department to the other. Perhaps the framework of the federal bureaucracy in each country is different, and this may be the reason for the difference we have seen.

What is an Indian Policy? - If the Indians and Whites had different ways of life, how then could both groups have lived on the North American continent while avoiding direct conflict as much as possible? Obviously the two groups were not equal in terms of technical-administrative capabilities, and the Whites maintained superiority over the Indians when the military threat by the Indians disappeared in the early nineteenth century. Indian policy, therefore, has to take into account the following factors: the co-existence of the Indians and Whites, and the clear superiority of one group to the other.

Théodore W. Taylor, a former Deputy Commissioner and assistant to the Commissioner at the BIA, identifies three elements of Indian policy - removal of the Indians, assimilation, and creation of a reservation system.

- (1) removal of Indians to Indian country based on the belief that there was room and sufficient resources for all and that in the separation of Indians from non-Indians there would be little conflict and no need to be concerned over the Indians' problems,
- (2) assimilation of the Indians into the European-oriented society -- expressed by Jefferson, some early treaties, and attempts to educate and train Indians in European ways,
- (3) assigning Indians to reservations to eliminate conflict with the advancing white population.⁷⁰

Take for example, the Indian Removal Act of 1830. The Indians were removed from their homelands (mainly from the eastern part of the United States, but also from the west) and relocated to Indian Territory, now known as Oklahoma. "Most of the tribes moved as a result of persuasion, bribery, or threats, but some, such as the

Seminole, had to be removed forcibly at great cost, and all of them were caught."⁷¹ How was the removal policy justified? According to one government document, it was regarded "as a means of protecting the Indians from repeated encroachment of eastern white settlers."⁷²

According to Prucha, President Jackson had four options with regard to Indian policy. These were destruction of the Indian population, assimilation, protective measures in the eastern part of the continent, and finally the Indian removal.⁷³ If the Indians were removed, then, not only would the white settlers obtain Indian lands, but the Indians would also be protected by the federal government. As a man of military experience, Jackson thought removal was the best policy.

The assimilation program was illustrated by the General Allotment Act or Dawes Act of 1887. This act was "based on the theory that anyone who possessed his own plot would automatically thereby become a farmer or livestock operator,"⁷⁴ and "authorized the President to parcel tribal land to individual members in tracts of 40, 80, or 160 acres, called allotments."⁷⁵ While this act was not considered favorably by the Indians because of its non-traditional elements (breakdown of communal land holding systems), in 1934, "246,569 assignments totaling nearly forty-one million acres had been made,"⁷⁶ and the tribal landholding was reduced from 138,000,000 acres in 1887 to 48,000,000 acres in 1934. Approximately one-third of the original Indian lands remained.

There were about 400 Indian treaties in the United States, and many of them (about 260) were "arranged between 1825 and 1860, during the great westward expansion of white settlers following the war of 1812."⁷⁷ Another 230 treaties had to do with Indian lands whereas the remaining 76 treaties dealt with the Indian removal.

While details of every Indian policy were different in Canada and the United States, the basic policy orientation of Canada seemed to follow Taylor's analysis. For instance, John L. Tobias finds three goals of Canada's Indian policy - protection, civilization, and assimilation.

Protection, civilization and assimilation have been the goals of Canada's Indian policy. These goals were established by governments which believed that Indians were incapable of dealing with persons of European ancestry without being exploited.⁷⁹

"Indian treaties are formal agreements between Indians and the Crown involving promises of peace and friendship, land cessions and other issues and benefits,"⁷⁹ and there are about 70 Indian treaties from 1725 to 1923.⁸⁰ It is important to note that characteristics of the treaties are not the same throughout Canada. As L.F.S. Upton indicates, the Indian-White relationships were very much influenced by many factors such as geography, economy and technology.⁸¹ The Indian treaties were no exception. Some parts of Canada (Quebec, B.C., Yukon and N.W.T.) were only partly covered by the treaties or not covered at all. In the Maritime regions, only 'peace and friendship' treaties were concluded in the eighteenth century: Indians and the Crown "agreed to aid each other in conflict or remain neutral."⁸² In this

sense, the Maritime Indian treaties did not deal with 'land cessions'. "There was no mention of land title and, invariably, the Indian people were assured they would not be disturbed in their traditional pursuits."⁸³ In 1995, the Supreme Court of Canada ruled that "a peace and friendship treaty signed in 1752 by the governor of Nova Scotia and a Shubenacadie Micmac chief is valid -- and as a result, Nova Scotia fish and game laws don't apply to the Micmacs unless safety is involved."⁸⁴

It became urgent to allocate parcels of land to British subjects or pro-British citizens who had left the United States to come to Canada after the Revolutionary War and the War of 1812. "Hence, the half-century between 1775 and 1825 witnesses a comprehensive land surrender scheme to extinguish Indian land title involving most of what is now southern Ontario."⁸⁵

"Thereafter, the exigent elements of Canada's growth westward and northward dictated the pace and direction of treaty activity."⁸⁶ As a result, the Robinson treaties were made in 1850, and 'numbered treaties' (Treaty No. 1 to Treaty No. 11) were signed between 1874 and 1921. Treaty-making of such numbered treaties was not carefully planned by the Crown.

Subsequent treaty activity continued ad hoc -- the discovery of gold at the Klondike River (1897) led to Treaty No. 8 in 1899, thus clearing the access route from Edmonton to the Pelly River; plans for construction of roads and railways precipitated the signing of Treaty No. 9 in 1905; Treaty No. 10 in 1906 immediately followed the attainment of provincial status for Saskatchewan and Alberta; the discovery of oil at Normal Wells in 1920 preceded Treaty No. 11 by one year.⁸⁷

In exchange for Indian lands or land cessions, the Indians received several benefits - "reserve lands in proportion to population, usually 128 acres (51,8016 hectares) per capita; a token annual payment to each person; farming and agricultural assistance; schools and educational assistance; ammunition and fishing twine; uniforms, medals and flags for the principal chiefs."⁸⁸

It is also important to know that both sides did not hold the same view concerning the treaties; i.e., the Indians expected to protect their traditional way of life, whereas the Whites saw "Indian reserves as places where Indians could learn to be settlers and farmers."⁸⁹

Since Chapters 4, 5 and 6 will discuss Canada's Indian policy fully, we do not attempt to analyze this subject here. However, a comparison of American/Canadian Indian policies will be examined briefly in the next section.

American and Canadian Policy Differences. Fundamentally, as we have seen before, Canada and the United States seem to employ the same policy orientation. But this is not always true. First, the leadership of the BIA has been impressive while Canada's Indian Affairs Branch has not delivered innovative programs. One of the reasons for this has been institutional differences. At the BIA, the Commissioner of Indian Affairs⁹⁰ is "appointed by the President and confirmed by the Senate, and his authority is delegated to him by the Secretary of the Interior."⁹¹ No man was more colourful and controversial than John Collier who was the Commissioner from 1933 to 1945, and the main architect of the Indian Reorganization Act of 1933.⁹²

He was able to apply his reformist ideas to American Indian policy when he became Commissioner. Although he was a member of an influential family in Georgia, he was engaged in social reform movements in New York and California. In New York City, he became a civic secretary of the People's Institute that offered free evening and adult education. After being involved in such social movements, he became interested in problems of the Indians. He earned fame as one of the reformers of the day and eventually the newly-elected President F.D. Roosevelt appointed him as Commissioner in 1933. His commissionership produced the so-called "Indian New Deal" which attempted to reintroduce a communal or traditional way of life for the Indians. It was said that the Dawes Act of 1887 seriously destroyed the communalistic Indian landholding system, and the Indian New Deal was intended to restore this tradition.

In Canada, those who headed up administration of Indian policies were civil servants, and it was unlikely that a person of Collier's dynamism and status would become head of this bureaucracy. For instance, Duncan Campbell Scott, a man of literature, and a Deputy Superintendent General of Indian Affairs from 1913 to 1932, did not introduce a radically-new policy. But the lack of 'dynamic' leadership did not necessarily mean lack of an Indian policy in Canada. In the United States, since a very influential person could be in charge of Indian affairs, the entire picture could change. The Dawes Act and the Indian Reorganization Act of 1933 were regarded as two extremes

(individualism vs. tribalism), and impacts of such policy changes were obviously confusing and costly. In Canada, on the other hand, a careful or modest policy seemed to be consistently maintained.

The second difference is what may be called "attitudinal differences." In Canada, while there were a few direct and sometimes bloody confrontations between the Indians and Whites, the legal status of the Indians remained unclear and ambiguous. Canada's Indian treaties were concluded when federal agents and Indian leaders signed a document. In the United States, the treaties were formally negotiated between the President and the Indians, and then legislative approval was required. Another example is citizenship. In the United States, it was 1924 when voting rights were granted to the Indians; in Canada it was 1960. Mr. Charles Curtis, a member of the Kaw tribe, Kansas, was elected to the Senate in 1907, and he became the first Indian Senator in the United States. In 1928, he was elected Vice President in the Hoover administration. In Canada, it was 1958 when Mr. James Gladstone from Alberta was appointed to the Senate. (But it is important to note that power and influence attached to Canadian Senators and American Senators are not identical. Therefore we should be cautious when we compare the two.)

While the basic Indian policies seem at first to be almost identical, one may get an impression that the American policy is one of rigidity whereas the Canadian policy is one of ambiguity and mildness.

V. The Images of the Native Canadians

To identify images of the native peoples in Canada is not easy because of the diversity of the aboriginal population; i.e., the Indians, Métis, non-status Indians, and Inuit. Each group is also fragmented and divided by its linguistic and cultural variations. And from the native points of view, such images of the natives held by the majority of Canadians may be unsatisfactory and biased. Here, it is our intention to review some empirical studies on this subject, and the above-mentioned elements will obviously limit our generalizations.

First, we will see the images of the native peoples in general - how are they described in textbooks and do Canadians hold the same images at all times? Second, the native peoples' social ranking and status will be considered - are they given high or low prestige by the other Canadians; do English Canadians and French Canadians see the natives in the same way; does every region have the same perception? Finally, we will look at the native peoples' perceptions of themselves.

General Native Images. The Indians are generally described in a negative context, according to L.P. Williamson's M.A. thesis that studies Ontario high school textbooks by comparing images of the French-Canadians, Americans and the Indians.

The image of the Indian as filthy, fiendishly cruel, and child-like, is regularly repeated, and an air of surprise often accompanies a mention of any positive achievement by the native people.⁹³

A similar study was conducted by G. McDiarmid and D. Pratt and some conclusions from their research include the following statements:

But it is in the casual phrase as much as in the narrative that the stereotype of Indian savagery is taught.Massacres of white men by Indians are frequently recorded in great detail, as in this description of the massacre at Lachine.Massacres of Indians by whites, on the other hand, receive scant attention.There is also a tendency to perpetuate the fallacy that white men have been generous in giving Indians money.⁹⁴

Historically speaking, it is important to note that the Canadians have not held the same images of Indians over time, according to Ronald G. Haycock's study. By reviewing popular national magazines such as Saturday Night and Canadian Magazine from 1900 to 1970, he finds changing images of the Indians. At the beginning of this century, a general perception was "remarkably and characteristically social-Darwinistic," and Canadians were very paternalistic towards the Indians. The First World War and the Great Depression made Canadians more sensitive towards the Indians. And the post-World War II era saw a renewed concern for the Indians. "Social interest, awareness of the 'whole' Indian, a drive for reform and active government sympathy were replacing the paternalism, social-Darwinism and noble savage concepts of the beginning of the century."⁹⁵ Since his analysis does not include other aboriginal groups and French-Canadian journals, we should treat his conclusion cautiously. But it is useful for us to note in general the gradual changes in attitude of Canadians towards Indians.

Contemporary Native Status and Prestige. According to P.C. Pineo's case study, Canada's native population is accorded relatively low prestige and social status.⁹⁶ Respondents were asked to identify in their estimation each ethnic group's position in 1967. The most prestigious group would receive 100 points, and a group without any prestige would get zero points. The English Canadians (N=300) gave 83.1 points to "the English Canadians" first, followed by other groups: the Scottish, Irish, French, Canadians of Western- and Northern-European descent, East European Canadians, Japanese and Chinese Canadians and native Canadians (28.3). Only two groups were believed to be lower than the native Canadians - the Coloured (26.3) and Blacks (25.4). The French Canadians (N=93) showed different attitudes. They saw the French Canadians, English Canadians, and Catholics equally (77.6), but other groups were, as a whole, given lower scores - Russians (33.2), Natives (32.5), Czechoslovaks (32.4), Finns (32.3), and Danes (32.2). This is interesting, but as Pineo indicated, we must treat this result carefully. "As well, there is some evidence that French Canadians are, quite understandably, less familiar with some of the smaller ethnicities and hence less able to rank them."⁹⁷

J.W. Berry, R. Kalin, and D.M. Taylor's work indicated a similar result as well. The English Canadians were ranked at the top of the hierarchy. Following were the Scottish, French, Dutch, Scandinavian Canadians. The Indians were located at the 24th position and only the Blacks (25th) and

the East Indians (26th and lowest position) constituted the bottom of the hierarchical structure.⁹⁸

Their work also examined attitudinal dimensions of such inter-group perceptions. Ten questions were asked with regard to each group's characteristics; i.e., hardworking, important, Canadian, clean, similar to me, likeable, stick together as a group, wealthy, interesting, and well-known to me. Respondents were required to identify each group's characteristics within a scale of 1 to 7.⁹⁹ The result showed that only two "good or positive" attitudes were attached to Indians (Canadian and stick together).

Table 2

Images of Ethnic Groups in Canada

<u>Ethnic Groups</u>	<u>Above Average</u>	<u>Below Average</u>
English Canadians	important Canadian clean similar to me likeable wealthy well-known to us	stick together
French Canadians	important Canadian clean similar to me likeable interesting well-known to me	
Immigrants in General		Canadian
Canadian Indians	Canadian stick together	hardworking clean similar to me wealthy well-known to me

Source: Berry, Kalin & Taylor, 103.

According to J.R. Ponting and R. Gibbins, while the western Canadians were more knowledgeable about Indian issues than other Canadians, they were less "sympathetic to Indian aims and aspirations than were respondents living outside the Prairies."¹⁰⁰ A similar regional variation was identified by Berry and his associates.

Respondents in the Prairies are least favourable in their overall evaluation of Canadian Indians, followed by BC, Ontario and finally the Atlantic provinces.¹⁰¹

They also found that the French Canadians were less knowledgeable but more sympathetic.

Francophone respondents were less knowledgeable about Indian affairs than were their Anglophone counterparts but, were, at the same time, much more sympathetic towards Indian aims and aspirations.¹⁰²

Native Perceptions. It is natural that Canada's native peoples have different perceptions of Canada and of themselves. In many cases, Indian intellectuals, e.g., D.A. Brown,¹⁰³ and N. D'Arcy,¹⁰⁴ express a sense of dissatisfaction, mistrust, and disappointment. In Canada, N. Cardinal identifies his feeling as follows:

The history of Canada's Indians is a shameful chronicle of the white man's disinterest, his deliberate trampling of Indian rights and his repeated betrayal of our trust. Generations of Indians have grown up behind a buckskin curtain of indifference, ignorance and, all too often, plain bigotry.¹⁰⁵

The native dissatisfaction is not without reason. S.H. Ullman points to the distinctive nature of the Micmac Indian students' political socialization, comparing White and Micmac pupils in Cape Breton.¹⁰⁶ As with sub-cultural variations between White and Black school children in the U.S., he assumes that the political socialization of Indian

children is different from that of the White students.

Several nationalistic questions were asked and responses were "Canada is the best country in the world," "Canadian flag is the best in the world," and so on. As he notices, the Indian students show different attitudes towards nationalistic symbols.

As the Micmac Indians mature and learn more about Canadian society and their standing within it, they become less supportive of their country than whites.... At various points in the data many Micmacs reveal that they do not consider themselves integrated parts of the Canadian political community. In addition, more Indians than whites state that they are willing to surrender Canadian independence. The Micmacs are also less likely to engage in nationalistic behavior, such as discussing Canada's problems, than whites.¹⁰⁷

In conclusion, one can point out that the host society has regarded the native population in a negative context, and even today the image of the aboriginal Canadians is not very reputable. The natives themselves see Canada in a negative or pessimistic manner. In other words, there are many differences in perception between the majority of Canadians and the natives.

VI. Summary and Conclusion

This chapter has reviewed the historical transformation of Aboriginal-White interactions, i.e., the history of North America and the Indians, Aboriginal-White relationships, administration of Indian policy and the images of native Canadians.

The history of North America and the Indians was examined in the second section and several issues were raised: i.e., the moralist, realist and native approaches; the frontier thesis and its application in Canada; and some new scholarly trends in this area. What is clear from this section is that the Indians are now being given proper attention by historians and social scientists, and the study of the Aboriginal-White relationship is becoming a mature discipline.

The third section analyzed the interactions historically, and three factors of these relationships were introduced - the attitudes of colonial powers, the socio-economic conditions of the frontier and aboriginal political power. The Spanish, British and French Indian policies were examined comparatively.

The administration of Indian affairs was reviewed in the fourth section. This included the historical overview of Indian policies, the nature of Indian policies and the differences between the American and Canadian approaches to these policies. Until the early nineteenth century, Indian military power was respected by the British and American authorities and some accommodative measures or diplomatic

relations were maintained. But once this military threat disappeared, the Whites became the dominant actors as a matter of course. By creating reservations/reserves, and concluding "Indian treaties," the isolation and the two distinctive societies as well as the development of western expansion were accomplished. While the basic policy orientations of the United States and Canada may have been similar, the administrative features were rather different. The British and Canadian authorities seemed to have been indecisive and subtle, whereas the U.S. seemed to have been decisive and confrontational towards the natives.

Finally, the images of Canada's natives were examined by reviewing some empirical studies. The images of native Canadians are not generally shown to be very positive, yet the English and French Canadians view the native population in different ways. Also, regional variations were discussed.

Can we use our model in this chapter? By bearing in mind the historical complexity of Aboriginal-White relationships in North America, it is possible to approximately identify historical transformations of this subject. It is important to note that our fourfold model assumes only interactions within a system, and it does not include interactions between systems at all. When North American Indians met Europeans, there existed a kind of quasi-international relationship, and Indian treaties and diplomatic arrangements between the two distinctive societies symbolized this type of interaction. But around

the beginning of the nineteenth century, the Indians became a part of the White society (ward) and their international status was almost eliminated. At this stage, the Indian-White relationship can be understood as an interaction within a system. While a system of separation has been maintained, the Indians' way of life has been very much dominated by the White population (pluralism, high; domination; high).

The Inuit-White relationship was somehow different from that of the Indian-White. It was mainly as a result of absence of interactions between the Inuit and White Europeans. Consequently, unlike the Indians, these kinds of domination-subordination patterns were not apparent here. As long as the Inuit lived in northern parts of the continent, they were able to retain their traditions and system without difficulty. Therefore, equality and the absence of institutionalized systems of separation seemed to refer to the position of the Inuit (the melting-pot model).

With regard to urban natives, the assimilatory model appears suitable for them because both domination and assimilation characterized their position in North America. The Canadian Métis also fell into the same box.

Figure 4

Aboriginal-White Relationship in North America:
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I. Introduction

In this chapter, administrative aspects of native issues in Canada will be discussed by looking at three areas: main policy trends, regional variations, and current government programs for the status Indians, Inuit, Métis, and non-status Indians. Constitutionally, the federal government is responsible for the status Indians and Inuit because of the B.N.A. Act of 1867, Section 91 (24), and one particular department, the Department of Indian Affairs and Northern Development, has this responsibility. So one might assume that there is a rather simple bilateral relationship between this department and the status Indians/Inuit in Canada. If we examine the situation carefully, however, this general perception is not entirely correct. As we will see later, the administrative interaction is extremely complicated, and any single generalization may not illustrate the entire picture.

The main policy trends, regional variations, and native programs are chosen here in order to study our subject, and a kind of "macro analysis" will be presented. In other words, a detailed micro analysis, or program-by-program examination will not be employed. Needless to say, it is desirable to know each program as thoroughly as possible, but this is not our primary concern in this chapter. Numerous government documents, papers, and materials produced by native organizations, for instance, will help us

understand the complicated administrative ~~issue~~ more precisely. By relying upon such works, we will attempt in this chapter to analyze the situation more or less systematically.

II. Main Policy Trends

Why is the simple bilateral relationship between the Department of Indian Affairs and Northern Development, or DIAND, and the native Canadians not functioning smoothly? Three main policy trends have changed the administrative approaches with regard to Aboriginal-White relationships since the early 1970's: functional decentralization within the federal government, federal-provincial cooperation, and native participation. Let us review each trend respectively.

Functional Decentralization. Here functional decentralization refers to the diversification of programs that were once provided solely by DIAND and its predecessors. Today, not only DIAND but also other federal departments and agencies provide their services to Canada's native population. This trend became especially visible in the 1970's. According to government documents, during the fiscal year of 1970-71, DIAND provided 86 per cent of the services to the status Indians and Inuit, and non-DIAND departments and agencies were responsible for the remaining 14 per cent.¹ In the 1983-84 fiscal year, DIAND's share was 69.7 per cent whereas non-DIAND departments were responsible for 30.3 per cent.² Since these figures were estimates, a precise year-by-year comparison is difficult. In addition, universal programs are provided to all Canadian citizens including the native peoples. Therefore we must be aware of these imprecisions. Next, when attempting to arrive at total services provided to status Indians and Inuit what was

the dollar allocation budgeted for these native programs.

In 1984-85, total spending was \$2,567 million: DIAND's share of that was \$1,893 million while the other departments spent a total combined amount of \$674 million (the Department of National Health and Welfare, \$327 million; the Department of Regional and Industrial Expansion, \$134 million; the Canada Mortgage and Housing Corporation, \$88 million; the Department of the Secretary of State, \$50 million; the Department of Employment and Immigration, \$36 million; and others departments, \$39 million).³

In 1945 the Indian Health Service Division of the Department of Mines and Resources was transferred to the Department of National Health and Welfare, one of the major departments involved with these programs. Currently, the Medical Services Branch of the department is responsible for this area. The understanding and rationalization for the 1945 transfer was that the department concerned with medical matters (NHW) was better able to handle this area than the Mines and Resources Department.⁴

Beginning in the early 1970's, various departments began to provide services to native Canadians. This trend could be seen as a reaction to recommendations included in the Hawthorn report, the White Paper of 1969, and perhaps increased government intervention. The following programs illustrate this:

"Indian and Northern Health Services"
Department of National Health and Welfare

"Native Citizens Program"
Department of the Secretary of State

"Native Court Worker Program"
Department of Justice

"Rural and Native Housing Program"
Canada Mortgage and Housing Corporation

"Northern Careers Program, Office of Native Employment,
and National Indigenous Development Program"
Public Service Commission

"Native Economic Development Program"
Department of Regional Industrial Expansion

"Recreation Canada Funding to Native Peoples"
Department of Fitness and Amateur Sports

One of the interesting characteristics which makes the DIAND and non-DIAND programs different is the range of peoples these programs serve. While DIAND serves only the status Indians and Inuit, the non-DIAND departments tend to deal with all the aboriginal population. For instance, the Department of the Secretary of State makes its programs available to the status Indians, Inuit, Métis, non-status Indians, and native women. Some of these are as follows: Native Social and Cultural Development Program, Native Communication Program, Native Friendship Centre Program, Northern Native Broadcast Access Program, Aboriginal Representative Organizations Program, Aboriginal Constitutional Funding, and Aboriginal Women's Program. It is interesting to see this department's policy with regard to support for all aboriginal groups. The above-mentioned programs are attached to the "Native Citizens Program" and the main aim of this program is to assist socially and politically weak citizens of Canada. As long as native citizens are unable to improve their status, they are eligible for these services. Therefore, the department is

free to choose its clients by not differentiating between the status Indians/Inuit and other native citizens. It is also interesting to note that although this department is responsible for multiculturalism in Canada, the Native Citizens Program does not deal with multiculturalism at all; it is a part of the Citizenship Branch policy.⁶ The Citizenship Branch was "originally formed to help immigrants integrate into Canadian Society"⁷ and the Native Citizens Program is "designed to assist the native people of Canada to develop and maintain their culture and identity as well as enabling them to participate more fully in the benefit of Canadian society."⁸

Another example is the \$345 million Native Economic Development Program, or NEDP, of the Department of Regional Industrial Expansion. This five-year program, which was launched in March 1984, is "open to all native persons -- status and non-status Indians, Métis and Inuit."⁹

What would be the results of functional decentralization? From the native point of view, a process of program application, assessment, and delivery becomes very time-consuming. According to a letter to the editor of The Globe and Mail from a band council in Nova Scotia, an application to the NEDP was held up for more than a year awaiting a reply from the Department of Regional Industrial Expansion.

One man with the new program came from Winnipeg to talk to us. Then responsibility for this part of Canada was shifted to Montreal, and we must now deal with another, newly hired person. We have also learned that our application was sent to another federal minister for approval and now sits on his desk.¹⁰

Since interdepartmental or intradepartmental coordination is necessary in Canada in the delivery of programs, this type of criticism may get results if pointed out by non-aboriginal citizens. But for the natives, "divided responsibility" may, in fact, imply "divided non-responsibility."

Another cost of functional decentralization is the "identity crisis" of DIAND.¹¹ The Canadian public, parliamentarians, and even civil servants regard this department as a minor institution of the federal bureaucracy, and the existence of this department has been questioned in the past. For instance, recently, it was proposed that this department be abolished. Reports dealing with this issue are: the Government White Paper of 1969; the report by the Special Committee on Indian Self-Government, House of Commons, 1983; and the so-called "Buffalo Jump" report of 1985 (Cabinet memorandum, Report of the Ministerial Task Force on Native Programs, April 12, 1985).

Since a constant reorganization of federal departments is not uncommon in Canada, any department may not be able to maintain its traditional mandate and role forever. But it is DIAND whose 'raison d'être' is always questioned.

According to one policy advisor of DIAND, however, this may not be a problem if DIAND becomes a policy coordinator within the federal government like the Privy Council. As long as DIAND remains as the department involved in program delivery, the identity crisis will never be solved. But if program delivery functions were transferred to other

federal line departments (health care to the Department of Health and Welfare; and housing to CMHC, for instance), DIAND will not be greatly affected.¹²

Federal-Provincial Coordination. In spite of the status Indians' desire to maintain their bilateral relationship with Ottawa, provincial involvements have recently become more visible and almost irreversible. There are several reasons for this. First, as long as the status Indians live on reserves, it is easy to keep the Indian-Ottawa bilateral relationship. But once they leave the reserves, they have to deal not only with the federal government but also the provincial government. The increased number of off-reserve Indians, one-third of the registered Indians, makes it difficult to maintain this traditional relationship. Second, as other advanced nations have experienced, the role of the federal government has become more and more active; e.g. welfare, education, employment. Third, from a technical or administrative point of view, while the reserves can be regarded as enclaves, it is clear that such enclaves cannot avoid contact or interaction with provincial/municipal governments. Some issues such as environmental protection, forest fire prevention, and transportation require close cooperation among the Indian communities, provincial governments and the federal government.

The history of intergovernmental coordination is rather complex, so we will review it very briefly. The first major decision was made at the 1951 Federal-Provincial Conference

on Social Security, and "the provinces agreed to extend old-age assistance and blind persons' allowances to Indians on a 50-50 cost-shares with the federal government."¹³ This decision was evaluated as follows: "This was the first time the provinces had agreed to assume a significant degree of financial responsibility toward assisting Indians residing within their boundaries."¹⁴

Then there were several important events such as the Government of Ontario's initiative programs, the 1964 Federal-Provincial Conference on Indian Affairs, the Hawthorn report of 1968-69. And in the early-sixties, some provinces agreed to enter into joint agreements with Ottawa: British Columbia, social and health service assistance; Saskatchewan and Alberta, rehabilitation services; Manitoba and Nova Scotia, child welfare; Manitoba and New Brunswick, education. Through the 1970's, various types of joint agreements were produced covering education, health, land claims, hunting and fishing rights, environmental protection, resources development and administration of justice. With the exception of the land claims issue in 1983, 14 types of joint programs were identified by the Federal-Provincial Relations Office (only DIAND and the provinces).¹⁵

While it is not our aim to study all agreements, let us examine a few illustrative examples. First, we will examine the Policing Agreements. Saskatchewan was the first province to enter this program in 1974 and the purpose was "to provide policing services on Indian reserves which are

comparable to those enjoyed by other Canadians."¹⁶ Nine provinces, except New Brunswick, and the two territories currently have policing agreements. How are these agreements maintained?

Cost-recovery arrangements for 1980-81 with the provinces and two northern territories is 46% federal, 54% provincial, with the exception of Ontario, where it is 52% federal and 48% provincial. Negotiations with Quebec are being reactivated for sharing financial responsibility for this program in Quebec between federal-provincial governments (currently financing is 100% federal).¹⁷

In 1980-81, DIAND's payment for the Agreements was \$3.9 million.¹⁸

The second example is education. There are three types of educational systems for the native children: federally-operated schools (total 173); band-operated schools (187); and schools under provincial jurisdiction.¹⁹ The third category includes "territorial schools, provincial 'joint' schools, separate schools and private schools"²⁰ and 54 per cent of the native students (43,652 students) attend these types of school. "Federal assistance for Indian students at provincial schools varies from paying tuition fees and providing school buses to fully maintaining students either in boarding homes or students' residences."²¹ With regard to tuition agreements, there are three categories. These are Master Tuition Agreements, Joint Tuition Agreements, and Joint Capital Agreements. The Master Tuition Agreement implies that "a department of education agrees to educate Indian or Inuit students in provincial schools for a fee from DIAND"²² and the fee is "based on the average estimated unit cost of educating a child."²³ The provinces of B.C.,

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Manitoba, and New Brunswick maintain this agreement. In the case of the Joint Tuition Agreement, "DIAND negotiates directly with school boards for the education of status Indians"²⁴ in Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and P.E.I. The Joint Capital Agreement covers "the cost of school construction for accommodating Indian and non-Indian children"²⁵ and it is "shared by the province and the federal government on a simple per capita basis."²⁶

The third and last example is unwritten/informal agreements between the federal and provincial governments. According to the Indian Health Services Information Book prepared by the Department of National Health and Welfare in 1980, this type of agreement exists in Quebec²⁷ and Manitoba.

A tacit agreement has existed between Medical Services Branch and the Provincial Department of Health and Community Services that is based on a written agreement, still in effect, dealing with provisions for service north of the 53° parallel. Present arrangements cover other areas of the Province. The agreement states that where there is a Federal health facility in an isolated area, health services will be provided to all members of a community and where there is no Federal facility, and the Province provides services, they will be extended to all members in their geographical area.²⁸

Do the status Indians evaluate federal-provincial coordination positively or negatively? It would be safe to say that they regard this trend very negatively. Why is this so? There are at least two reasons for this. First, the Indians see the joint agreements as the actual implementation of the 1969 White Paper that suggested complete transfer of federal responsibility for Indian matters to provincial governments. In other words, the

Indians think that Ottawa is eliminating federal responsibility by entering more joint cost-sharing programs with provincial governments. The second reason is more practical. One example is the Master Tuition Agreement. In spite of such agreements, it can be pointed out that the provincial departments of education do not necessarily spend the funds exactly as they are supposed to.²⁹ In other words, once the funds are transferred to a province, the federal government will have no say in this area because education is a "provincial responsibility." An advisor to the First Nations of South Island in B.C. indicates this in the following way:

The Minister of Education for the Province of BC stated in 1979 that, regardless of any agreement, the provincial government will provide education services to status Indians, because this is their right as provincial citizens.³⁰

Once funds are allocated to a provincial department, board of education, or provincial agency, Ottawa is not in a position to impose the rules of the agreement on behalf of the status Indians. If the federal government were to actually try to impose the rules, it would be very expensive politically (violation of federal/provincial responsibilities), and perhaps discussion or persuasion would be a more relevant method of correcting the situation. Since the James Bay and Northern Quebec Agreement offers us an interesting case in this context, this subject will be explored more fully in Chapter 5. Nevertheless, a dramatic federal intervention on this matter is unlikely in the near future and the Indians' dissatisfaction with this agreement will probably remain unresolved for some time.

Native Participation. From the native point of view, functional decentralization and federal-provincial cooperation did not necessarily produce positive results. In order to make the programs more suitable for the natives, the aboriginal peoples began to participate in processes of planning and delivery of the native programs in the early-1970's.

In December 1972, the National Indian Brotherhood (NIB) submitted a policy paper entitled "Indian Control of Indian Education" to the Minister of DIAND, and in early February 1973, DIAND formally approved the ideas of this proposal. The paper indicated philosophy, goals, principles and directions of Indian education.

Until now, decisions on the education of Indian children have been made by anyone and everyone, except Indian parents. This must stop.³¹

Transfer of educational jurisdiction from the federal government to provincial or territorial governments, without the consultation and approval by Indian people is unacceptable.³²

The basic idea of this policy paper was to reduce the federal and provincial control over Indian education and to enhance Indian parents' influence over this matter. "Indian parents must have full responsibility and control of education. The federal government must adjust its policy and practices to make possible the full participation and partnership of Indian people in all decisions and activities connected with the education of Indian children."³³ What kinds of proposals were presented in the paper? There were four areas of concern: responsibility (Indian control),

program development (language, culture, and curriculum), teachers, and facilities.

The Minister of DIAND, J. Chrétien, in early 1973, "agreed with the paper's basic policy" and "assured the NIB that the Department 'is fully committed to realizing for the Indian people the educational goals which are set forth in the proposals'."34

While not every issue with regard to Indian education is solved, "Indian Control of Indian Education" seems to be evaluated by the Indians positively. "Since that time there has been tremendous growth and development in the area of Indian education by Indian communities as evidenced by the 230-plus schools now existing in Canada which are presently Band-controlled and/or operated by Band involvement beyond the purely administrative functions."35 In addition, by the end of 1980, there were three Indian/Inuit-controlled school boards in two provinces; the Cree and Kativik School Boards of northern Quebec and the Nishga School District No. 92 in B.C.

The second example of native involvement is the Native Council of Canada's (NCC) housing proposal submitted to the Minister of State for Urban Affairs, Ron Basford, who was responsible for the Central Mortgage and Housing Corporation (CMHC), a crown corporation, in September 1973. (This corporation was later renamed the Canada Mortgage and Housing Corporation). In this proposal, since the Métis and non-status Indians could not receive programs from DIAND, unlike the status Indians/Inuit, the NCC directed its

attention to the CMHC and asked it to create a new program for them. In March 1974, the Minister unveiled the new program entitled "Rural and Native Housing." The CMHC's reaction was rather interesting. Urban Affairs rejected the notion of becoming responsible for the housing issues related solely to Métis and non-status Indians. Not only CMHC but also provincial counterparts had to be involved in this matter. In other words, CMHC turned down creation of a relationship similar to that of DIAND and the status Indians/Inuit. "A unilateral federal program was not considered to be practical and it was decided that it was necessary to involve the provinces."³⁶ Another interesting point was that CMHC recognized the need of non-aboriginal rural residents' housing problems as well as that of the Métis and non-status Indians. "The Minister reiterates that benefit of the program would be available to people of other than Indian ancestry, who were in the [sic] equal need."³⁷

How was this program implemented? According to the Annual Report of CMHC, in 1983, it was organized as follows:

CMHC's social housing activities include assistance directed to communities of less than 2,500 people. In 1974, a goal was set to construct or rehabilitate 50,000 dwellings in these communities.³⁸

This goal was achieved by 1990 as CMHC had expected.³⁹

The third example is the health conditions of native Canadians. In November 1978, the NIB presented an Indian health policy paper to the Minister of National Health and Welfare, Monique Bégin, in which the status Indians' health problems were identified. In September 1979, The Indian Health Policy was published by the department which

recognized the importance of "Indian Control of Indian Health." "The Federal Government realizes its legal and traditional responsibilities to Indians, and seeks to promote the ability of Indian communities to pursue their aspirations within the framework of Canadian institutions."⁴⁰ The department suggested that the delivery of health services to Indian communities be based on three pillars: community development, positive federal roles, and harmonious cooperation among different levels of government. The third pillar needs further explanation here. Four participants will have to play significant but different roles respectively in the delivery of health promotion and health services to meet the specific needs of the native communities: (1) the federal government, health activity and promotion; (2) provinces; and (3) private systems, diagnosis and treatment of acute/chronic diseases and rehabilitation of the sick; and (4) the Indian communities, health promotion and health services.⁴¹ In addition, another departmental paper, Indian Health Discussion Paper, was published in 1980 in which the issue of Indian self-determination was seriously discussed. "Our standard medical tools do not seem to address the problems of high hospitalization rates, violence, antisocial behavior, suicide -- all indices of an accelerating crisis of health and social breakdown."⁴² So a solution to the crisis may be self-determination of Indian communities. The 1980 report concluded: "only the Indian people themselves can make decisive improvements in their own health -- by assuming

power over their own lives and own environments and by wielding that power to make substantial change."⁴³

The Indian Health Services Information Book identified some cases of "Indian Control of Indian Health" in 1980.⁴⁴ One of these cases was the Stoney Indian Health Centre in Alberta. The Stoney Band had 1,800 registered Indians, and was responsible for this centre.

Clinical services are provided by local physicians on a sessional basis. Community health and health education programs are provided by two community health representatives. Medical transportation and health-related counselling services are also provided.⁴⁵

From the federal government point of view, native participation seemed to imply "administrative decentralization" of DIAND's program delivery system.

In 1993-84, half the total budget of the Indian affairs program was managed by bands -- a significant increase since 1971, when only 16 per cent of the total budget was under band control.⁴⁶

The new funding continues the government's policy of transferring delivery of services for Indian people from government to Indian control.⁴⁷

Although native participation is gradually producing positive policy changes, there are at least two problems that should be mentioned here. First, while program delivery functions are being transferred to band councils, tribal councils, or regional/national organizations, such native organizations do not have decision-making powers. In other words, DIAND retains the final authority, and the band councils have to follow instructions prepared by the department. A second serious problem is the unrealistic assumption that every Indian band in Canada has the same administrative capacity. If a band is financially well off,

then it can afford to hire experts and specialists who could initiate proposals, fill out application forms, carry out programs, and establish good financial/administrative practices. If a band is poor and unable to hire such experts, it will not be able to deal with these time-consuming processes. So the richer bands are more likely to receive program benefits, while poorer bands are unlikely to gain advances because of their lack of resources and expertise. According to a policy advisor of DIAND, about two-thirds of Indian bands are classified as the second type, and only one-third of bands can enjoy the game of "administrative decentralization." This will produce a greater degree of differentiation among the Indian communities in the future.⁴⁸

III. DIAND and Regional Variations

How are Canada's Indian policies maintained currently? In order to analyse this question, it is necessary to review DIAND's structure and regional variations in general.

DIAND has two major functions. These are Indian and Inuit Affairs, and Northern Affairs. The Department of Indian Affairs and Northern Development Act, 20 acts (The Indian and Inuit Affairs Program) and 14 acts (the Northern Affairs Program) defines the structure and mandate of this department.

The Indian and Inuit Affairs Program, or IIAP, is "responsible for providing the delivery of municipal- and provincial-type services to status Indian and Inuit communities."⁴⁹ In the area north of the 60th parallel, it is the Northern Affairs Program (NAP) that carries out different types of functions: "resource development, land use management and environmental protection."⁵⁰

The basic distinction between these two programs seems understandable, but the reality is very complicated in Canada's two northern territories. For instance, who would be responsible for the status Indians and Inuit in the Northwest Territories? As we will see later, two levels of government and the natives as well sometimes face difficulties in identifying the jurisdiction of the two governments. In addition, other federal departments also operate in the northern territories: the Department of the Environment, the Department of Fisheries and Oceans, the Department of National Defence, the Department of National

Health and Welfare, the Department of Energy, Mines and Resources, and so on. Therefore, DIAND cannot claim exclusive jurisdiction over the northern territories. One of the interesting accommodations of "shared jurisdiction" was the creation of the Canada Oil and Gas Lands Administration (COGLA) in 1980 which had to report to two Ministries - DIAND and the Department of Energy, Mines and Resources.⁵¹

The main office of DIAND is currently located in Hull, Quebec, and has five major units. These are the Indian and Inuit Affairs Program, the Office of Native Claims, the Corporate Policy Sector, the Northern Affairs Program, and the Finance and Professional Services units. Each unit is headed by an Assistant Deputy Minister (ADM). The Office of Native Claims is responsible for land claims issues which will be discussed fully in Chapter 5. As the main policy planning and policy development agency of DIAND, the Corporate Policy Sector is expected to identify and initiate future policy directions for this department. The Finance and Professional Services unit takes care of the administration of this federal department.

The total number of employees of DIAND was 5,948 in 1982,⁵² and its 1983-84 budget reached \$2,051 million.⁵³ DIAND is said to be highly decentralized. "Seventy-six per cent of departmental employees are located in regional and district offices across the country."⁵⁴

The IAP has five branches (Housing and Band Support, Education and Social Development, Resource Economic and

Employment Development, Program Planning and Policy Coordination, and Reserves and Trust). The NAP has four branches (Northern Policy and Coordination, Renewable Resources and Northern Environment, Northern Resources and Economic Planning, and Northern Regulatory Review).

The IIAP's local offices are classified under two categories. These are regional offices (program management) and district/sub district offices (program delivery). In 1984, there were 63 local offices in total.⁵⁵ With the exception of the Maritime provinces, each province and territory has a regional office and its chief is a Regional Director General (RDG). The Atlantic Regional Office is located in Amherst, Nova Scotia, and is responsible for Nova Scotia, New Brunswick, and Prince Edward Island. As we will see later, there is no DIAND office in the province of Newfoundland.

While the main duties of local offices are almost identical in every region; i.e., education, band government, community services, land administration, economic development, engineering and architecture and intergovernmental relations, at the same time regional variations in program delivery are visible. To illustrate this point, the variations in Newfoundland, Manitoba and the Northwest Territories are chosen here as our examples.

First, we will look at Newfoundland. Today there are 1,600 Inuit who live in five communities (Rigolet, Makkovik, Postville, Nain and Hopedale) and 850 Naskapis-Montagnais Indians who live in two communities (Davis Inlet and

Northwest River). These seven communities are all located in Labrador. One remaining Indian community is on the Island of Newfoundland: the Conne River Indian community whose population is about 580 Micmac Indians.⁵⁶ When Newfoundland joined Confederation in 1949, no specific mention was made of the aboriginal residents although "the question of the rights of Indian people was raised briefly."⁵⁷ It was believed that every Newfoundlander was equal and no special status should be given to the Indians or Inuit because of their ethnic origins. "It has been the consistent policy of Newfoundland governments not to differentiate between its citizens on the basis of racial or ethnic origin."⁵⁸ And the federal government also confirmed this position. "The federal government, notwithstanding its legislative authority with respect to indigenous people in other parts of Canada, has no desire to disrupt the 'status quo' in Newfoundland."⁵⁹

In 1954, however, the Canada-Newfoundland-Native Peoples of Labrador Agreement was concluded in order to provide some particular services to the Indian and Inuit communities. These included community and economic development, education, fisheries, housing and northern development. The federal government paid 90 per cent of the total cost of these services and the provincial government took care of the remaining 10 per cent. A similar agreement concerning the Conne River Indians was finalized in 1973. Currently these two agreements are renewed and in force.⁶⁰

The native communities in Labrador and Newfoundland are not necessarily happy about such agreements. The government branch that actually administers these programs is the Department of Rural, Agricultural and Northern Development of the provincial government, and DIAND is not involved nor does it supervise the process at all. From the native point of view, the government of Newfoundland has done an unsatisfactory and poor job in administering these programs.⁶¹ As we have seen earlier, this is the problem with the federal-provincial agreements; i.e., the fact that once an agreement is ratified, Ottawa is not able to impose its original plan even if the provincial government is not meeting the requirements. No Indian in Newfoundland is recognized as a "registered Indian" under the Indian Act, and no reserve is established by the federal government.

Unlike Newfoundland and the Northwest Territories, Manitoba seems to provide a standard style of administration which may be applicable in western Canada. In Manitoba, there are 60 Indian bands and two local DIAND offices serve the Indians. The Regional Office is in Winnipeg and responsible for 50 bands while the District Office in Thompson takes care of the remaining 10 bands. "The resources of the region were 649 person years of whom 294 were teachers in 1983/84. The total budget was \$199,147,000."⁶²

The RDG of Manitoba is responsible for the following programs:

Direct Delivery Programs - education, resource economic and employment development, social development, reserve and trust, band support and capital management, engineering and architecture and the Thompson office.

Support Programs - Manitoba resource development impacts office, finance and administration, program planning and management improvement coordination, communication, personnel, and intergovernmental relations.⁶³

The 1983/84 expenditures were as follows: education, 22.1 per cent; social development, 28.3 per cent; band support and capital management, 12.2 per cent; economic development, 3.7 per cent; capital, 23.8 per cent; teachers' salaries, 3.6 per cent; staff salaries, 5.5 per cent; and others, 0.8 per cent.⁶⁴

One outstanding characteristic of the Manitoba region is the high degree of decentralization.⁶⁵

Manitoba's tribal councils now have the major responsibility for program service delivery. It needs to be emphasized that the councils are not clones of the existing structure of Indian Affairs. Rather, and most definitely, they are independently designed and devised as a service system that is best suited for local Indian people who are roots of the tribal council concept.⁶⁶

The Manitoba region seems to be confident of its management. "The region's existence revolves around the realization of Indian self-government. With an air of confidence, this region looks forward to the achievement of that goal."⁶⁷ But the Indians in Manitoba do not share this view at all times. For the Manitoba Indians, decentralization sometimes means increased responsibility and underfunding of the programs at the same time.⁶⁸

Unlike the provinces, the two territories have to deal with complex situations because of their status in Canadian federalism.⁶⁹ With regard to education, the government of the Northwest Territories assumed responsibility for this area in 1969. "What distinguishes the territory from the provinces is the absence of Indian reserves in the Northwest Territories and the provision of education to all residents irrespective of race through a public education system."⁷⁰ While the Territories' Department of Education pays particular attention to the native children (two-thirds of all students in the N.W.T.) by emphasizing multilingualism and multiculturalism, one educational system is available to the entire population of the Northwest Territories. In 1967, the government of the Yukon Territory also became responsible for the education of its Indians.⁷¹

The health care issue is also complex. The Health Department of the N.W.T. is responsible for some areas (medical care and hospitals), but the Department of National Health and Welfare maintains nursing stations and hospitals in the N.W.T..⁷²

The issues of land management and resource ownership are another source of strain between the two levels of government. It is true that the territorial governments have been granted increased autonomy and self-management in the last decade by the federal government. The Commissioner became a kind of figurehead similar to the Lieutenant Governor of a province, and new financial arrangements were introduced in 1985 (from annual negotiations to multi-year

financial arrangements for example). But Ottawa seems to retain the final say in many areas. In 1984, the Yukon government criticized the COPE agreement (the Committee for Original Peoples' Entitlement) that finalized the land claims issue between the federal government and the Inuit in the western Arctic. In this agreement, the Yukon government was included as a member of the federal delegation; but the northern part of the Yukon was reserved as a new national park without any consultation and discussion with the government of this Territory. Therefore, the territorial government was simply ignored by the federal government in this case.⁷³

IV. Provincial Native Agencies

In the 1970's, it was not uncommon for provincial governments to establish their own native departments/agencies in order to deal with all situations rationally. In Quebec, there is SAGMAI, which is an abbreviation for Secrétariat des Activités Gouvernementales en Milieu Amérindien et Inuit. Established in 1978 as part of the Executive Council, the SAGMAI reports to the Premier directly. Its main duty is policy-making and coordination, and does not offer any programs to the Indians and Inuit of Quebec. "For the past five years, SAGMAI has pursued a number of goals, which includes harmonizing relations with Native communities and making government departments more aware of the situation of AmerIndians and Inuit."⁷⁴

As we will discuss fully in Chapter 5, due to the James Bay and Northern Quebec Agreement, many program delivery functions were transferred to both the native organizations and the provincial government from the federal government. As a result, the SAGMAI became a kind of provincial DIAND in northern Quebec.⁷⁵ As a result DIAND's local offices were all relocated south of the 50th parallel (Québec City, Pointe-Bleue, and Sept-Iles) leaving no federal Indian affairs presence in northern Quebec.

Alberta and Saskatchewan also have their own native affairs agencies. In Alberta, "the Liaison Group for Alberta Indians and Métis" was created in 1971, and attached to the Department of Northern Development. In 1975, this office was promoted to the Native Secrétariat and given a

minister responsible for native issues. The main functions of the Secretariat are policy development and coordination (Land Tenure Program, Urban Native Referral Program, for instance), and funding to native organizations.⁷⁶

In the fiscal year 1969-70, the Thatcher administration in Saskatchewan created an Indian and Métis department, and later it became the Indian and Native Affairs Secretariat (INAS). The INAS, like its Alberta counterpart, is headed by a minister responsible for these matters.⁷⁷

Ontario's situation is somewhat different. Within the government of Ontario, there are several units that deal with native citizens of that province; e.g., the Office of Indian Resource Policy (Department of Natural Resources), the Native Community Branch (Department of Citizenship and Culture). In addition, there is a tripartite committee, the Indian Commission of Ontario. Created in March 1978, this commission intends to be a mediator between the Ontario Indians and the federal and Ontario governments. (The Indian Chiefs of Ontario represent the status Indians in this case.)

It was felt that such a forum, by providing for input from an impartial or independent party, would help speed up discussion. ...The purpose of the Indian Commission from the outset was to overcome roadblocks which delayed or prevented discussion and to facilitate co-operation.⁷⁸

This Commission's function is multi-dimensional. "The Commission thus acts as a facilitator and a mediator. It may also function as a catalyst, a source of professional, independent opinion, a mechanism for the articulation of alternatives."⁷⁹

The sole Commissioner is Justice E.P. Hartt of Ontario and he employs only five people. "Precisely because the Commission wishes to avoid becoming a bureaucracy, it has turned to outside help when indicated rather than build up its own infrastructures; it has been assisted in its work on a project or advisory basis as needs arise, limiting such use to special occasions requiring legal, social, or economic counsel."⁸⁰ As an independent advisor, the ICO has tried, in the past, to resolve different issues such as policing, the wild rice problem, fishing rights, and land agreements.⁸¹

Recently, two agreements were concluded. The Islington Band and the Ontario Government Agreement was finalized in December 1983 in order to compensate for flooding damages and costs of mercury pollution. A fund of one and a half million dollars was created to deal with community development projects. Another agreement was the Islington Band and Ontario Hydro Agreement of December 1983.

Among other offers of settlement, Ontario Hydro has agreed to purchase 4,200 acres of land contiguous to the Reserve lands from the Ontario Government for the Band. The agreed-upon parcels of land will be added to the Reserve. In addition the Agreement specifies a monetary settlement of \$1,500,000.⁸²

V. The Off-Reserve Indians, Métis, Non-Status Indians and Urban Natives

It is often pointed out that some native groups are treated just like non-aboriginal citizens. What kinds of administrative relationships are there between the off-reserve Indians, Métis, non-status Indians and urban natives and different levels of government in Canada? This section will review this question briefly.

Off-Reserve Indians. What will happen if a status Indian or registered Indian leaves his reserve? Obviously he is no longer able to participate in every-day band politics and the reserve's way of life although he can retain his band membership. There are a few rules that determine the benefits available to off-reserve Indians, such as in the areas of education and health care. For example, the Master Tuition Agreement in Manitoba "covers pro rata operating costs of provincial schools for status Indians in attendance at provincial schools outside their reserves."⁸³ In 1975, \$1,036.60 per Indian student was paid by DIAND to the Manitoba government to cover 3,800 students, for a total of \$4,000,000.⁸⁴ If an Indian student attends a provincial school, he has to be away from his reserve. How does DIAND interpret this situation? "DIAND considers 'eligible' all status Indians living on reserves and those status Indians living off reserves who have not established permanent off-reserve residence."⁸⁵ If DIAND judges that a student's off-reserve residency is too long, he is considered no longer eligible for the service. "In 1975,

3,200 pupils who are status Indians resided permanently off reserves in Manitoba. DIAND has ruled these students are ineligible for claims by the province under the Master Tuition Agreement."⁸⁶

Since 1973, there has been an agreement on eligibility of the off-reserve Indians with regard to health and welfare services between Ottawa and the Saskatchewan government. Saskatchewan's Minister of Social Services, Alex Taylor, and the then Minister of DIAND, J. Chrétien, established the following rule in 1973. "It was agreed that treaty Indians would remain wards of the federal government for one year after moving off a reserve."⁸⁷ A similar agreement was also created in 1973 between Ottawa and Manitoba.

Métis and Non-Status Indians. At the federal level the Métis and non-status Indians receive government programs from the Department of the Secretary of State and CMHC. The Secretary of State Department's Aboriginal Representative Organizations Program covers expenses of aboriginal political organizations.⁸⁸ CMHC provides a Rural and Native Housing Program to native Canadians and rural residents.

Traditionally the Métis are regarded as a provincial responsibility. Except for Alberta, no special program as such has been initiated by any provincial government. In Alberta, due to the Métis Betterment Act of 1938, the Métis were able to create their own communities. Currently, in the northern parts of the province, eight Métis communities comprising a population of approximately 4,000 hold 501,810 hectares of land.⁸⁹ In 1980, the Métis Development Branch

of the Municipal Department (formerly the Department of Social Services and Community Health) became responsible for the Metis communities.

The intention behind the move was to shift the emphasis from a social-welfare orientation to one of concern for local development at the settlement level.⁹⁰

How will the 1985 Indian Act revision affect the non-status Indians? There are at least two points that we have to mention here. The first concerns membership.

Currently, and of course traditionally, it is the federal government that can determine who is an Indian and who is not. Because of Section 12(b)1 of the Indian Act, many Indian women who married White males lost their status, although Indian males could retain their status if they chose to marry White women. The 1985 Indian Act revision attempted to correct this discriminatory treatment based on sex. But many native organizations, especially the Assembly of First Nations and the Native Womens' Association of Canada, objected to this revision for a philosophical reason. They felt that it should be the aboriginal people, and not the federal government that should decide their status. Secondly, some Indian bands will reject those Indians who have newly obtained their status based on the Indian Act revision. Generally speaking, one can point out four benefits of being "status Indians", and non-status. Indians can expect to enjoy such benefits if they become eligible. These benefits are the right to live on reserves, the right to participate in band politics, education assistance and health care assistance.⁹¹

However, those Indians who have obtained status will not be eligible for the benefits automatically. In order to be qualified, they have to apply to their band for membership. Some bands may accept the applications, but other bands may reject new members. As for bands that are poor, the new members may become a burden as the band has to take care of additional members although economic resources of the band are limited. On the other hand, for a relatively well-off band, the new members may share the resources of the band with the new members (for instance, oil royalties) and this could lead to problems with the older members who may not wish to share.⁹²

The Urban Natives. The urban natives are usually located at the bottom of the strata of the urban population and their socio-economic conditions are said to be very serious in certain cities such as Winnipeg, Regina and Vancouver.

As one of many attempts to stabilize the native Canadians' way of life in urban centres, the Friendship Centre of Winnipeg opened in 1959 by offering "referral services for Indians and Métis newcomers."⁹³ "The referral services would offer newcomers guidance and counselling on matters of employment, housing, education, health and other community services."⁹⁴ In 1972, the national headquarters of the National Association of Friendship Centres was established in Ottawa, and there are now nearly 90 affiliates across the country. By recognizing the needs of the urban natives, the Migrating Native Peoples Program was

Initiated by the Department of the Secretary of State in 1972. In 1983, this program was renamed the Native Friendship Centre Program: a five-year project with a budget of \$78.6 million.

How did municipal or provincial governments react to the issue of the urban natives? From the local governments' points of view, it is difficult to establish 'native' programs because of financial and jurisdictional problems. A municipal government can deal with them as ordinary citizens, and perhaps this is the only answer to the problem.⁹⁵ So far, the Secretary of State Department provides the only program designed especially for the urban aboriginal peoples.

VI. Summary and Conclusions.

The main goal of this chapter was to identify the administrative aspects of the Aboriginal-White relationship in Canada. The second section examined three main policy trends: functional decentralization, federal-provincial coordination, and native participation. In the past decades, only DIAND was responsible for the status Indians and Inuit, and not many other departments were involved in this issue. But since the early 1970's, several federal departments and agencies have begun to provide their programs to native Canadians. Approximately one-third of the budget of the native programs is implemented by the non-DIAND departments. Also it is interesting to note that non-DIAND agencies are prepared to serve not only status-Indians/Inuit but also the Métis, non-status Indians and urban natives in different ways. The federal-provincial coordination covers many areas of service, such as policing and health care. The native Canadians also began to assert their views and demands when the native programs were implemented. As these trends indicate, the administration of Indian policy in Canada cannot be carried out without referring to the transformation of Canadian federalism. In other words, it would be almost impossible to maintain the traditional relationships between the government and aboriginal Canadians.

Regional variations of Canada's Indian policy were studied in Section III. Depending upon several factors (history, geography, administrative features), each region

seeks its "policy style": Newfoundland, lack of native programs; Manitoba, the case of decentralization; Northwest Territories, complexity and strain under the federal-territorial relationship. As a whole, it is clear that there is no 'standard' policy style with regard to the administration of Canada's Indian policy.

The fourth section briefly examined the provincial native agencies in Quebec, Ontario, Saskatchewan and Alberta. Each agency shares the same characteristic; i.e., it is responsible for policy coordination and development, but does not offer any programs.

Section V discussed the situations of the off-reserve Indians, Métis, non-status Indians, and urban natives. If a status Indian leaves his reserve and lives in a city, he has to face difficulties in dealing with different levels of government.

In this chapter, administrative aspects of the four characteristics are as follows: C₁ on equality, C₂ on domination, C₃ on pluralism and C₄ on assimilation. And as we have discussed in Chapter 2 (Section V), we have decided to measure the four characteristics based on our judgement and observation (high, medium and low).

- C₁: The aboriginal people are provided the same public policies by the government like other Canadians.
- C₂: The aboriginal people are provided inferior public policies by the government unlike other Canadians.
- C₃: A distinctive aboriginal policy is maintained.
- C₄: A distinctive aboriginal policy is denied.

The administrative position of the status Indians seems to be characterized by C₂ and C₃. While a distinctive aboriginal policy is maintained, the programs provided by the federal government do not improve the Indians' way of life very effectively. As we have discussed, three main policy trends do not necessarily ease the current strains. Therefore, according to our model, the control model would be the best choice for us: a high degree of pluralization and subtle government control and/or inability to maintain the situation - pluralism, high; domination, high.

The Inuit in the N.W.T. and northern Quebec can be characterized by C₁ and C₄. Although the Inuit are a majority in each region, the administrative features are those of the melting-pot model. In other words, the local autonomy granted to the Inuit is primarily based on "non-ethnic public rule," and this is especially applicable in the case of northern Quebec. However, there is no denying that such non-ethnic public rule is in fact "ethnic rule." Absence of distinctive ethnicity and integration based on equality seem suitable to describe the inter-group relationships of these areas - equality, high; assimilation, low.

Why would "assimilation" be applicable in the case of the Inuit? If we consider geographical elements (remoteness), assimilation may sound rather irrelevant. Certainly it is true that the Inuit could maintain their distinctive way of life without difficulty. However, their basic life style has been enormously influenced by that of

the west. Some of these areas of influence are in housing, education, health, sewage and water supply, food consumption and entertainment. In other words, they are exposed to the western (materialistic) culture, and their assimilation into the western civilization seems almost inevitable in spite of their geographical locations. Since government services and programs deal with every aspect of the Inuit life, assimilation is chosen here.

The assimilatory model can explain the position of the Métis and non-status Indians. A distinctive aboriginal policy as such is denied, and although the federal government does not provide inferior services, the socio-economic status of the Métis and non-status Indians is far below the average. They may choose to be assimilated into the mainstream of society no matter how undesirable this option may be - domination, medium; assimilation, medium.

Similarly, the position of the Indians and Inuit in Labrador and Newfoundland is described by C₁ and C₄. There exist no pluralistic institutions (no Indian band, no Indian reserve, and no registered Indian population), and any special status as such is denied. So, like the Métis and non-status Indians, the assimilatory model would be the best model for them - domination, medium; assimilation, medium.

The Alberta Métis, who maintain eight land-based communities, have a similar position to status Indians; namely, a distinctive aboriginal policy is maintained within the framework of the provincial political system, yet the kind of inter-group relationship is closer to "domination"

than "equality." On the whole, the control model is the most suitable choice, pluralism, low; domination, high.

As for the urban aboriginal natives, like the Metis and non-status Indians, the assimilatory model would identify their administrative positions in Canada; i.e., the lack of land-based communities, urban residency, and the absence of distinctive aboriginal policies designed for them - domination, high; assimilation, high.

Overall, it is necessary to note that some aboriginal Canadians indicate their dissatisfaction over the administration of Canada's Indian policy. But at the same time, it is important to remember that Canada is a federal and plural society. The diversity of regions, highly fragmented aboriginal communities, and complex intergovernmental arrangements make the situation extremely difficult. Any single remedy would be hard to obtain as long as Canada remains as a federal and plural society. The administration of the Indian policies cannot escape this syndrome.

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Aboriginal Peoples and Administration

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I. Introduction

In this chapter, political aspects of the aboriginal issue will be discussed: organizational development, devices of native political involvement, territoriality and autonomy, land claims settlements, and the James Bay and Northern Quebec Agreement of 1975. The main theme to be examined is relationships between the native peoples and the Canadian political system.

The first question concerns development and the roles of aboriginal associations: when and why did native groups begin to establish their organizations? The roles played by these associations have been crucial in terms of their influence on and visibility in Canadian politics, yet they seem to suffer crises of identity and legitimacy.

When the native peoples wish to exercise their political power, they can choose various methods and approaches such as lobbying, demonstrating, and media campaigns. In this section, three political devices are chosen in order to demonstrate the influence of the native peoples on Canadian politics. These are electoral power, access to the federal Cabinet and the federal Parliament. Are they useful political devices for native Canadians?

The issue of territoriality remained as a minor concern among political scientists until recently. In the case of the status Indians this subject is important, for their reserves are the bases for their political, cultural, economic and social activities. It is generally understood

that "Indians live on reserves". This is true, but greater detail is needed to describe the relationship between Indians and their lands. Although problems to do with Indian reserves are discussed occasionally, such examinations tend to be fragmentary. What is needed is to identify the political-economic position of the Indian reserves within the context of Canadian federalism.

Another topic we will deal with in this chapter will be the issue of land claims settlements. The federal government generally rejects dealing with issues of native land claims and self-government at the same time (settlement first, then self-government). But the native associations feel differently about this. To them, land claims and self-government are different sides of the same coin. The James Bay and Northern Quebec Agreement of 1975 provides us with interesting case studies on territoriality, autonomy and self-government for native Canadians.

Politically speaking, it would be inaccurate to say that all the aboriginal peoples are subjugated by White Canadians. The reality is far more complicated than this type of generalization. Why is this? This is the subject we will examine in this chapter.

II. The Aboriginal Organizations and Public Support

It is not uncommon for a minority group to establish its own political organization and attempt to influence a government's public policies or policy-planning in order to represent that group's distinctive interests and concerns. Like many other ethnic groups today, Canada's native peoples have established organizations and participate in political processes in various ways.¹

In addition, when a society is very receptive to the minority group's demands, this group can at least enjoy a favorable environment, directly or indirectly. But if the society is hostile to the minority group, this group has to negotiate with the government without public support. In order to discuss the nature of public support, one White native-support organization and the Berger Report will be examined.

Aboriginal Organizations. At the national level, aboriginal organizations were created mainly in the early-1970's, and there exist five major associations.

The Status Indians:

The National Indian Brotherhood (1968-1982)
In April 1982, the NIB was replaced by the
Assembly of First Nations.

The Inuit:

The Inuit Tapirisat of Canada (1971)
The ITC's constitutional arm, the Inuit Committee
on National Issues, was established in 1979.

Métis and Non-Status Indians:

The Native Council of Canada (1970)

Western Métis:

The Métis National Council (1983)

Native Women:

The Native Women's Association of Canada

Functions that are performed by native associations are numerous: lobbying the federal government, MPs and departments; implementation of programs; maintenance of their own organizations and consensus-formation within each constituency; and public relations activities. Without these organizations, it is certain that native administrative, political and constitutional developments in Canada would not have been possible in the past decade.

However, many native associations suffer serious problems, and their organizational bases are not stable. First, except for the Inuit Tapirisat of Canada (ITC), the native associations suffer problems of internal schism. With regard to the Assembly of First Nations (AFN), at least two native groups have questioned its legitimacy. These were the Coalition of First Nations, and the Prairie Treaty Nations Alliance. The former was created in March 1983 by Indian bands from B.C., Alberta, Manitoba, Québec, and the Maritimes. By withdrawing from the AFN, these bands indicated their dissatisfaction concerning provincial participation in the First Ministers' Conference.² "It maintained that discussions relating to aboriginal and treaty rights should be between Canada and the First Nations and should not involve the provinces."³ The Prairie Treaty Nations Alliance (PTNA) also disagreed with the AFN because

treaty rights of western Indians were not well protected by the AFN itself. The AFN-PTNA division was further politicized when D. Ahenakew, who was the National Chief of the AFN, 1982-85, was replaced by G. Erasmus of the Northwest Territories. Ahenakew's handling of the constitutional issues and financial accountability were the prime reasons for this leadership change. Resenting the AFN's decision, he later joined the PTNA.⁴ This internal fragmentation is serious not only in terms of a group's legitimacy but also its ability to manage financial resources. The PTNA insists that one-third of the AFN's budget from DIAND should be redirected to the western association because it represents one-third of the Indian population.⁵ The case of the non-status Indian and Métis is also complex. It was expected that the Native Council of Canada (NCC) would be able to consolidate the wishes and aspirations of the Métis and non-status Indians into one voice. Yet the two groups did not have the same interests or ideas at all times - the creation of the NCC was regarded as a marriage of convenience. This internal dispute was responsible for the establishment in 1983 of a new association, the Métis National Council (MNC), when the western Metis finally broke away from the NCC. Unlike the Coalition of First Nations (CFN) or the PTNA, the MNC successfully participated in the First Ministers' Conference of 1983.⁶

The Inuit's association, the ITC, seems to be more stable than those organizations previously mentioned

perhaps because of the nature of the Inuit's socio-political structure; i.e., homogeneity.

The Native Women's Association of Canada (NWAC) does not seem to suffer the problem of legitimacy for this organization represents all aboriginal women: the status Indians, Métis, non-status Indians and Inuit. But due to disagreement regarding revision to the 1985 Indian Act, Section 12(b)1, some native women's groups challenge the NWAC's legitimacy as well.

The second problem is raised by an ex-civil servant concerning the role of national organizations:

Bands are primarily concerned about "bread and butter" issues, while regional and national organizations stress broad policy questions.⁷

A common concern among reserve communities is that the regional and national Indian leaders have become Indian politicians and are no longer serving the communities which they presumably represent.⁸

There is no denying that national and regional organizations provide career opportunities for the native Canadians who generally find difficulty in pursuing careers in the mainstream of society.⁹

Below the national level, there are numerous provincial, territorial and tribal organizations, band governments, and regional associations.¹⁰ The relationship between a national organization and local units is not always an easy one. An example is the AFN. "In 1968, the National Indian Brotherhood was established as a federation of provincial and territorial organizations; with no representation from chiefs or band councils, it had no direct links with bands."¹¹ Then, requests to give "chiefs

direct control over national policies"¹² became urgent, and in April 1982, the NIB was transformed into the AFN. "The NIB corporate structure was retained for legal purposes, but the Assembly did not incorporate under Canadian law."¹³

Provincial/territorial organizations are not the same in terms of membership and organizational structure. For instance, in B.C., institutional development of the native peoples has been remarkable, yet internal rivalries have been also regarded as an obstacle to unity of the aboriginal peoples in this province.¹⁴ In the Yukon, the Council of Yukon Indians represents both the status Indians and non-status Indians, but this type of membership is rather exceptional.

It would not be fair if we neglected to mention the role of the federal government here. In 1971, the federal government began to support such native organizations under a program of core funding. Without adequate government support, it would be difficult to maintain such national organizations. Yet, from a native point of view, this funding system is seen as a manipulative tool on the part of the federal government. If the government does not approve of a particular group, it can then withhold allocation of funds to that group.¹⁵

As we have discussed before, the enormous diversity of interests and aims among native peoples makes group unity very difficult. From the government's perspective, the diversification of its clients makes negotiation difficult, but is not of major concern to the government. In Canada,

schism among native organizations seems inevitable, and it is these groups who have to pay the price of internal division.

Public Support. Is public support useful as well? D.B. Sealey and A.S. Lussier examine problems of a non-aboriginal support group in Canada. The Indian-Eskimo Association was created in 1960 and its main functions were in the areas of education and research. But the membership of this association was mainly White and in 1972 it was asked to change its name to the Canadian Association in Support of Native Peoples (CASNP). Yet, according to them, "certain provincial branches of CASNP were allegedly led by members who opposed the politics of the provincial organizations."¹⁶ H. Cardinal opposed this association in 1969 "because it drew money from both government and business that could be used more effectively by Indians and Métis groups."¹⁷ The CASNP ceased to exist in 1980.

In many cases, public support becomes a source of political power for native Canadians. One of the best examples is the Berger Commission which investigated the proposed MacKenzie Valley Pipeline project.¹⁸ In March 1974, Mr. Justice Thomas Berger of the B.C. Supreme Court was appointed Commissioner of the inquiry. His two-year investigation received much attention and public support in southern Canada as well as from native residents of the North, and the final report recommended that "no pipeline be built across the northern Yukon territory"¹⁹ and "the MacKenzie Pipeline should be postponed for ten years to

allow time for the settlement of native land claims and for taking measures to reduce the social costs."²⁰ Public support can be marginal, but if we compare the Berger inquiry with the Alaska Highway Pipeline Inquiry of 1977 commissioned by K.M. Lysyk, the contrast is striking for the latter study did not command attention and public support.²¹

III. The Aboriginal Peoples and the Political Process

How are the aboriginal peoples interconnected with Canadian politics in general? The relationship between the native peoples and the federal/provincial bureaucracies was discussed in Chapter 4, whereas the aboriginal-judicial relationship will be examined in Chapter 6. What is examined with regard to "political relationships" in this section is the native electoral power, access to the federal Cabinet, and roles of the federal Parliament. In other words, the way in which the native peoples attempt to transmit their concerns to the federal government will be discussed: how can they exercise their political power and towards whom?

Electoral Power. Do the native Canadians have influence over elections, and are they really using this electoral power? The answer is very complicated depending on the scope and level of elections.

At the time of the 1980 federal election, the National Indian Brotherhood (NIB) identified 21 ridings where "the population of Indian ancestry 18 years and over is greater than the margin of victory in the general election of May 22, 1979"²² and some MP's were evaluated positively or negatively by that organization. The regional breakdown of the 21 ridings was Ontario (6), Manitoba (2), Saskatchewan (4), B.C. (4), Nova Scotia (2), the Yukon (1), and the N.W.T. (2). Similarly, 24 federal ridings were identified in the same manner by an Ottawa consulting firm, Hoople,

Posluns and Associates, prior to the 1984 election: Ontario (7), Saskatchewan (6), B.C. (4), Manitoba (3), Alberta (2).²³ A major problem of native electoral power is that native people do not vote collectively. So native votes are important numerically, but do not bring power collectively. The NIB confirms this difficulty. "But such an alliance, or even an Indian block vote can happen when there is a disciplined and cooperative effort which transcends all the petty differences which so often dominate any political movement."²⁴ In addition, election participation by Indians is very low: one-third of them voted in the 1979 federal election.²⁵

At the provincial or territorial level, native voting power is not negligible. This is particularly true in the N.W.T. where the native peoples are in the majority. In fact native Members of the Legislative Assembly (MLA's) made up the majority of the Territorial Legislature in 1985, and 14 out of 24 of the total MLA's are Indian, Métis or Inuit politicians.²⁶ However, we should not assume that native MLA's are acting as a unified group. Unlike the Yukon where partisan politics is a norm of territorial politics, the N.W.T. does not maintain rigid party politics nor ethnic politics. Instead, the politics of the N.W.T. is characterized by "consensus politics" and while ethnicity is important, every issue is expected to be solved by a consensus of all members.²⁷ In other words, party politics and ethnicity are not unimportant, but a harmonious

decision-making process is important. As a result, it is rather wrong to expect fierce competition between native MLA's and White MLA's in the N.W.T.

Another example of electoral power is found in Saskatchewan. According to Senator D. Stewart, about 10-15 of the 64 provincial ridings can be influenced by the Indian, non-status Indians and Métis voters.²⁸ Even municipalities may be influenced by the native voters as well. Senator Stewart, the former mayor of Prince Albert, predicts that native electoral power has the potential of being a strong influence at the provincial and municipal levels of government.

However, this potentially-powerful tool has not been used often in the past. One reason is that native Canadians tend to associate themselves with the federal government, and they seem uninterested in local politics. So native voting power could be a powerful tool, but it has rarely been employed. This analysis is confirmed by another example. When the federal voting right was granted to the status Indians and Inuit in 1960, the reaction was not completely positive. In particular, some status Indians did not like this change as there was only one link between "the Indian Nation" and "the British Crown" and the new franchise would endanger their international status spelled out in Indian treaties.

In 1960, after the Canadian government had 'granted' to the "Indians of Canada," the right to vote in Canadian federal elections, a telegram was sent to Ottawa on behalf of Kahnawake, rejecting the "right" to vote, expressing the exact sentiments of the Haudenosaunee as a whole. To this day, the

Haudenosaunee do not take part in Canadian federal and provincial elections (nor in American federal and state elections).²⁹

Professor V. Valentine indicates another reason of the invisible native electoral power and that is gerry-mandering. According to him, electoral boundaries (federal and provincial), are determined (gerrymandered) by governments in order to assure hegemony of the White population, especially in western Canada. As a result, the native voting power is not well articulated in Canadian politics.³⁰

Then should there be reserved seats for the native Canadians in the House of Commons or in provincial assemblies? It is well known that the Maori of New Zealand are given reserved seats in the national parliament. Some native organizations, especially the Native Council of Canada (NCC), support this idea.³¹ But one status Indian leader, Sol Sanderson, does not like the concept at all.

It is likely that if there were a number of Indian MPs elected to Parliament or appointed to the Senate, the basic problems affecting Indians would be aggravated because government leaders would then consult them instead of coming to the leaders of our people in Canada.³²

The first Indian Senator was appointed in 1958 by the Rt. Hon. John Diefenbaker. He was James Gladstone, a member of the Blackfoot Nation in Alberta. Then there was Mr. Willie Adam of the N.W.T. who became the first Inuit Senator in 1977.

Mr. Guy William, a B.C. native, became the second Indian Senator in 1971, and one of the leaders of northern Quebec, Mr. C. Watt, was appointed to the Senate as the

second Inuit Senator in 1982. Mr. P. Ittinuar of the eastern Arctic was elected in 1979 as the first Inuit Member of Parliament, representing the riding of Nunatsiak. In the 1984 election, Mr. Thomas Suluk of the Progressive Conservative Party was elected as the M.P. from the same region. The current total of native M.P.'s and Senators is 4: 3 Senators (G. Williams, C. Watt and W. Adams), and one M.P. (T. Suluk).

Do party politics influence the native communities in Canada? Professor Valentine points out a close rapport between the federal Liberal Party and some native leaders. For instance, D. Ahenakew and S. Sanderson are strong supporters of the Liberal Party and Mr. Sanderson was once a president of the Saskatchewan Liberal Party. As we have mentioned briefly in Section II, the Métis National Council (MNC) was invited to participate in the 1983 First Ministers' Conference. After splitting off from the Native Council of Canada, in order to obtain its seat the MNC threatened court action to block the constitutional conference in early March, 1983. However, the then Justice Minister, Mark MacGuigan and the MNC's leader, Mr. James Sinclair were close friends politically, and the Justice Minister decided to offer the seat to the Métis organization. While several reasons could be identified, the political connection between MacGuigan and Sinclair is believed to be the main cause of the Justice Minister's quick move.³³

Joint Cabinet Committees. It is rare for the Government to establish joint Cabinet committees with any particular ethnic group in Canada. While the political voices of French Canadians, in Cabinet, can be represented by some Cabinet ministers who may work on their behalf, the other ethnic groups usually find difficulty in participating in the Cabinet-level decision-making process directly. So in this context, rare chances were given to both the NIB and Native Council of Canada (NCC) in the 1970's.

The Joint Cabinet/NIB Committee began in 1974 in order to solve some issues pragmatically. There were three levels of committee activity: full joint committee, joint sub-committee, and two joint working groups on land claims and the Indian Act. The full joint committee's "policy recommendations were to go to the Cabinet Committee on Social Policy, and eventually to the full Cabinet for Government consideration."³⁴ This new experiment, however, came to an end in 1978 due to difficulties in maintaining this committee. "Despite dedicated efforts by key actors on both sides, the Joint Committee failed to produce any mutually agreed upon policies in its lifetime."³⁵ Why was this experiment a failure? S.M. Weaver finds one reason for this problem: different perceptions and expectations of both sides.

In the end, the NIB saw the joint committee as a political arena for producing immediate, general, ideological policies that would affirm the unique aboriginality of Indians whereas the cabinet, seeing Indians essentially as an underprivileged group in Canadian society, viewed the joint committee as a political/bureaucratic arena for producing future, specific, pragmatic policy recommendations that would ameliorate Indian socioeconomic conditions.³⁶

The Native Council of Canada has not completely abandoned this type of political device today. From 1977 to 1982, five Joint Cabinet/NCC Committee meetings were held to discuss economic development, land claims, and the Constitution. In 1984, a proposal to continue the committee was sent to the Deputy Prime Minister, Mr. E. Neilsen, by the NCC, but the NCC received a strange reply from the Government. By confusing the name of the NCC, the Government responded to the native organization that no joint cabinet committee was held with the National Capital Commission (NCC!).³⁷

Parliament and Standing/Special Committees. Unlike departments or agencies of the federal government, parliamentarians tend to maintain harmonious relationships with the native peoples. These relationships were crystallized in a report on Indian self-government which was released in 1983. This report was written based on submissions and hearings from the native communities across the nation. In fact, three native organizations were asked to participate on a special committee on Indian self-government. They were the Assembly of First Nations (AFN), the Native Council of Canada (NCC), and the Native Women's Association of Canada (NWAC).

This kind of rapport may not be considered strange when viewed in the context of other parts of the Government. Direct Cabinet access is, as we have seen before, not so promising. First, it is hard to establish, second it is not easy to produce positive results within a reasonably short

time period. The Department of Indian Affairs and Northern Development is a bureaucratic institution in charge of various aspects of the Indian and Inuit requirements, but cannot act totally on behalf of the native peoples because of complicated federal-provincial agreements and functional decentralization of program delivery within other federal government departments and agencies. This makes the entire situation very complex. For example, the judicial functions of the federal or provincial governments are sometimes helpful, but may also be expensive for two reasons; 1) legal expenses in bringing cases to the courts, and 2) unpredictable results. If a court decision is in favour of the native side, then, litigation makes sense. But if the court decides against the native side, the litigation may produce an unwelcome precedent.

The federal parliament is not directly responsible for program delivery nor for legal decisions. One of its main responsibilities is to supervise and monitor the implementation of federal government legislation. The Standing Committee on Indian Affairs and Northern Development is said to be one of the least partisan committees in the House of Commons. According to Mr. Keith Penner, a Liberal critic of Indian Affairs and the Chairman of the Special Committee on Indian Self-Government, the former Minister of DIAND, Mr. J. Munro, was even criticized by his fellow Liberal MPs when he was invited to state his departmental policy in the Standing Committee. Mr. Penner indicated that if there was a division in the Committee, this division was based on

knowledge and understanding of the issues, and not based on partisan points of view.³⁸

How does the Standing Committee oversee the actions of the federal government on Indian matters? The question of program implementation of the James Bay and Northern Quebec Agreement is illustrative in this context. The Cree Indians and Inuit indicated the problem of implementation before the Committee in March 1981. Both the federal and provincial governments had not respected provisions of the Agreement. After these hearings, the Committee recommended to DIAND that it review the Agreement, and Mr. Munro established a special team to investigate the matter. The review team's report, The Implementation Review, was released in February 1982, and in it some problems were identified. Once again, in May 1982, the Cree Indians and Inuit were asked to express their opinions before the Committee. The overseeing function of the Standing Committee did not produce immediate positive results for the native groups, but the Minister and DIAND were forced to consider the native complaints. (This subject will be fully discussed in Section VI of this chapter.)

To what extent do parliamentary committees influence the Government's long-term Indian policy? While no one is sure about the possibility of Indian self-government at this time, the Special Committee on Indian Self-Government has discussed Canada's long-term Indian policy. The Standing Committee agreed to establish a special committee in order to study the problem of sexual discrimination relating to

Section 12(b)1 of the Indian Act in September 1982. The federal Minister responsible for the status of women urged the Standing Committee to proceed with the study as soon as possible. As a result, the Sub-Committee on Indian Women and Indian Act was created in September 1982, and its committee hearings and final report were completed by the end of September 1982. Following this study the Standing Committee was urged to consider the issue of native autonomy. As a result, a Sub-Committee on Indian Self-Government was established. (Later this sub-committee became the Special Committee on Indian Self-Government.) After finishing local hearings and analyzing the research, the Special Committee published its final report in October 1983, and the federal government was formally asked to respond to this report.³⁹

While a Standing Committee of the House of Commons can remain non-partisan, as Mr. Penner indicated, the House of Commons itself can politicize the issue of Indian affairs to a large extent. When a confidential Cabinet task force report which recommended spending cuts on native programs (approximately \$311 million) was revealed to the public in the spring of 1985, the two opposition parties strongly criticized the federal government.⁴⁰ The report was prepared under the supervision of the Deputy Prime Minister, yet the federal government insisted that the Cabinet was not aware of this report.⁴¹ In spite of this federal position, one senior civil servant of DIAND (Mr. John Price) decided to reveal the report to the public and was subsequently

fired by the department in July 1985. He was also charged by the RCMP "for unlawfully giving a secret Cabinet document to an unauthorized person."⁴² Interestingly enough, the federal Justice Department decided not to pursue the charge in September 1985 against Price.⁴³

IV. Territoriality and Autonomy

The section will extensively examine three aspects of native political units: territoriality, decision-making power, and economic basis. It is not our intention to provide any kind of future prescription for self-government. Rather, we intend to analyze the current situation more or less systematically.

Territoriality. First of all, we must ask a simple question -- is it true that Indians live on reserves? This question does not entirely encompass the territorial aspects of Indian communities. So let us review a few important elements one by one.

By December 31, 1983, there were 578 Indian bands in Canada and these bands possessed 2,242 separate parcels of reserve land totalling 10,021 square miles.⁴⁴ The average band population is about 550. A problem we shall examine is the relationship between Indian bands and reserves. Generally speaking, the average Indian band possesses at least two or three parcels of land. However, this is not always the case. In B.C., many Indian bands have more than 10 parcels of land. For instance, the Lake Babine band has 24 parcels of land, of which only three are inhabited by band members.⁴⁵ On the other hand, some Indian bands have no reserve at all. In the Yukon and the Northwest Territories, there are "settlements" that provide land-based territories. The only "reserve" in the N.W.T. was created in 1974 at the Hay River.⁴⁶ In Newfoundland and Labrador, there is no formal "status Indian" or "Indian reserve" in

existence (this was fully discussed in Chapter 4). The Lubicon Lake band of Alberta also does not have a reserve.⁴⁷ Although in 1983 and 1984 the federal government proposed to the Alberta government the creation of an Indian reserve for this band, the provincial government did not accept this recommendation. The band's territory is called "the little Buffalo Indian Settlement," and if a reserve was granted it would be an unusual exception in Western Canada.⁴⁸

If we attempt to classify the territorial relationship strictly, there are four types of residency in the Indian communities.

- 1) On reserve (own band)
Registered Indian band members who are residing on reserves set aside for their band.
- 2) On reserve (other band)
Registered Indian band members who are residing on reserves set aside for other bands.
- 3) On Crown land (own band)
Registered Indian band members who are residing on Crown land in a community administered by their band.
- 4) On Crown land (other band)
Registered Indian band members who are residing on Crown land in a community administered by other bands.⁴⁹

Why were reserves created? One reason for establishing reserves was to avoid conflicts between the native and White population as much as possible; i.e., separation of two distinctive societies. While Indian treaties usually spelled out the requirements for the provision of reserves in detail, where no treaty was ratified between the Indians and Whites, as in the Maritime provinces, Quebec, and B.C., no reserves were identified. For instance, the origins of the Indian reserves in Quebec are diverse. "The situation

is complicated by the fact that some reserves have been established by one law and increased through purchase, while others have been set up by one law but modified by another. Some have never been legally constituted at all."⁵⁰

According to a provincial royal commission (La Commission d'Etude sur L'Intégrité du Territoire du Québec), eight types of reserves are summarized as follows:

created under the law of 1851 (9); created under the lands and forests acts of 1922 (9); leased land (1); settlements simply occupied (12); reserves existing before 1851 (6); reserves transferred from Quebec to Canada (3); reserve where Quebec renounced its rights (1); reserves purchased from a private party (7)⁵¹
(number of reserves)

The next question to be discussed here is population size. The diversity of population size is enormous. In B.C., there are seven Indian bands whose population is less than 20: the Kwiakah band, 14; the High Bar band, 9; the Cowichan Lake band, 8; the Aitchelitz band, 18; the Coquitlan band, 18; the New Westminster band, 2; and the Popukam band, 7.⁵² On the other hand, the largest single band in Canada is the Kahnawake of Quebec whose population is 5,364.⁵³ And the Six Nations of the Grand River is composed of 13 bands with a total population of 10,544.⁵⁴ Therefore a small band can be as small as a family whereas a large band or band council can be as large as a town or village. A national overview of the Indian population is as follows: 0-99, 81 bands; 100-199, 95 bands; 200-499, 191 bands; 500-999, 115 bands; over 1,000, 96 bands. The distribution by these bands by provinces is shown in Table 3.

Table 3

Band Population

Popula- tion Region	0-99	100-199	200-499	500-999	Over 1,000	Total	
						Popula- tion	Number of bands
P.F.I.	-	-	2	-	-	564	2
N.B.	5	1	5	3	1	5,944	15
N.S.	-	2	8	-	2	6,308	12
Quebec	2	5	12	9	12	33,911	39
Ontario	17	19	39	23	17	75,385	115
Manitoba	4	3	18	15	20	51,376	60
Sask.	2	4	14	30	18	53,445	68
Alberta	3	4	10	12	12	42,248	41
B.C.	46	53	67	16	13	60,811	195
N.W.T.	1	-	9	6	1	8,476	17
Yukon	1	4	7	2	-	3,536	14
Total Canada	81	95	191	115	98	341,968	578

Source: Registered Indian Population, 1985.

However, it is necessary to emphasize one point when we consider the Indian population. The data we summarized include both on-reserve and off-reserve populations who are recognized by the federal government as "registered Indians." If we exclude the off-reserve Indian members, the actual members of the on-reserve population would be approximately one-third of the total figures. In the case of the Kahnawake band, only 91 Indians are living outside the reserve and the remaining 5,273 belong to the on-reserve population. On the other hand, the majority of the Coquitlam band of B.C. is off-reserve leaving only five persons on the reserve. Therefore, although nationally one-third of the Indian population is off-reserve, each band seems to have a different on- and off-reserve residency pattern.

In addition, we should be aware of the location of Indian reserves. The majority of the Indian population (65 per cent) is located in rural and remote communities, and when we compare this figure with the Canadian population (25 per cent rural residency), the contrast is distinctive.⁵⁵

If we consider "economic aspects" of autonomy, in many cases, a reserve or a few reserves do not support the Indian communities' traditional way of life such as hunting, fishing, trapping and farming. The reserves tend to be small, and various regulations of provincial governments for areas surrounding the reserves make self-sufficiency very difficult.

What is the territorial base for the Inuit? The Inuit are, from an institutional perspective, less structured than the status Indians. First, Inuit do not have reserves. Like the status Indians of the northern territories, the Inuit have as their bases communities or settlements, and no legal provisions are made concerning territoriality of the Inuit. Second, while the status Indians have a political unit at each band level (the band council), the Inuit have no "Inuit band council." All they have is local/community governments which have no formal ethnic characteristics. The Métis and non-status Indians, with the exception of those previously mentioned in Alberta, do not have legally-defined territorial units in Canada.

Aboriginal Autonomy. At first, it seems reasonable to say that autonomy for Indians is very much assured. They have reserves, their own band governments, various government programs, and a decentralization in the administration of program delivery. And while this is not always satisfactory, the federal government is attempting to meet Indian demands and even the concept of "self-government" was adopted in Bill C-52 of 1984. With all this the majority of Canadians may feel that the Indians' desire for autonomy has materialized.

The reality surrounding Indians is, however, different from this general perception. The first example is the power of band governments. Since 1951, an Indian band council has had by-law making powers. Various arrangements and decisions on Indian reserves are determined by the band

councils such as traffic speed and traffic signs, curfews, water supply and sewage, fish and game laws, and appointment of band officials. From 1951 to 1978, 1,158 by-laws were passed by band councils.⁵⁶ If this by-law making power is significant the band government can enjoy local autonomy like other municipal governments. But the federal-band governments relationships are different because of Ottawa's supreme position in this matter. In other words, a decision made by the council has to be reviewed by the federal government. The 1951 Indian Act is, in this sense, not much different from the previous legislation.

In the final analysis, the 1951 Act differed only slightly in tone from the Indian Act of 1876. Both provided for a cooperative approach between Government and Indians towards the Government of Indian "advancement" and assimilation. Nevertheless, while band council powers had been extended somewhat since the 1876 Act, by 1951 ultimate authority still remained with the Minister or Governor in Council.⁵⁷

One example would suffice in order to illustrate this point. "Section 80 of the Indian Act authorized band councils to pass by-laws on, for example, public health or traffic regulations."⁵⁸ But this did not mean that every band council was allowed to do so. If the Minister was of the opinion that the band was advanced and capable, then the band by-laws were allowed. But, if the Minister thought otherwise, he "could veto any band council decisions."⁵⁹ Section 82 also granted money by-law making power only to "advanced" bands.

The picture of Canadian federalism might be very much different if Ottawa still retained and used the power of disallowance and reservation over provinces, and if

provincial governments classified "advanced" and "under-developed" municipalities and treated them differently. With regard to band governments, the hierarchical pattern is predominant and, unlike provinces and municipalities, band governments seem not to be a part of federalism but a ward of federal authority.

Are the Inuit in the N.W.T., Quebec and Labrador and the Métis in Alberta facing similar problems? The Inuit in the N.W.T. do not have their own aboriginal government. All they maintain are local governments. Depending on the population size, there are five types of local government: city, town, village, hamlet, and settlement. (The local and municipal government system was introduced in 1967.)

City: over 6,000 and taxable assessment of \$2,500 per capita.

Town: over 1,000 and taxable assessment of \$2,500 per capita.

Village: 500-999

Hamlet: petition of 25 residents and Commissioner's approval.

Settlement: not incorporated.⁶⁰

Let us take one example here. Arctic Bay had 387 residents in 1980 and the majority were Inuit (97.4 per cent); hamlet status was granted to this community in 1976. Like Arctic Bay, many communities in the eastern Arctic have settlement councils.

In the MacKenzie Valley area, the situation is complicated because of dualistic local government systems:

band councils for the status Indians and hamlet/settlement councils for the Inuit, Métis, non-status Indians and Whites. "The introduction of the municipal system in 1967 thus resulted in the creation of parallel bodies in the Indian communities. In consequence, there is conflict and competition between two structures."⁶¹ In Fort Good Hope (82.6 per cent, Dene; 0.9 per cent, Inuit; 16.5 per cent others) two local governing bodies were integrated in 1981 in order to serve the 450 residents efficiently. A similar experiment was also conducted in Fort Resolution.

As far as Métis colonies of Alberta are concerned, their political status seems to be stronger than the other native groups such as the non-status Indians. But the provincial government has unilateral control of the situation. For instance, the Wolf Lake community was forced by the province to leave its land without the prior agreement of the natives. "In 1960 the Alberta government decided the land was no longer suitable for Métis settlement and took the land away. All the families living there were moved out. ... Some Métis were very unhappy about once again losing their land and are still trying to get it back."⁶²

Economic Development and Indian Reserves. Another aspect of the hierarchical structure is found in the economic basis of Indian communities. According to an excellent case study on this subject, "Economic Foundation of Indian Self-Government," we can point out at least four major (institutional) obstacles to economic development: the Indian Act, wildlife conservation legislation and regulations, DIAND, and land claims policy.

The Indian Act does not clearly define rules and regulations concerning Indian economic development. "The major Indian Act provisions affecting Indian economic development are unclear and inconsistent in meaning... The ambiguities in the Act only serve to complicate and confuse the political relationship between Indian nations and the Canadian state."⁶³ There is one interesting example to discuss at this point and that is the incorporation of Indian economic units. Indians are not asked to pay certain federal and provincial taxes (Sections 87 and 90 of the Indian Act) and this practice is usually regarded as a kind of privilege, to which non-Indians are not entitled. If the Indian communities were all located in a unitary state, this practice might be easily carried out. But it is the provinces that regulate economic transactions of the non-Indian and Indian population. "Most of the laws affecting legal vehicles for economic organization are provincial. Indian governments are legitimately concerned that DIA requirements for incorporation will make Indian lands and resources vulnerable to further encroachment by provincial authorities."⁶⁴ Why is incorporation recommended? "The main reasons advanced by the Department for incorporation are the advantages obtained from limited liability and its own desire to establish a legal entity for business purposes."⁶⁵ So incorporation makes borrowing and credit purchases accessible, and as a result, it makes economic development possible. But there are disadvantages as well -- loss of tax exemptions, transfer of land through

leasing arrangements, uncertain jurisdiction of band councils over businesses on reserves, and subjection of "non-Indian" companies to provincial income and sales taxes, where applicable.⁶⁶ So Indian band councils are not well prepared for economic development, and the legal entities are rather complicated and confusing.

The DIA consistently describes band councils as equivalent to rural municipalities. However, the Department has been reluctant to define them as municipalities for tax purposes because they are incorporated. Under these circumstances, band councils would have to become non-Indian in order to clarify their status as legal entities.⁶⁷

With regard to wildlife conservation, government regulations are sometimes seen as obstacles to native economic development. For instance, in the western provinces the Natural Resources Transfer Agreements restrict the traditional native economic activities. Commercial hunting and fishing are subject to provincial game laws. "In non-treaty areas, or areas not covered by the Natural Resource Transfer Agreements,"⁶⁸ the native hunting and fishing rights are tightly regulated by both levels of government. "Non-treaty Indians and those not protected by other federal legislation are subject to provincial laws of general application which are not related directly to Indian status or rights."⁶⁹

The third problem is DIAND itself. This department does not see the importance of a long-term economic development policy for the native people.

Approximately 94% of all programme appropriations are directed to what the department calls "maintenance and remedial programs." In contrast about 6% of the budget is directed to job-creation and economic development initiatives.⁷⁰

This kind of criticism was also raised in the Hawthorn report of 1967.⁷¹ From the native point of view, the lack of a long-term perspective would not improve the native communities at all. "The Band [the Bella Coola band of BC] believes that these spending priorities deliberately maintain dependency and only serve the interest of the Department."⁷² The existing economic development policy is criticized as follows:

Every band, tribal council and economic development enterprise involved in our case studies stated that the Department of Indian Affairs lacks comprehensive planning. They pointed to haphazard, project-by-project funding, lack of follow-through, and ad hoc development projects as the result of an inefficient, top-heavy bureaucracy out of touch with community needs and interests.⁷³

In conclusion, from the political and economic points of view, the existing band government system seems not to have real power to manage local autonomy and self-government. If almost every aspect of the Indian life is regulated and supervised by the federal and provincial governments, such "autonomy" does not make sense for the Indians.

V. Land Claims Settlement

From a political scientist's perspective, the issue of land claims settlement has two important implications. First, it can be seen as a case study of conflict management -- how does a government try to solve this problem politically? The aims, goals, and processes of land claims settlement are good examples in the study of conflict management. Second, the issue of land claims and the notion of self-government are closely related to each other. This is particularly true in the case of "comprehensive claims," and we have already mentioned one example -- the James Bay and Northern Quebec Agreement of 1975.

This section will try to analyze "goals" and "processes" of land claims settlement in general, and then the James Bay Agreement in particular will be examined in the next section. While legal and constitutional implications of this issue will be briefly mentioned here, the main focus is "political." Chapter 6 will extensively discuss "meaning" and "origins" of aboriginal rights, and the constitutional debate.

Nature of Land Claims. The aboriginal people have maintained a close and special relationship with the land. Unlike European settlers, land has had many meanings for the aboriginal Canadians other than just being property. Through countless interactions between the aboriginal population and White immigrants, the original form of the native land holding system has been dramatically changed and transformed. As we have seen in Chapter 3, this process of

accommodation was in favor of the White residents, and the native Canadians' demands and wishes were not necessarily fulfilled by government authorities. The result has been rather negative as demonstrated by the native population's dissatisfaction over the land claims problem.

The current government policy on land claims, which was introduced in 1973, can be understood as an attempt to recognize grievances and formally correct government misconduct of the past. In other words, the government began to understand and appreciate aboriginal people's notions and concepts of land ownership.

Why did such a change occur? There are several factors which forced the federal government to introduce a new policy in 1973.⁷⁴ Politically, Ottawa was prepared to find a new method to deal with the native issue when the Rt. Hon. Pierre Trudeau's government was formed in 1968. One of the attempts was the release of the White Paper in June 1969 which suggested elimination of special Indian status by emphasizing liberalism and equality. Yet this White Paper was severely criticized by Indian groups, and in March 1971, Mr. J. Chrétien, the then Minister of DIAND, formally abandoned this proposal. Another attempt was the creation of the Canadian Indian Claims Commission in December 1969, and Dr. L.I. Barber was appointed as the first commissioner. Legally, a landmark decision was made by the Supreme Court of Canada in 1973 (Calder vs. Attorney-General). The Nishga Indians of B.C. were disputing with the provincial government over the ownership of their lands. While the

court itself declined the claims based on a technical reason, "six of seven Justices of the Supreme Court of Canada recognized and confirmed that there was such a thing as a native title."⁷⁵ This decision was critically important because the court acknowledged the existence of a native claim for the first time.

Prior to 1973 the government held that aboriginal title claims were not susceptible to easy or simple categorization; that such claims represented, for historical and geographical reasons, such a bewildering and confusing array of concepts as to make it extremely difficult for either the courts of the land or the government of the day to deal with them in a way that satisfied anyone. Consequently, it was decided such claims could not be recognized.⁷⁶

Therefore, after the 1973 decision the government was not able to avoid this issue as it had in the past.

Another source of pressure to recognize land claims was the development plans and projects for the north in the early-1970's. The Mackenzie Valley of the N.W.T., and northern Quebec each had large-scale energy projects which required dealing with native claims. In addition, the state of Alaska was about to finalize a claims agreement.

What is the land claims issue? According to the Indian Claims Commission's study, there are three types of claims: aboriginal rights, treaty and scrip settlement grievances, and band claims.⁷⁷ As original inhabitants of North America, the Indians and Inuit claim that their land ownership is still valid, and the government is asked to honor this concept. "While this content has never been clarified in Canadian law, aboriginal title has been referred to by the judiciary as a personal and usufructuary

right, or right of use and occupancy, 'dependent upon the good will of the sovereign.'"78 The second type of claims issue is summarized as follows: depending on the nature of each treaty and scrip settlement, various types of compensation and government programs were promised. But in some cases, these provisions were neglected and the Indians felt their treaty rights were violated. So, the government is required to do something in order to correct the previous misconduct. The third type of claims issue is related to reserve lands.

In the early eighties, the federal government published two booklets outlining two types of claims and government policies; i.e., comprehensive claims and specific claims. "Comprehensive land claims relate to the traditional use and occupancy and the special relationships that Native people have had with the land since time immemorial."79

One case (Inuvialuit, western Arctic) has reached a final settlement. Five other cases remain unsolved: Conseil Attikamek-Montagnais du Québec, Tungavik Federation of Nunavut, Dene Nation/Métis Association of the N.W.T., the Council of Yukon Indians and Nishga Tribal Council.80

Specific claims are related to "the administration of land and other Indian assets and to the fulfillment of treaties,"81 and over 200 claims were presented to DIAND.82

The Government's attempt to deal with the issue was marginal until 1973. In the U.S., the year 1946 saw the creation of the Indian Claims Commission, and the Canadian Parliament was inspired by the idea. The establishment of

a similar commission was recommended by the Joint Committees of the Senate and House of Commons on the Indian Act (1946-48), and on Indian Affairs (1959-61), and Bill C-123 was introduced in June 1965 in order to establish an Indian claims commission. But this bill was criticized because of its limited capacity and power. Due to minor roles given to the commission, Indian opposition and the dissolution of Parliament itself, this bill was to die prior to passage.⁸³

In late 1969, the Canadian Indian Claims Commission was created by the Trudeau Government, yet the majority of Indians were suspicious. It was regarded as "an outgrowth of the unacceptable White Paper." In 1977, this commission was replaced by the Canadian Indian Rights Commission and this second commission was itself dissolved in January 1979.⁸⁴ Unlike our southern neighbor, a neutral independent commission has not been institutionalized in Canada. Instead, the Office of Native Claims (ONC) was created within DIAND in July 1974.

Process of Land Claims Settlement. Theoretically Indian bands can choose two approaches; i.e., the courts or the Office of Native Claims.⁸⁵ Like ordinary cases, Indians can bring a case of land claims into court, where the judicial decision will finalize the dispute between the government and the Indians. Another approach is to discuss the matter with the ONC of DIAND. If litigation is a sufficient and effective method of solving the issue, the second approach may not be necessary. Why is the second approach frequently used by many native groups?

The problems of litigation from the native perspective are twofold -- high costs and unpredictable results of court decisions. If the result is negative, bringing the case before the judiciary might be disastrous. The second approach has several advantages for both sides at the same time although no legal or judicial implications will be attached to this case. From the native point of view, there are at least two reasons to adopt the second approach.

First, research ~~expenses~~ are provided by DIAND (not from the ONC but from the Corporate Policy Branch), and even professional and technical advice would be made available from DIAND to the Indian claimants. The second reason is that by discussing the case with the ONC, the Indians can negotiate every aspect of settlement whereas in litigation the courts will listen to both sides, but neither the Government nor the native claims can control the result.

Through formal and informal consultation, the native groups participate in the process. From the Government's point of view, there are also advantages. By avoiding sweeping judicial decisions which may be extremely expensive for the Government, DIAND can minimize the costs of the land claims.

However, the natives remain weak participants in the process of land claims. DIAND acts as the administrator (IIAP) and at the same time as a court. "They [Indians] pointed to the conflict of interest inherent in departmental control of a process set up to decide upon the rights and entitlement of bands whose claims arise from the actions or

inactions of the same department."⁸⁶ In addition, if a claim is rejected by DIAND, this is the end of the land claim.

The process of land claims settlement is as follows: Contributions, interest-free loans and interest-bearing loans will be provided by the Research Branch of the Corporate Policy Sector of DIAND to a claimant. The steps in the process are presentation of claims, review by ONC, ONC consultation with the Department of Justice, interdepartmental meetings, Cabinet approval, and a referendum by the native claimant group.⁸⁷ In the case of the comprehensive claims, all these steps are usually taken, plus consultation between the Government and natives becomes the norm during this process. The specific claims do not require all steps, particularly if the case is limited to the band and DIAND only. If so, interdepartmental meetings or Cabinet approval may not be necessary. As a legal counsel to the federal government, the Department of Justice will give advice to DIAND concerning legal and constitutional implications of each case.

Let us examine the two types of claims closely. Specific claims can be divided into three types and these are: lawful obligation, beyond legal obligation, and Statutes of Limitation and the Doctrine of Laches.

Lawful Obligation:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the Indian Act or other statutes pertaining to Indians and the regulations thereunder.

iii) A breach of an obligation arising out of government administration of Indian funds or other assets.

iv) An illegal disposition of Indian land.⁸⁸

Beyond Lawful Obligation:

i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any agencies of authority.

ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.⁸⁹

Statutes of Limitation and the Doctrine of Laches:

Statutes of Limitation are the federal or provincial statutes which state that if one has a legitimate grievance, yet fails to take action in the courts within a prescribed length of time, the right to take legal action is lost. The right to take action on a valid civil claim, therefore, will expire after a certain length of time unless legal proceedings have been started.

The Doctrine of Laches is a practice which has come into observance over the years. It is, therefore, a common law rule as opposed to a specific piece of legislation passed in Parliament. The doctrine is based on actual cases whereby people lose certain rights and privileges if they fail to assert or exercise them over an unreasonable period of time.

With respect to Canadian Indians, however, the government has decided to negotiate each claim on the basis of the issues involved.⁹⁰

The exemption of the Doctrine of Laches is not very surprising because the ONC is not a court and does not need to accept all legal principles. However, the ONC is not being as generous as it appears. "Claims related to treaties or other events prior to Confederation cannot be considered under the present policy."⁹¹ According to the 1983-84 Annual Report, 212 specific claims were being processed as follows: 75 accepted for negotiation; 72 under

review; 21 rejected; 16 settlements reached; 15 other disposition; and 13 in litigation.⁹²

Two examples might be of interest here. By the end of August 1984, an agreement was reached between the White Bear band of Saskatchewan and Mr. Douglas Frith, the Minister of DIAND. Government offers to the 1,500 members of the band included cash compensation (\$16,165,000), and land (valued at \$1,845,000). According to an investigation sponsored by the Federation of Saskatchewan Indians the Indians lost their lands to the federal government through fraud and cover-up.⁹³

In the case of the Musqueam Indian band of B.C., their claim was settled through litigation. In November 2, 1984, the Supreme Court of Canada awarded \$10 million to the band.

At a meeting in 1957, band members authorized crown agents to rent the land to the Shaughnessy Heights Golf Club for \$29,000 per year for 10 years with a clause allowing the band to subsequently renegotiate the deal every five years. The government agents promised to follow the band's wishes.

However, the deal signed by crown officials the following year set an initial lease of 15 years, limited subsequent rental increases to 15 per cent and set several other conditions favorable to the golf club that were not approved by the band.

The Indians were not informed of the changes before the deal was signed and were unable to obtain a copy of the lease from the Indian Affairs Department until 1970.⁹⁴

The comprehensive claims are more complex because of the involvement of provincial/territorial governments and the issue of self-government. Except in one case (Newfoundland),⁹⁵ the federal government does not link the claims settlement and self-government.

Federal participants include not only the ONC but other departments such as Fisheries and Oceans; Transport,

Environment and Energy Mines and Resources. Led by a chief negotiator, who is usually appointed by the Minister of Indian Affairs, the federal government negotiates with the native groups and provincial governments. The territorial governments are included as a member of the federal team and are only granted observer status. The chief negotiator is not considered as a neutral chairman. As the head of the federal government delegation, he is expected to represent federal interests and concerns. According to Senator D. Stewart, who was the chief negotiator for the Inuvialuit Agreement from 1980-82, depending on needs, he arranged meetings between the Inuit and various government departments such as the Department of Fisheries and Oceans.

With regard to self-government proposals and land claims the N.W.T. offers us an example of the complexities which must be dealt with. These are: the division of the N.W.T. (east and west), the Nunavut proposal (eastern Arctic), the Inuvialuit (western Arctic), the Dene Nation (MacKenzie Valley), the involvement of the territorial government (Western Constitutional Forum and Nunavut Constitutional Forum), and the future position of the territorial government in Canadian federalism.⁹⁶

The Case of Métis Claims. Are the Métis eligible for land claims settlement as are the status Indians and Inuit? Historically, in the west, Métis aboriginal title was recognized by the federal government, especially in the Manitoba Act of 1870. Section 31 and 32 of the Act are of importance here. "Section 32 assured all people, regardless of ancestry, that the lots they occupied in 1869 would not

be jeopardized by an influx of newcomers expected to follow the transfer of Rupert's Land from the Hudson's Bay Company to Canada."⁹⁷ "Section 31, on the other hand, was a payment in land to be distributed exclusively among partly Indian persons 'toward the extinguishment of the Indian title.'"⁹⁸ So Section 31 particularly acknowledged a "land bonus to all people of one specified ancestry because of that ancestry."⁹⁹ As a result, one could conclude that the Métis' aboriginal title was constitutionally recognized in the Manitoba Act, one of Canada's constitutional documents. According to this provision, by extinguishing the aboriginal title "the allotment of 1,400,000 acres to the Half-Breed residents of the province"¹⁰⁰ was promised to the Métis.

But the actual implementation was not necessarily carried out as planned in the west. The 1975 Indian Claims Commission's study finds validity of Métis claims in three ways. First, the distribution of lands and scrip, especially under the Manitoba Act, was unjustly and inefficiently administered.¹⁰¹ The second point is that "this form of compensation was inadequate to extinguish the aboriginal title enjoyed by the Métis community,"¹⁰² and especially the scrip policy was regarded as tokenism because "few of them gained very much from scrip"¹⁰³ for various reasons. The final point was that "Métis are Indians under the terms of the BNA Act, if not under those of the Indian Act, and are entitled to special consideration from the federal government."¹⁰⁴

A study done by the Métis Association of Alberta identifies the validity of Métis claims based on four reasons. These were: that there were many legal documents which recognized the aboriginal rights of the Métis; that the human rights of the Métis were violated; that the land program was designed to benefit speculators, not the Métis; and that the government of Canada was guilty of a breach of trust with the Métis.¹⁰⁵ According to D.N. Sprague, it was "government lawlessness" that characterized "the administration of the Manitoba Land Claims, 1870-1887."¹⁰⁶

What is the current Métis claims policy in Canada? On April 24, 1981, Mr. J. Chrétien, the then Minister of Justice, wrote a letter to the NCC in order to clarify a government position on eligibility of Métis and non-status Indians in this matter. The Minister indicated "the government's view that Métis and non-status Indians had no valid claims to aboriginal or treaty rights."¹⁰⁷ However, this is not always true. A senior policy advisor at the ONC indicates that as long as one can prove his aboriginal ancestry, he would be entitled to the benefits of claims settlement. In other words, the prime importance is his native ancestry, and the status defined by DIAND is rather secondary; the status Indian, Métis, non-status Indian, and Inuit can be treated equally in this case.¹⁰⁸

This wider definition of eligibility should be viewed carefully -- when the government and native participants discuss eligibility, it is usually determined by the native participants and the ONC accepts their decisions. So the

ONC is prepared to accept all aboriginal Canadians, but membership is determined by the native groups.

When we look at the Yukon and the N.W.T., unlike provinces, Métis and non-Status Indians are included in the process of settlement, and the federal government does not seem to be disturbed by this inclusion. The Council of Yukon Indians was established in 1980 by amalgamating the Yukon Native Brotherhood and the Yukon Association of Non-Status Indians. In the case of the N.W.T., although views and goals of self-government are rather different, the Dene Nation (status Indians) and the Métis Association of the N.W.T. are supporting the same proposal. How can this inclusion of Métis (N.W.T.) and non-status Indians (Yukon) be viewed here? As the senior advisor of the ONC indicates, if aboriginal ancestry is sufficient, the northern situation is an application of the principle. But if Mr. Chrétien's statement is correct, the practice north of the 60th parallel might be seen as a deviation from the rule. Viewed from historical experience, a complete exclusion of Métis and non-status Indians from the land claims process or land ownership itself seems rather unnatural and unrealistic.

VI. The James Bay and Northern Quebec Agreement

Since detailed descriptive analyses of the James Bay and Northern Quebec Agreement, especially the process of negotiation, are numerous, this section will briefly summarize major events from 1971 to 1975. The main focus of this section is on the post-1975 era when the Cree Indian and Inuit communities were transformed into another form of local autonomy. This autonomy includes: administrative and political units; an economic basis; and relationships among Indians/Inuit, the government of Quebec, and the federal government.

The northern Quebec case is interesting because the land claims issue and notion of self-government are actually implemented, and we can see the result of such implementation relatively easily.

General Overview. On April 30, 1971, Premier Bourassa of Quebec announced the planned James Bay Hydroelectric Development Project. The provincial government was not in a position to recognize "aboriginal rights" as such and the Cree Indians who were about to be affected by the project strongly criticized this plan. Through research, consultation, and discussion, attempts were made by both sides to meet half way. Being very frustrated by the provincial government's position, the Indians and Inuit on May 5, 1972, "initiated proceeding for an interlocutory injunction to stop work on the hydro project which had been underway for a year. (An interlocutory injunction is a writ granted by a court whereby a party is required to refrain

from continuing a specific act, i.e., construction of the project.)"109 After hearings, on November 15, 1973, Mr. Justice Malouf of the Quebec Superior Court awarded the interlocutory injunction and ordered an immediate halt to the project. However, the province appealed Justice Malouf's decision to the Court of Appeal and had the injunction suspended and the project was allowed to continue on November 22, 1973..

While Malouf's decision was overturned, the concept of aboriginal rights became impossible for the Bourassa government to ignore. His new proposal was presented November 19, 1973.. This time the native groups decided to choose negotiation rather than litigation to solve the problem. (The Malouf ruling was a victory for the Indians and Inuit, but any future litigation might go the other way thus damaging this minimum victory.)

On November 11, 1975, the James Bay and Northern Quebec Agreement was finalized by all concerned parties including: the Grand Council of the Crees (Indians); the Inuit Northern Quebec Association, the federal government, the provincial government, the James Bay Corporation, the James Bay Energy Corporation, and Hydro Quebec. In October 1977, 24 months after the signing of the Agreement, it came into force. And in June 1978, various laws were introduced in order to set up the administrative organizations of Nouveau-Quebec.110

What the Agreement promised for the native groups was as follows:

specific land rights; hunting, fishing and trapping rights; hydro development project modifications & remedial measures; future development and environmental considerations; provision for local and regional government authority; establishment of native controlled health and education authorities; measures relating to policing & administration of justice; continuing federal and provincial beneficiaries; native development and economic measures; cash compensation of approximately \$232.5 million divided proportionally between the Crees and Inuit and paid out over a maximum period of 21 years.¹¹¹

In exchange for these benefits, the native parties agreed to "cede, release, surrender and convey all their native claims, rights, titles and interests..." to the 400,000 square mile territory.¹¹² Who were entitled to these provisions? Approximately "4,386 Inuit and 6,650 Cree Indians, living in 15 Inuit and 8 Cree communities"¹¹³ were registered as beneficiaries.

The Naskapis Indians, whose population is about 400, signed the Northeastern Quebec Agreement in 1978, and political and administrative institutions were established similar to the James Bay Agreement.¹¹⁴

Under the agreement there are several types of land provisions: Categories I-A, I-B, I-B Special and II (Cree Indians), and IA-N, IB-N, and II-N (Naskapis Indians.)¹¹⁵ All lands in Category I were set aside for the exclusive use and benefit of the natives (sole ownership), and the Government enjoys free access to I-B Special lands. Category II lands are "for the exclusive use of the native peoples for traditional pursuits (hunting, fishing and trapping)," but are also "available to the province for development without the consent of the natives, but subject

to replacement or compensation, while non-native people will not be allowed to hunt, fish, or trap on any of these lands."¹¹⁶

Category I-A or IA-N land is under the jurisdiction of a band council and this land is equivalent to a reserve in other provinces. (Therefore the provincial government cannot exercise its power over this land.) Category I-B or IB-N land belongs not to the Indian band but to public corporations which are considered as municipal governments.

In Category III lands, "the indigenous people can exercise traditional pursuits, but these lands will be generally available for future development."¹¹⁷

The Inuit were also given Categories I and II lands and their rights were identical with those of the Indians. But there is one difference. While the Indians have reserves and the federal government is responsible for this type of land (Category I land) the Inuit communities became "Quebec municipalities." According to a government report on local governments, such Inuit communities are classified as northern villages.¹¹⁸

In addition, there are several native-controlled local authorities. From 1975 to 1978, the Grand Council of the Crees remained as the trustee for the beneficiaries of the Agreement, and after that, the Cree Regional Authority (CRA) was established as "a service organization for all the communities."¹¹⁹ While the Grand Council of the Crees remains as a political arm of the Cree Indians, the CRA acts as an administrative agency for them. The CRA "carries out

administrative functions on a regional basis in matters such as housing, economic development, environmental protection, municipal services."¹²⁰ The Cree School Board and the Cree Regional Board of Health and Social Services take care of educational and health issues respectively. There are also several Cree corporations which came into existence, and they include the Cree Housing Corporation, the Cree Native Arts and Crafts Association, the Cree Outfitting and Tourism Association, the Cree Trappers' Association, the Cree Distribution Centre, the Cree Construction Company and Air Creebec.¹²¹

The Inuit have similar organizations. The Kativik Regional Government (KRG), which is essentially non-ethnic and territorial, is responsible for many programs like the CRA. (The majority of the population, 90 per cent, is the Inuit.) As ethnic organizations, the Makivik Corporation and land-holding corporations exclusively represent the Inuit population. "The role of the Makivik Corporation is to ensure that the rights of Inuit beneficiaries are protected and to administer the collective compensation granted the Inuit by Quebec and Canada under the Agreement."¹²² In areas of education and health, two functional agencies work on behalf of the Inuit: Conseil Régional de la Santé et des Services Sociaux Kativik (CRSSS Kativik), and the Kativik School Board.¹²³

Problems of the Agreement. Is the James Bay and Northern Quebec Agreement a success story? Many sources indicated various problems of the Agreement. The first

criticism came from the Indians and Inuit. Both the Grand Council of the Crees and the Makivik Corporation testified before the Standing Committee on Indian Affairs and Northern Development in March 1991 and May 1992. What they complained about were problems of everyday life in the native communities including lack of water and sewage systems, deplorable health problems, bad housing conditions, and shortage of school facilities. In addition, they were also unhappy about the government of Quebec's inaction in dealing with the problems.¹²⁴ A DIAND report, The Implementation Review, confirmed such basic problems of daily life in northern Quebec, the most crucial issue being "implementation" of programs.

The pressure under which the Agreement was negotiated, the inherent complexity of its provisions, and the fact that negotiating is by its nature a process of compromise, resulted in a document with many provisions which are vague, ambiguous and open to widely varying interpretations. It was generally understood during the negotiations that the precise details of the various programs, rights and benefits would be worked out over a lengthy process of implementation which would be carried out through the various entities established pursuant to the Agreement and through ongoing discussions involving all parties to the Agreement.¹²⁵

And surprisingly, those who were involved interpreted the Agreement differently. "Most people involved in the negotiation of the wording felt strongly that they knew what it meant and that in their view the meaning was clear. Unfortunately, their interpretations varied."¹²⁶

The report also identified a problem of cash compensation. The amount of \$225 million would be paid out until 1997, and amongst the natives this figure has been

considered insufficient. "The extended payout results in a considerable reduction in the real value of the compensation payments," and according to an optimistic estimate, "the compensation funds will shrink in real terms by over 20% simply as a result of the prolonged payout period."¹²⁷

Due to a difference of jurisdiction, the Inuit communities tend to face additional problems. After February 1981, under the terms of the Northern Quebec Transfer Agreement, Quebec became fully responsible for Inuit natives. But this transfer to provincial responsibility did not produce a positive result because of "Quebec's failure to provide what the Inuit consider to be an adequate level of service, Canada should assist in funding the upgrading program."¹²⁸ Another issue which can be examined at this point is CORE funding. Since "Inuit's local and regional government come under Quebec jurisdiction" and because of the non-ethnic nature of such local authorities, Ottawa is not able to provide the CORE funding to Inuit. (Until 1979-80, the Inuit had received funds from the federal government.)¹²⁹

Therefore, due to differing interpretations of the Agreement, transfer of provincial program responsibility, the provincial government's inability to provide the same level of services as DIAND, jurisdictional differences of the Inuit and Cree Indians, and, most importantly, the lack of adequate financial assistance, the Agreement cannot be praised as being the most successful and meaningful agreement in Canadian/native history.

Another type of criticism has come from the Inuit communities. In 1975 the Inuit Tunqavinga Nunamin (ITN) was created in order to represent those who had objections to the Agreement. Three communities formed the ITN (Povungnituk, Ivujivik and Suquluk). These Inuit did not like the Agreement, and found that their land rights were severely restricted. According to a leader of ITN, many Inuit could not even read or understand the Agreement.

Reporter: Do you think Quebec Inuit knew what they were voting for when they voted for the James Bay Agreement?

Oumak: We never knew at the time, and if they were like us, they didn't know exactly. It was very convincing the first time they told us -- when negotiators were travelling from place to place. It was convincing because we never saw the proposal and text was only in English. Much later we got it translated into Inuktitut by (Father) Steinman. We were the first ones to hear about it because they (the original documents) were all in French. I am sorry about the people; we were asked to approve when the river was to be dammed and we just agreed. But when we understood after a year or so we had to rush to pull out our signature. The three communities knew that it was unfit when we realized that we were giving up our aboriginal rights. We went to Montreal, but the others never knew because it wasn't translated for them into Inuktitut. I am sorry to see that they made a mistake with the agreement. They never really understood it.¹³⁰

These objections to the Agreement culminated in an explosive issue over schools in Povungnituk and Ivujivik. Today, Inuit dissenters maintain that the Agreement would not be implemented with their current understanding of the issues.

Thirdly, there are various 'outsiders' who have made observations and comments on the Agreement. For instance,

the Native Council of Canada (NCC) made a presentation to the Standing Senate Committee on Legal and Constitutional Affairs on June 7, 1977 in terms of the perspective of the Métis and non-status Indian. The NCC's criticism was to be directed to three aspects of the Agreement: economic development, money, and the exclusion of other native groups in northern Quebec. First, the economic basis given to the native population (traditional hunting, fishing and trapping) tends to be marginal in terms of developing modern capitalism. Another crucial factor in the north is the right to participate in energy development which has been taken away from the natives.

All we ask for is the opportunity which this Bill does not provide -- to take part in the development of oil, gas and hydro-electric energy resources as co-equal partners and not as humbugged victims.¹³¹

If this agreement is sincere why deny the people ownership over the very resources that can help them the most? Are we not yet able to think of native peoples as being owners, developers, even financiers?¹³²

The amount of money to be compensated (86 cents per acre) to Indians and Inuit is comparatively smaller than that of the Alaska Settlement (\$2.92 per acre) or even that of Manitoba Métis scrip lands in the 1880's (14 cents less per acre). And the way in which money is allocated is also inadequate. "Clearly there is worry -- if not fear -- that the money would be squandered if paid directly to natives."¹³³ Not only this, but also the arrangement for payment is not well organized.

\$225 million invested carefully at 10% per year would yield an annual income of \$22.5 million without touching the original capital. Perhaps two governments do not have the cash on hand to foster this kind of economic development among natives. If not, why not pay them interest on the first two amounts of \$75 million.¹³⁴ Again, at an interest rate of 10 per cent on a loan over a 20 year term would yield an income of about \$17 million per annum.¹³⁵

And finally, the Agreement excluded other native groups such as the Métis, non-status Indians, the Montagnais, the Tête du Boule Indians, and the Algonquin Indians. In addition, the aboriginal title of these groups was extinguished without their consent or agreement. According to the NCC's estimate, "several thousands" of the other native Canadians were excluded from this pact.¹³⁶

A research project commissioned by the Special Committee on Indian Self-Government of the House of Commons has also seen some problems with the Agreement: absence of effective Indian control over compensation and development payments, the establishment of a complex regional bureaucratic structure, the municipalization of Indian bands, and massive transfer of federal responsibilities to the province.¹³⁷

In conclusion; the Agreement produced administrative institutions for the Cree Indians and Inuit, yet these local governments seem to lack real political and economic power to sustain their native communities.

VII. Summary and Conclusion

The development of the native associations was discussed in the second section. While such aboriginal associations were a major force that improved the political-legal status of the native populations, the organizational stability has been seriously challenged through internal schisms. The status Indians and Métis/non-status Indians suffer this problem constantly: the Association of First Nations versus the Coalitions of First Nations and the PTNA; the Native Council of Canada versus the Métis National Council.

The role of the federal government is crucial in terms of financial assistance, but not every native Canadian is satisfied with the way in which the core fundings are provided to the native associations.

As we have seen in Chapter 3, the Canadian natives are not held in high-esteem by the majority of Canadians. Yet as the Berger inquiry indicated, sometimes the Canadian public is receptive to the aboriginal people's demands and voices.

In Section III, the relationship between native Canadians and Canadian politics was discussed from electoral power to access to the federal Cabinet and MP's/parliamentary committees. Native electoral power is visible in the Arctic. However, native electoral power has not been as visible in the provinces due to the fact that the native Canadians do not all hold the same political view. In addition, there are problems of non-participation and

electoral boundaries. Therefore the lack of collective voting power, non-participation in provincial/municipal politics and gerrymandering of electoral boundaries do not give the aboriginals distinct electoral power in Canadian politics.

Exclusive access to the federal Cabinet was made available for the status Indians and Métis/non-status Indians in the 1970's with Joint Cabinet Committees for the NIB and the NCC respectively. However, this kind of experiment did not produce a positive result as each side held different views and expectations and consensus-building was difficult.

Unlike the other parts of the federal government (executive, bureaucracy and judiciary), there exists a relatively conflict-free harmonious relationship between the federal Parliament and the native peoples. Parliament, through the MP's and committees, has been receptive and accommodative to native aspirations. Two illustrative cases were discussed: the Special Committee on Indian Self-Government and the James Bay and Northern Quebec Agreement.

The fourth section examined "autonomy" and "territoriality" of the native political unit. Contrary to a common perception, the territorial basis of the status Indians is complicated because of reserves, settlements and population size. One has to be aware of the complexity of the Indian territorial units. In addition, problems of economic development and Indian reserves were discussed in.

this section. Formally the reserves are under the control of the Indians, but this does not foster economic/business development because of being regulated by provincial governments. It was also pointed out that the federal government's policy is not on development but on the maintenance of welfare.

As a whole, the status Indians are not satisfied with the current system. The Métis and non-status Indians, except Alberta Métis, do not have political units which are based on territoriality.

The issue of land claims was examined in Section V. Historically, many of the lands once occupied by native Canadians have become private property of the White Canadians, and today the aboriginal peoples are resentful of this land/ownership system. There are fundamentally two reasons why this issue is politically important. The first is found in a case study of conflict management and the issue of self-government. The second reason is particularly important because of "the comprehensive claim" which is closely related to the problem of self-government.

The federal government was forced to deal seriously with the land claims issue when the Supreme Court of Canada acknowledged the existence of aboriginal title in 1973. In order to handle this problem, DIAND established the Office of Native Claims in 1974, and currently two types of claims are identified: specific and comprehensive claims. Depending on scope and range of the claim, participants in the process of settlement are diverse including DIAND, other

federal departments, provincial governments, and the natives. This institutionalized consultation process is supposed to be efficient in solving the problems in terms of financial costs and obtaining predictable results as opposed to going through the litigation process.

The Métis, unlike the status Indians and Inuit, are not eligible for a similar process as they are a provincial responsibility in Canada. But historically speaking, the Métis were eligible for land claims as in the case of Sections 31 and 32 of the Manitoba Act of 1870. In addition, in the Yukon and the N.W.T. the Métis and non-status Indians are eligible for land claims. Also a policy advisor of DIAND identified that "any person of Indian ancestry" has the necessary attribute for eligibility. One is able to point out that the federal position toward the Métis land claims is inconsistent.

The James Bay and Northern Quebec Agreement of 1975 established a frame of reference for aboriginal self-government for the first time in Canadian history. The Cree Indians and Inuit were offered monetary compensation and local autonomy in exchange for their land claims. As local governments, the Cree Regional Authority (CRA) and the Kativik Regional Government (KRG) became responsible for the James Bay Area and northern Quebec. Under the CRA and KRG, there exists several native-controlled corporations.

The story of the 1975 Agreement has not always been successful, however. The Cree Indians and Inuit complain that programs specified in the Agreement are not implemented

by the federal and provincial governments. DIAND reviewed this complaint, and to some extent native resentment was acknowledged by the federal government. But many provisions still need to be "reinterpreted" in the near future because of the lack of consensus among the federal and provincial governments and the native parties. Another type of criticism was raised by dissenting Inuit who did not want to ratify the Agreement. Bitter disagreements between those who ratified and those who objected still remain unsolved. The third type of criticism indicates that other Indians, Métis and non-status Indians were excluded from the Agreement. One must question why only the Cree Indians, Inuit and later the Naskapis Indians were eligible under the Agreement. The Agreement is said to produce internal confrontation between those who are eligible and those who are not in northern Quebec.

Having reviewed various issues, it is now necessary to consider our subject theoretically. Our four conditions which illustrate equality, domination, pluralism and assimilation are as follows;

- C5: The aboriginal people have the same political power over a decision-making process like other Canadians.
- C6: The aboriginal people are controlled by other Canadians.
- C7: A distinctive aboriginal political unit has authority to decide its own affairs.
- C8: A distinctive aboriginal political unit is denied.

Do the aboriginal people have the same political power over the decision-making process as do other Canadians?

Formally the answer is "yes" as in a liberal democracy where

everyone is expected to participate in politics equally. Recently, through native organizations, aboriginal people have begun to assert their political power and they even participate in unprecedented Joint Cabinet Committees (NIB and NCC). In this sense, one can say that their organizational power is recognized and institutionalized in our political process. This recognition is, however, marginal. Their organizational unity is constantly challenged by other native Canadians and a legitimacy crisis is not uncommon in native organizations. Needless to say, these internal divisions have weakened "native power" in general and it is the natives, not the Government, that have to pay the price of these schisms. In addition, even if they possess "political power," it tends to be a veto power used to protect existing socio-economic-political rights. Native organizations themselves cannot bring about policy changes immediately -- they have to rely on the federal and provincial levels of government.

Are the aboriginal people controlled by other Canadians? In the case of the status Indians, this question can be answered affirmatively. Through the Indian Act and intergovernmental agreements, the everyday life of status Indians is almost totally regulated by the federal and provincial governments. This concept is particularly persuasive when the issue of resource development is reviewed. In general, the Inuit have more freedom than the status Indians to determine their affairs, but this is not always the case. Northern Quebec's Inuit now have to deal

with all aspects of their life through the provincial government, and this change has not necessarily been positive.

Regulation and conditions set by the authorities for the Métis and non-status Indians are less visible.

Is there a distinctive aboriginal political unit in Canada? And, if so, does this aboriginal political unit have authority to decide its own affairs? The band council, which is the political unit for status Indians, does possess the status of quasi-municipality, but every decision is theoretically scrutinized and supervised by DIAND. So authority is given to the status Indians, but this authority is weak and marginal. The Inuit in the N.W.T. maintain a similar local system of government such as Hamlets or Settlement Councils, but these local authorities are "public" and "non-ethnic."

The James Bay and Northern Quebec Agreement produced both public and ethnic governments. The power and financial resources they actually possess are limited. Not actually as distinctive aboriginal political units but more as local governments, these native-controlled local authorities seem to work within the framework of provincial politics.

With the exception of the Métis in Alberta and unlike status Indians, the Métis and non-status Indians lack their own local autonomy.

Based on our analysis, one may conclude that the position of status Indians is characterized by a high degree of pluralism and high degree of domination. When we

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consider the political and economic elements of Indian reserves, the control model appears suitable. While degrees of pluralism are different, the Métis in Alberta seem to fall into the same model (pluralism, low; domination, high). The melting-pot model appears relevant to identify the Inuit's position (equality, high; assimilation, low). Being a majority in northern Canada, the Inuit can enjoy their political equality, yet their local autonomy is not necessarily satisfactory because of a lack of financial resources and political power.

The Métis and non-status Indians do not have their distinctive political units (absence of institutionalized group distinctiveness), but this does not mean complete assimilation. Political development of the Métis and non-status Indians should not be underestimated in this context. On the other hand, unlike the Inuit, they do not seem to enjoy political equality: domination or absence of equality between the Métis/non-status Indians and the mainstream society. As a whole, the assimilatory model would be useful here (assimilation, medium; domination, medium).

Figure 6

Aboriginal Peoples and Politics

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I Introduction

This chapter will examine constitutional aspects of the Aboriginal-White relationships in Canada by looking at aboriginal rights, the Canadian Constitution, and native self-government. Since the previous two chapters dealt with the more practical aspects of the issue, this chapter will focus on the theoretical and philosophical implications of native self-government. Sometimes not only the current situation but also a few proposals for aboriginal autonomy will be discussed -- therefore our examination will include hypothetical as well as factual arguments at the same time.

The second section will discuss the meanings and sources of aboriginal rights. It is certain that the Canadian public is sometimes puzzled by the term "aboriginal rights," and many attempts to define the concept have not been successful. One reason for such difficulty is that the concept is multi-dimensional; it cannot be defined purely in a legal perspective. One has to consider political, social, cultural, economic and legal aspects at the same time. In addition, sources of aboriginal rights will be discussed. Why are aboriginal rights legitimate? Why did Canadian courts recognize the validity of this concept?

Then, Section III will analyze ideas of "sovereignty" that are understood differently by the White Europeans and aboriginal Canadians. The two distinctive conceptualizations of sovereignty will lead us to a study of the relationships between the two separate societies and two

models of interaction will be introduced. As long as one cannot understand the basic philosophical gap between the two groups, the issue of "self-government" will be incomprehensible.

The politics of constitutional reform will be presented in Section IV. Several participants involved in the First Ministers' Conferences will be critically evaluated.

Is it possible to create ~~create~~ aboriginal self-government in Canada? And, how is this problem related to the Constitution? Two approaches to self-government will be introduced in the fifth section. As we mentioned earlier, Section V will deal with both the factual and hypothetical arguments for self-government at the same time as it remains an unresolved future endeavour. The final section will summarize the chapter and present a theoretical conclusion.

II. Meanings of Aboriginal Rights

First of all, it is necessary to bear in mind that there is no clear definition of aboriginal rights as such. Both native organizations and governments interpret this term differently and one can be assured that no consensus is available. In addition, the term can be used emotionally by native associations.

We will examine two aspects of aboriginal rights in this section: definitions and sources.

Definitions. Anyone who has ever attempted to understand the meaning of aboriginal rights might have difficulty comprehending this concept. Obviously there are several reasons for this. First, various native organizations, tribal councils, or band councils defined the term differently and depending on their legal positions, the concept may include various elements. While native organizations agreed tentatively to work together at the time of the First Ministers' Conference on Aboriginal Rights, for instance, they did not necessarily agree on what this concept constituted. Another technical difficulty is that aboriginal rights include not only legal/constitutional rights but also political and cultural rights, and this combination of many factors makes aboriginal rights confusing.

It seems better to examine the "components" of aboriginal rights rather than to try to define a single term precisely. According to Chief John Snow of Alberta, almost every aspect of the Indian way of life should be regarded as an element of aboriginal rights.

the right to keep our language
the right to keep our identity
the right to keep our traditions
the right to keep our religion
the right to keep our teachings
the right to keep our philosophies
the right to keep our land
the right to keep our hunting, trapping, and gathering
rights
the right to go to our sacred areas to worship
the right to pursue a path in the future and point out
our own destiny.¹

Then, he summarizes this concept as "the right to self-determination as the original peoples of this great island [North America]." ² This explanation is interesting in terms of illustrative points, but for us this seems difficult to follow. Douglas Sanders, an expert on aboriginal rights and a legal advisor to many native organizations, seems to clearly summarize this ambiguous term:

- (a) the recognition of aboriginal self-government
- (b) the recognition of customary aboriginal law
- (c) the recognition of aboriginal land rights
- (d) the recognition of land-based rights, such as those of hunting, fishing and trapping³

Interestingly enough, definitions (c) and (d) -- aboriginal title and the usufructuary right -- tend to be regarded as main elements of aboriginal rights in Canada.⁴ For instance, Native Rights in Canada, one of the authoritative studies on aboriginal rights, defines this concept as follows:

"Aboriginal rights" are those property rights which inure to native peoples by virtue of their occupation upon certain lands from time immemorial.⁵

In the past, as Sanders indicates, Canadian courts have dealt with "the aboriginal title" and "usufructuary right" as native rights. Therefore from a traditional legal view, "aboriginal self-government," which is essentially a

political issue, is beyond comprehension and a source of confusion.

The issue of self-government will be fully discussed later in this chapter, so let us briefly review definitions (b), (c) and (d).

With regard to the recognition of aboriginal customary law, this was hardly accepted in the Canadian courts in the past. Recently, however, the Supreme Court of the N.W.T. began to respect Inuit customary law. A dispute on Hall Beach was solved according to the Inuit tradition in 1984.

A Northwest Territories Supreme Court Justice has defended the Northern court system against criticism that it is passing light sentences on wife-beaters, rapists, and child-molesters due to cultural consideration.

The brief but pointed statement by Justice Mark DeWeerdts came last week when he sentenced an Inuit common-law husband and wife from this remote Inuit community on the east bank of Melville Peninsula to 2 1/2 years in jail for sexually assaulting the woman's 20-year-old daughter.⁶

A similar event took place in Arctic Bay in 1984 (a rapist was not sent to jail, but allowed to return to his community).⁷

The recognition of Inuit custom is not without cost, however. Native women's groups in the N.W.T. strongly criticize these decisions because they are mostly in favor of "male" interests and women's rights are not properly protected as long as sexual abuse is tolerated by such culture or tradition.

Is this type of legal duality an exceptional case in a liberal democracy like Canada? The U.S. and Greenland show

a pluralistic arrangement between the aboriginal population and the non-aboriginal society with regard to the recognition of aboriginal tradition. In the U.S., "there are three distinctively different types of court systems on some 60 to 120 various reservations."⁸ The essence of these court systems is to solve minor cases (mostly family and criminal cases) at a reserve/community level by recognizing the importance of the Indians' distinctive way of life. In other words, as long as it remains a minor case, the federal and state governments will not impose their Anglo-American legal principles, and allow the Indians to handle the case according to aboriginal and traditional customs/laws. And the role given to such courts is, of course, minimal. "The authority of Indian tribes to impose criminal penalties is limited by federal law to petty misdemeanor ceilings -- six months' imprisonment and \$500 fine."⁹ Three types of court systems are identified as "the traditional courts," "the courts of Indian offences," and "the modern tribal courts." (Generally speaking, the phrase "tribal courts" refers to all three types of court at the same time.) The traditional tribal courts are found in many cases among the Pueblo Indians, and they continue to resolve issues based on their "tradition" and "customs." The Courts of Indian Offences were created in 1883 by the Bureau of Indian Affairs of the Interior Department, and "all relevant federal law, rulings of the Department of the Interior, and any tribal ordinances or customs that are not inconsistent with federal law"¹⁰ are applicable in this type of court. The Indian Reorganization

Act of 1934 created "the tribal courts" or the "modern tribal courts," and subject to "the constitutions and tribal codes of law and order adopted by many tribal governments in accordance with the provisions of the Indian Reorganization Act."¹¹

It is necessary here to mention that the Indians can choose not only "the tribal courts" but also other state and federal courts: the tribal courts are not the only judicial institution for Indians.

How do the traditional and Anglo-American legal systems differ? According to Vine Deloria Jr. and C.M. Lytle, concepts of punishment are entirely different.

Under Anglo-American notions of criminal jurisprudence, the objectives are to establish fault or guilt and then to punish. The sentencing goals of retribution, revenge, and deterrence and isolation of the offender are extremely important (though the system often pays much lip service to the concept of rehabilitation as well).¹²

Under the traditional Indian system the major objective was more to ensure restitution and compensation than retribution. The idea, therefore, that tribal laws involved some Old Testament eye-for-an-eye mechanism that worked independently of human personality stems merely from inadequate observations of what really occurred in tribal societies.¹³

Just because the two legal systems emphasize different points of view (Anglo-American law, punishment; the traditional law, rehabilitation and compensation), this kind of legal separatism may not necessarily threaten the unity of administration of justice in the U.S.

In Greenland, the traditions and customs of the Inuit are also recognized in the Greenland Criminal Code, which was established in 1954. It was decided in that year to

bring the Danish Criminal Code to Greenland, but a sanction system was to follow the Inuit tradition.

Like the American Indian tradition, the Inuit customs see the importance of "rehabilitation" and "compensation." "The goal of the Greenland Criminal Code is not retribution (the word "punishment" is never used) but rehabilitation. There are no full-time prisons."¹⁴

An unemployed chronic thief was given a job and a home-building loan. A man convicted of bestiality with sled dogs was married, with the minister's help to a woman reputed for her sexual dissipation. When some fishermen assaulted a settlement leader and vandalized his property because the salthouse was not large enough to buy and accommodate their catch, monies were allotted not to build a jail for the perpetrators, but to expand the salthouse.¹⁵

Therefore from a comparative perspective, the recognition of traditional/aboriginal laws and customs is not difficult to recognize in liberal democracies. One could say that Canada has paid very little attention to this issue in the past.

The question of land claims was fully discussed in Chapter 5. It was a 1973 Supreme Court of Canada decision (Calder case) that recognized the existence of aboriginal ownership of lands. Since then, the federal government has been forced to deal with this problem seriously. Between two types of claims settlement (specific and comprehensive claims), the comprehensive claims settlement seems to be more important than the specific claims settlement because many native claimants raise the issues of land ownership and self-government at the same time.

The fourth and final component of aboriginal rights, hunting, fishing and trapping rights, was discussed previously in Chapter 4. Many provincial and federal laws regulate and control native people's hunting, fishing and trapping rights -- the Migratory Birds Convention Act, the Fishing Act, and the Natural Resources Transfer Agreements, are examples. In addition, generally aboriginal title and usufructuary rights do not include the right to exploit mineral resources. This is shown in the case of the James Bay and Northern Quebec Agreement which did not grant any mining rights to the Cree Indians and Inuit.

Sources. Why are aboriginal rights legitimate?

Obviously there are several historical and judicial sources of aboriginal rights. Constitutionally aboriginal rights are somehow recognized in the following documents: the Royal Proclamation of 1763; the BNA Act, 1867; the Manitoba Act, 1870; Rupert's Land and North-Western Territory Order, 1870; British Columbia Terms of Union, 1871; Ontario and Quebec Boundaries Extension Act, 1912; the Constitution Act, 1930.¹⁶

From an historical point of view, we see patterns of the interaction between European settlers and original inhabitants of North America and consequently it is necessary to review international law concerning "sovereignty." John H. Clinebell and Jim Thomson, in their article, "Sovereignty and Self-Determination: The Rights of Native Americans under International Law", clearly summarize this complicated issue of creation of sovereignty in a new

territory of the United States. Although this paper does not deal with Canada, its basic framework would be applicable in both countries.

A question asked in their paper is "how is sovereignty established in a new world?" In other words, how could we delete "aboriginal sovereignty" by creating "European sovereignty" in North America? The two authors identified five major methods of creating sovereignty and these were discovery and occupation, conquest, cession and agreement, acquisitive prescription and changed circumstances.¹⁷ If we wish to justify the creation of European sovereignty, these five approaches could easily solve the problem.

"Uncivilized savages" were not regarded as human beings, and thus North America was in this sense inhabited by no one; European settlers discovered and occupied the continent, Indians were conquered and the White and Indian treaties, made cession and agreement possible. So by force or consent at the time, one could claim that the European settlers had legitimate authority to create sovereignty in North America, and theories and doctrines of international law reasonably justified that concept. However, this so-called legitimate approach was not exercised because European and North American authorities accepted aboriginal rights and this would constitute the sources of aboriginal rights.

The European colonial powers and scholars acknowledged the rights of the original inhabitants of North America. One of the best examples was a Spanish theologian

Francisco de Vitoria who recognized the Indians' ownership of North America in 1532. This recognition was later confirmed by Pope Paul III in the 1537 Bull Sublimis Deus. "The sentiments of the Papal Bull were reflected in Spain's law of the Indians which ordered that Indians be placed in a position of equality with Spaniards and also provided for the protection of Indian lands."¹⁸

The Dutch, Swedish and British colonial powers as well as the colonies of Massachusetts, Connecticut and Rhode Island honored the Indians' land ownership when these authorities tried to purchase lands from Indians.¹⁹

The second source of aboriginal rights is the Royal Proclamation of 1763 which was issued by the British Crown. This is very important in Canada because it is now recognized as a source of aboriginal rights. Through Section 25 (a) many rights and freedoms have been recognized by the Royal Proclamation of October 1763. A major goal of the Proclamation was to settle any disputes between the Indians and European settlers by establishing boundaries and rules of land purchase. If the Indians wanted to sell their lands, it was only the Crown that could do the purchasing.

In brief, the Proclamation reserves "for the use" of the several "Nations of Tribes of Indians with whom we are connected" all the lands not included within the limits of Quebec, East and West Florida, or the territory of the Hudson's Bay Company.²⁰

Further, the chief executive of each colony was forbidden from granting any patent for lands beyond the bounds of his respective territory. Such lands, "not having been ceded to or purchased by" the Crown, were "reserved to the said Indians." Persons who had settled on Indian lands were ordered removed and private individuals were prohibited from making direct

purchase of Indian territory. If however, "the Indians should be inclined or dispose of (their) lands ..." the land could be purchased only by the Crown.²¹

While the Proclamation was regarded as a "Charter of Indian Rights," some points later became unclear and ambiguous. First, concerning the area of application: i.e., "while the eastern boundaries of 'Indian Country' are indicated in its text, the Proclamation is silent as to the western boundary of the reserved area."²² N.H. Mickenberg analyzes this issue by reviewing various court decisions and finds that the Proclamation was in force in other parts of Canada.

The proposition that aboriginal rights exist independently of the Royal Proclamation has received judicial approval. In a series of cases involving Indian hunting rights, Canadian courts have expressed the view that aboriginal rights apply throughout the Dominion notwithstanding the Royal Proclamation's geographic limits.²³

An exception was the case of Calder vs. Attorney-General of B.C. (1973) -- "the court held that not only did the Royal Proclamation of 1763 not extend to British Columbia, but that there could be no judicial recognition of aboriginal right absent legislative or executive 'recognition' of such title."²⁴

The second area of ambiguity with regard to the Proclamation was "whether it represents the exclusive source of aboriginal rights in Canada."²⁵ In St. Catherine's Milling and Lumber Company vs. The Crown (1888), the British Privy Council "seemed to imply that the Royal Proclamation constitutes the sole sources of aboriginal rights."²⁶ But, on the whole, Mickenberg concludes that the Proclamation was not the only source of aboriginal rights.

To the contrary, a strong case can be made that that law of aboriginal rights applies throughout Canada and that in those areas not covered by the Proclamation of 1763, the source of those rights is the law of nations, now incorporated into the common law of Canada.²⁷

The third source of problem stemming from interpretation of the Proclamation were court decisions in the U.S.. Of many decisions, two cases deserve special attention here; i.e., Johnson vs. McIntosh (1823) and Worcester vs. Georgia (1832). Chief Justice Marshall of the Supreme Court formulated a theory, later called the Marshall doctrine. "The theory of these two cases was that an aboriginal claim was legally recognized right to occupy those lands held by Indians from time immemorial. On discovery, the legal title or fee to the newly claimed land went to the discovering State, subject to this aboriginal right of occupancy."²⁸ While he recognized the aboriginal title in a sense, sovereignty of Indian nations was being ignored by European settlers. What Indians could possess was the status of "domestic independent nation."

They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil, at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.²⁹

Why are American cases relevant in the Canadian context even though the courts in Canada are not bound by such decisions? Mickenberg argues that both Canada and the U.S. were influenced by British Indian policies and followed a similar path.

Aboriginal rights evolved in both Canada and the United States from the respect accorded native lands by the colonizing powers, particularly Great Britain. It is therefore no coincidence that the theory of aboriginal rights has developed along the same lines in both nations. It is also more than mere chance that leading American decisions have referred to the Royal Proclamation of 1763 and leading Canadian decisions have referred to the early American jurisprudence, in tracing the origins and nature of original Indian title.³⁰

G.S. Lester, however, seriously doubts the previous argument. He objects to an uncritical use of the Marshall doctrine in Canada.

The early objection to the Canadian courts relying on these early Marshall judgements is this: contrary to what Marshall would have us believe, the English Crown's rights in the original thirteen American colonies were acquired by conquest. Discovery was completely irrelevant to any prerogative power or property rights, and hence for the fate of the Indians' territorial rights.³¹

In other words, the majority of lawyers think that in the U.S. European sovereignty was established by a theory of discovery (Marshall doctrine), but Lester rejects this view by indicating that the original colonies were obtained by conquest. "The fact that the thirteen colonies were acquired not by discovery but by conquest immediately makes American doctrines irrelevant to those other parts of the English common law world where the Crown's rights followed from discovery."³²

How does Lester's argument change the nature of aboriginal rights in Canada? His main focus is on Inuit's legal rights. Since the patterns of land acquisition and legal systems are different, the uncritical use of American court decisions would not be relevant for the Inuit. In other words, he rejects that one particular theory (Marshall

Doctrine) could confirm the aboriginal titles of "American Indians," "Canadian Indians" and "Canadian Inuit" at the same time. Although unlike North American Indians, the Inuit cannot use the same logic and legal documents when they discuss their "aboriginal title."~~33~~

III. Aboriginal Sovereignty: Inherent Right or Illusion

Concepts of Sovereignty. Native organizations use the terms "sovereignty" and self-government when they discuss aboriginal rights, and, these terms create confusion after confusion among the non-aboriginal population.

Our rights flow from our title to our traditional lands. Our rights are recognized internationally as belonging to us as free, distinct, self-determining peoples. This is a process through which these rights can be given special recognition, especially the right to self-government.³⁴

Why can an Indian band or tribal council have "sovereignty" when only the federal government can claim "sovereignty" in the international community? How can we understand native "sovereignty?"

According to Blackstone, the author of The Commentaries on the Laws of England (1765-70), sovereignty was defined as follows: "There is and must be in every state a supreme, irresistible, absolute, and uncontrolled authority, in which the ... right of sovereign resides."³⁵ For political scientists, the concept of sovereignty implies two meanings: internal sovereignty and external sovereignty. Jean Bodin, in his The Six Bookes of a Commonweale (1576), developed a modern theory of sovereignty. In the sixteenth century, France was severely fragmented and damaged by religious wars, and a political group (the Politiques) believed that "the state was primarily concerned with the maintenance of order and not with the establishment of true religion."³⁶ As a member of the Politiques, Bodin believed in the necessity of an authority that could restore order and peace in France. "It is clear that the principal mark of

sovereign majesty ... is the right to impose laws generally on all subjects regardless of their consent... If he is to govern the state well, a sovereign prince must be above the law..." (1576, p. 32 in the 1955 edition).³⁷ Here, we can find Bodin's "absolute and perpetual" sovereignty.

However, he was careful to indicate the limit of "absolute sovereignty": "the rights of sovereignty are restricted by natural law as well as other claims of the community."³⁸

Thomas Hobbes further elaborated the theory in his Leviathan. "The fundamental law of nature is self-preservation; only sovereign power can prevent men from destroying each other; and the only sovereign power to be obeyed is an effective one."³⁹ Like Bodin, Hobbes saw the importance of a central authority in order to maintain order and peace.

External sovereignty, generally speaking, refers to "absolute power" of each independent state in the international community.

Thus 'sovereignty' in international law implies the recognition of a state as having rights of jurisdiction over a particular people and territory, and being solely answerable for that jurisdiction in international law.⁴⁰

Here, we have a dilemma between "sovereignty" and international peace and order: "only the sovereignty of one state could be presupposed and the sovereignty of this state would exclude the sovereignty of all other states."⁴¹ In other words, the question is whether or not a sovereign state is allowed to do anything to its neighboring states in

the name of absolute sovereignty. H. Grotius believed that in general sovereignty was free from regulations, yet any state had to respect the general principles outlined by the natural law (jus naturale) and the law of nations (jus gentium).

Although supreme power is defined initially as that power whose actions are not subject to the legal control of another and cannot therefore be rendered void by the operation of another human will, it is also true that every political society, and therefore its supreme power, is subject to the limitations set by the law of nature and the law of nations.⁴²

According to Menno Boldt and J.A. Long, sovereignty should have three components: authority, hierarchy of power relationship, and a ruling entity. Their study indicates rather different natures of Indian communities -- "spiritual compact" instead of "social compact," equality instead of hierarchy, and lack of clear dichotomy between a ruler and the ruled. The European-Western type of highly-structured power relationship was missing in the Indian communities. Indian leadership was characterized by non-formality and lack of domination of one person over another.

The absence of personal authority, hierarchical relationship, and a separate ruling entity carried profound implications for the exercise of leadership in Indian society. For example, elders played an essential and highly valued function by transmitting the Creator's founding prescriptions, customs and traditions. Yet they had no formal authority. The elders merely gave information and advice, never in the form of a command.⁴³

Boldt and Long use an analogy of "coach-driver" which is introduced by Paul-Louis Carrier in order to illuminate the Indian nonauthoritarian style of leadership. "The coach-driver conveys his patrons, but merely to the destination and by the route they choose. To an uninformed observer the

coach-driver may appear to be the real master, but this is an illusion."⁴⁴ Why was such a pattern possible? They conclude that "direct participatory democracy" and "rule by consensus" made such nonauthoritarian politics possible in the Indian communities.

Is this conclusion relevant? Certainly this is an interesting idea that characterizes the Indian leadership structure. But the idea is incomplete because the majority of native organizations emphasize another aspect of sovereignty, namely external sovereignty, and an ability to engage in decision making.

Their analogy is based on the late-sixteenth and early-seventeenth centuries, when European colonial powers and Indian nations maintained quasi-international relationships by respecting each other's power, territory and sovereignty. Even today, they assert their traditional status (sovereignty) simply by assuming that this earlier power relationship is still valid and in force. Canada is often regarded by the natives as a junior member of such an international community, and the United Kingdom still maintains the primary role in dealing with the Indian's territorial and sovereignty issues. This was well indicated when many Indian associations went to London, England in the early-1980's in order to ask the British Parliament to consider their "international obligation" once spelled out in Indian treaties.

Bill Wilson of the Native Council of Canada rejects the hierarchical notion of sovereignty by emphasizing a

decision-making capacity as an element of sovereignty. From his perspective, sovereignty does not imply "governments that have their own exclusive jurisdiction" nor "apartheid and separation."⁴⁵ Instead, it is "the right to make decisions about ourselves, to enforce through our own institutions, our cultures, and our languages, and our traditions."⁴⁶ This form of sovereignty would enable the aboriginal people to maintain their distinctive identity in Canada.

Our analysis indicates that it is not very relevant to discuss "aboriginal sovereignty" within the context of the western political tradition, because the non-authoritarian leadership structure and quasi-international status of the sixteenth and seventeenth centuries do not constitute the present-day western notion of internal and external sovereignty. Instead, what emerges from our study are two entirely different points of view. For aboriginal Canadians, their sovereignty is an inherent right, whereas the majority of Canadians consider the idea of aboriginal sovereignty as almost groundless and meaningless. Why are these conclusions so different?

Two Different Perceptions. Fundamentally, there seem to be two conceptual approaches to native self-government. The one held by the majority of Canadians is an equality model where everyone has the same legal and constitutional rights. Although Indians might have had sovereignty in the seventeenth and eighteenth centuries, and treaties may have been "international treaties" in the past, all aboriginal peoples are now incorporated into one system in Canada.

Figure 7

Equality and Vertical Models

Equality Model

Vertical Model

equal partnership

What would happen if native self-government was granted to the aboriginal peoples in Canada? T. Flanagan states that this would lead to a breakdown of Canadian political unity and sovereignty.

By this criterion, Indian First Nations would virtually secede from Canadian federalism. They would become enclaves within the Canadian state, receiving fiscal subsidies but in other respects constituting imperia in imperio.⁴⁷

The native perspective may be illustrated by "a vertical model." In this model, the aboriginal peoples are not incorporated into one system with the White Canadians, still they maintain different systems as a whole. In other words, in spite of the incorporation of the native Canadians into the Euro-Canadian mainstream society, they insist that they retain their own political, cultural, economic and legal entities, and no one is entitled to disturb their way of life. The Haudenosaunee Confederacy of Quebec illustrates this point: namely the Two Row Wampun thesis.

When the Haudenosaunee first came into contact with the European nations in the early 1600's, they realized that it was not possible to bring these nations (the Dutch, French, English, and later the American) inside the Circle. Therefore a treaty of friendship and peace was made with each European nation respectively. Each of these arrangements is symbolized by the "Gus-Wen-Tah" or the Two Row Wampun. It describes how two different peoples relate to each other and how they can exist with one another in a way of peace.⁴⁸

Between the two societies, a rule of mutual respect was established.

Probably the first time that the Two Row Wampun agreement was made with a European power was with the Dutch. Symbolically, there was a river flowing called the River of Life. In that River of Life it was agreed that the Haudenosaunee and the Dutch would travel together, side by side in parallel paths which would never cross or meet. In their vessel the Dutch agreed to keep their government, their laws, their ways and beliefs. In our canoe, the Haudenosaunee were to keep our laws, our ways of government, our traditions and beliefs. Neither the Haudenosaunee nor the Dutch were to make laws over each other.⁴⁹

As a result, the Haudenosaunee Confederacy could claim their sovereignty quite easily. "We seek only the rightful recognition of our historic, current and future rights as one of the original confederations of nations of North America."⁵⁰ Is this Confederacy a part of Canadian federalism? This association has avoided participation in any elections (Canadian federal/provincial, American federal/state elections), and the federal franchise to the Indians in 1960 was viewed negatively by the Indians.

The Haudenosaunee Confederacy is sovereign in the international community, not within the Canadian (or American) context. The Haudenosaunee have never been part of Canada. We have always had our own country and our own government.⁵¹

So the Indian society and the White majority were not incorporated into one system, and they have expressed their

wish to remain separate. Perhaps the case of Haudenosaunee Confederacy is an exceptional case, and many aboriginal organizations want to be members of Canadian federalism. While it sounds rather confusing, it is safe to say that many native organizations want self-government or self-determination, yet they wish to be a part of the Canadian political system.

And while there are realities we are forced to submit to, such as the existence of a country called Canada, we insist on the right to self-determination as a distinct people and the recognition of the Dene Nation....

Our plea to the world is to help us in our struggle to find a place in the world community where we can exercise our right to self-determination as a distinct people and as a nation.

What we seek then is independence and self-determination within the country of Canada. That is what we mean when we call for a just land settlement for the Dene Nation.⁵²

The basic premise is that the present political development of the Inuit of the NWT is inadequate because it fails to provide structures within which the Inuit can achieve political participation reflecting their aspirations. The document proposes the creation of a territory called "Nunavut" which, after some years under territorial status, will progress maturely to provincehood and take its rightful place within Confederation.⁵³

While the two different societies maintain different systems, the federal government is responsible for the aboriginal peoples because of the trust relationship built up over time. This relationship does not undermine native self-government because the aboriginal society and the mainstream society remain as equal partners in Canadian federalism. The trust relationship should not be viewed as that of the ruler versus the ruled type of interaction.

In the case of Quebec, an interesting question emerged. How did the Parti Québécois (PQ) government accept "native sovereignty" and "self-government" although the PQ government itself attempted to separate from Canadian federalism? The position of the PQ government was stated at the First Ministers' Conference on Aboriginal Rights in 1983.

1. Quebec recognizes that the aboriginal peoples of Quebec constitute distinct nations, entitled to their own culture, language, traditional customs as well as having the right to determine, by themselves, the development of their own identity
2. It also recognizes the right of aboriginal nations, within the framework of Quebec legislation, to own and control the lands that are attributed to them.
3. These rights referred to in 1 and 2 are to be exercised by them as part of the Quebec community and hence could affect the territorial integrity of Quebec.⁵⁴

On March 20, 1985, the Quebec National Assembly passed a motion for the recognition of aboriginal rights in Quebec which included: a) the right to self-government within Quebec; b) the right to their own language, culture and traditions; (c) the right to own and control land; (d) the right to hunt, fish, trap, harvest and participate in wildlife management; e) the right to participate in, and benefit from, the economic development of Quebec.⁵⁵

Compared with the western provinces, the PQ government seemed to be accommodating the native demands, yet the aboriginal self-government had to be established within the framework of provincial politics.

IV. Politics of Constitutional Reform

General Overview. It may be appropriate to say that any substantial movement toward constitutional reform was initiated by the Rt. Hon. Pierre Trudeau, who became Prime Minister of Canada in 1968. His attempt was made rather difficult due to the lack of an amending formula and lack of consensus. Irritated by the slow progress in this matter, Trudeau began to assert his determined leadership in the late 1970's. In A Time for Action (June 1978), he manifested his willingness to renew the Constitution. First Ministers' Conferences on the Constitution were held in February 1979, June 1980, September 1980, and November 1981, and it was during the last conference that the constitutional debate was finalized. In relation to "Native Rights," it was not a good start. The White Paper of 1969, which J. Chrétien declared as being no longer valid, was formally scrapped. The Final Report of the Molgat-MacGuigan Committee (The Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada) in 1977 made four recommendations regarding native peoples, as follows:

9. No constitutional changes concerning native peoples should be made until such time as their own organizations have completed their research into the question of treaty and aboriginal rights in Canada.
10. The preamble of the new Constitution should affirm the special place of native peoples, including Métis, in Canadian life.
11. Provincial governments should, where the population is sufficient, consider recognizing Indian languages as regional languages.
12. No jurisdictional changes should be made in administrative arrangements concerning Indians and Eskimos without consultation with them. 56

A Time for Action recognizes native rights as one of the principles of constitutional renewal. "The renewal of the Federation must foster cooperation among Indians, Inuit and other Canadians in order that the descendants of those who first occupied this country might make their contribution, with equal rights and opportunities, to the strengthening of national unity, so that they are recognized as founders of the future Canada."⁵⁷ At a National Conference of Indian Chiefs and Elders held in April 29, 1980, Trudeau frankly admitted that government efforts were not successful and recognized the needs of native people in Canada..

The key to this most agonizing problem, in my opinion, is to find ways to break the bond of deep-seated dependency on government resources and government decisions -- the kind of dependence which robs a man of self-esteem, which robs a woman of her hopes for a better life for her family, which robs children of their future.⁵⁸

One may conclude that his acknowledgement of aboriginal rights was a substantial change in his political and constitutional theory of federalism. In Federalism and the French Canadian, he clearly opposed any special right to a province -- particularly Quebec -- and federalism and individual liberalism were firmly integrated in his theory. According to his concept, no province and no particular group should be given special rights in Canada. Therefore, his statement in April 1980 seemed to indicate a modification of his theory. But this was not the case as his justification for including aboriginal rights in the Constitution was primarily based on inferior socio-economic conditions with regard to native Canadians. In other words,

this conceptualization was still based on the equality model, and within the hierarchy of Canadian federalism, where only a greater degree of autonomy and decentralization could be achieved.

There were different patterns of prime ministerial leadership in the constitutional debate. The two First Ministers' Conferences held in 1983 and 1984 indicated Trudeau's style of leadership. The lower-level ministerial conferences could produce results. However, the most critical federal proposals on the agenda were not presented until the First Ministers' Conferences opened. Native organizations and provincial governments had to prepare their evaluations of the federal proposals without reasonable time periods to do so. What symbolizes this is the competitive nature of federalism -- "I present my proposal, then you decide whether you accept it or not."

The 1985 First Ministers' Conference was different from the previous two conferences. The federal proposal was already presented to all participants when lower-level ministerial conferences were held. So the participants were able to evaluate the proposals in advance and there were no surprises at the time of the conference. If an analogy is used here, Pire Trudeau tended to emphasize a theoretical framework a priori and Brian Mulroney, the present Prime Minister of Canada, tends to emphasize the process itself. The methods used by Trudeau and Mulroney to arrive at a consensus were and are different -- Trudeau through competition and conceptualization and Mulroney through

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accommodation and persuasion.⁵⁹ But the point is that neither competition nor accommodation can accomplish the goal -- as long as political leaders understand the problem from the equality model perspective.

Here, one may ask a basic question. "Why is the constitutional entrenchment of aboriginal rights necessary?" Many native organizations require entrenchment of the rights because any political agreement or administrative agreement can be modified or rejected by the federal and provincial governments without native consent. In other words, non-constitutional methods to recognize aboriginal rights would be very fragile. Instead, constitutional entrenchment will allow aboriginal people to keep a relatively firm position and every level of government is forced to respect this position.

There are some reasons why native organizations are suspicious of political accords or administrative agreements. Indian treaties tend to demonstrate this point. The Indians regarded the treaties as "international treaties," and it was not their intention to give up their autonomy or sovereignty at all. But from a government perspective, once a treaty was concluded, the Indian treaty would not connote "international treaty" in any sense. So what comes out of the exercise is a perception gap between the two sides.

Western Métis explain their position based on the problem of the 1870 Manitoba Act.

It is only natural for Métis to address their land claims to the process of constitutional renewal because their loss of a landbase resulted directly from illegal amendments to the Manitoba Act of 1870, a part of the Constitution of Canada.⁶⁰

Another example is a tripartite agreement between the federal and provincial governments and a tribal council, for instance. This agreement allows the provincial government to spend money on behalf of the tribal council. But as we have seen in Chapter 4, this type of intergovernment agreement is not necessarily implemented as originally planned. Administrative decentralization was expected to produce a new style of program delivery. However, in many cases, it meant rather the elimination of the program itself. Therefore what native organizations want is a basic rule that no exception is allowed notwithstanding provincial policies.

Once aboriginal rights are entrenched, native Canadians will not lose their political, administrative, and constitutional power as a result of court decisions which would modify their position in the future.

Premier Hatfield of New Brunswick also expressed his view, at the 1985 First Ministers' Conference, that a political accord would not be an appropriate method to protect the native peoples' rights.⁶¹

Native perceptions of the constitutional debate were characterized by very symbolic acts. One of their efforts was directed towards the United Kingdom which is one of the original signers of Indian treaties and the originator of the Royal Proclamation of 1763. Through public relations

campaigns directed at the British and European public (i.e., the Constitution Express), and through lobbying British parliamentarians, native organizations, especially status Indian associations, tried to sway the British opinion in favor of their cause.⁶² Another symbolic act was the bringing of legal action into the British courts. While legal actions were symbolic, the natives used two methods of litigation. One was the "sovereign status approach" brought by the Union of British Columbia Indian Chiefs and Federation of Saskatchewan Indians and the other was the "minority status approach" brought by the Indian Association of Alberta. The sovereign status approach required that "the consent of Indian Nations was constitutionally required before the UK parliament had power to patriate the BNA Act,"⁶³ whereas the minority status approach sought a statutory declaration that "the British Government's interpretation of the treaty obligation was wrong in law."⁶⁴ These two approaches to litigation actions were summarized by M. Woodward and B. George as follows:

Each view could be justified on its own merits: the FSI/UBCIC approach clearly played more to Canadian Indian politics than Anglo-Canadian constitutional arrangements, whereas the IAA appreciation of British politics was hard to reconcile with the prevailing direction of Indian affairs in Canada.⁶⁵

Based on the vertical model, this type of public campaigning, lobbying, and litigation in England was appropriate. But in the international community, where sovereignty of each nation is fully respected, there was no room to accept the concept of "aboriginal sovereignty." The federal government might have been embarrassed

internationally by the native actions in London and other European cities, even though the native groups themselves were not likely to gain anything significant through these actions.

Provincial governments show different attitudes and concerns towards the entrenchment of aboriginal rights. A few provinces (Ontario, New Brunswick, and Manitoba) support the idea of entrenchment, while both Alberta and British Columbia firmly reject it. Between the two extremes, the other provinces remain undecided and uncommitted. The First Ministers' Conference in 1985 was a good example of these various attitudes and concerns. On April 2, 1985, a federal proposal was introduced at the Conference, and five provinces (Ontario, Manitoba, N.B., P.E.I., and Newfoundland) decided to support the proposal. Yet four other provinces rejected the proposal for three main reasons: 1) the provinces would be forced to commit to negotiate on self-government with the aboriginal groups; 2) undefined sections may cause fear among the public, and premiers might be criticized; and 3) ambiguous clauses would be settled by the courts at a later date and the provinces would have no say in the matter. Saskatchewan, B.C., Alberta and N.S. were against the federal proposal.

Instead, Premier Grant Devine of Saskatchewan introduced his proposal on the same day which would eliminate forced provincial commitment and identify provincial veto power over any self-government arrangement.

After formal and informal consultation, the Saskatchewan

proposal gained the support of the federal government, Ontario, Manitoba, N.B., P.E.I., Newfoundland, and N.S... Only Alberta and B.C. did not support the Saskatchewan proposal. (The Quebec government was in favor of entrenchment, but the new constitution itself was not regarded as valid by the PQ government.) According to Premier Bill Bennett of B.C., aboriginal rights had to be defined as clearly as possible first, then entrenchment would be considered.

I make this suggestion because British Columbia continues to believe it would be unwise to entrench in our Constitution provisions that are undefined, ill-defined or not acceptable to the various parties that have an interest in these matters.⁶⁶

Premier Peter Lougheed of Alberta, in addition to supporting Bennett's position, refused to ratify a document in which treaty Indian rights were not well identified. (The Prairie Treaty Nations Alliance also did not support this proposal.)⁶⁷

With regard to territorial governments, while their observership played a minor role in the Conference, the two governments indicated different opinions on entrenchment, with the N.W.T. in favor and the Yukon rejecting it strongly.

First Ministers' Conferences. The federal delegation to the First Ministers' Conferences is mainly composed of three participants including the Office of Aboriginal and Constitutional Affairs (OACA), the Department of Justice and the Department of Indian Affairs and Northern Development. The OACA was created in 1983 by Prime Minister Trudeau and

attached to the Federal-Provincial Relations Office, a sister organization of the Privy Council. The OACA's main function is policy development and policy coordination and responsibility for the conferences. The Department of Justice has a Native Law Section and this section is expected to represent the federal government in general when dealing with native legal matters. The Constitutional Affairs Directorate, (a branch of the Corporate Policy Sector) of DIAND, is concerned with the native peoples and their relations with the department. Therefore, each of the three principal departments plays a different but complementary role. Depending on necessity, staff from the Prime Minister's Office and other federal departments are invited to attend meetings and conferences.⁶⁸ The Canadian Intergovernmental Conference Secretariat is responsible for the logistical aspects of the First Ministers' Conferences.

Are First Ministers' Conferences useful? One can point out both negative and positive effects of these conferences. According to a senior government advisor, the conferences themselves are nothing more than political shows, and no fruitful results are likely to be achieved. If the conferences were closed to the media, the meetings would be meaningful, according to this advisor. As long as political shows are open to the public, any compromise would be difficult to achieve.⁶⁹

Another critical view was expressed by Mr. K. Penner, a Liberal Party Indian Affairs critic, and MP for Cochrane-Superior (Ontario).

The last meeting the First Ministers' Conference held in April of this year, as witnessed by those of us who were present or who watched it on television, was nothing more than a public relations exercise. We have to admit that the aboriginal peoples at that conference were used. They were like props in a play and the theme of that play was, "look how our new Prime Minister can get along with the provinces."70

From the native point of view, it is not easy to maintain unity at all times. For instance, a 1985 Saskatchewan proposal was firmly rejected by the Assembly of First Nations (AFN) whereas the Native Council of Canada and the Métis National Council decided to support it because of the Prime Minister's assurance of a land-based community arrangement for them. The Inuit remained undecided until their communities could determine which side of the issue to support. Internal dissension among the native organizations also reduced the effectiveness of a united stand at these constitutional conferences. D. Ahanekeew, the national chief of the AFN, 1982-85, pointed out that provincial participation was not necessary, and only a bilateral negotiation between the status Indians and Ottawa would be desirable. G. Erasmus, another leader of the same organization, rejected Ahanekeew's view, and insisted that provincial involvement was important and necessary. As head of the Dene Nation of the N.W.T. in the 1970's, Erasmus seemed to have learned the importance of cooperation and understanding.

"If you were non-native, the impression you got was that you would be sent packing and everything was going to be returned to the First Nations, even the home you lived in," Erasmus said. "Northern society became polarized, fear mounted virtually to hysteria and because we were ignoring them, it rose to a high-fever pitch; I learned some lessons from that. We were very young at the time."71

What could be viewed as a positive result of the conferences? One contribution is quite clear and that is that the conferences would teach and inform the Canadian public about the native aspirations for aboriginal self-government. As long as the conferences are a 'political show', Canadians will have a chance to know the issues of native rights in Canadian society.

V. Approaches to Self-Government

The issue of aboriginal self-government is confusing in terms of division of powers in a federal system. The question is, is it possible to entrench self-government (vertical model) in the Canadian Constitution? The existing studies on aboriginal self-government seem to fail to consider the gap between the vertical model and the equality model. Many of the studies are written from the viewpoint of the equality model and try to locate the position of self-government within a framework of Canadian federalism. The following reasons may help to explain this conceptual problem. First, many researchers and analysts consider self-government in the context of the Constitution and law while the issue is basically one of politics. The question arises: do lawyers deal with the political issues properly at all times? Second, the issue of self-government is very emotional. The Canadian public may believe the aboriginal peoples are asking too much on the one hand, while the aboriginal peoples regard this issue as a matter of life and death. Any move towards self-government may influence (or hurt) both sides immediately and emotionally. Third, the term self-government itself is still unclear and needs to be more thoroughly defined.

With regard to the existing literature on the subject of self-government, two works deserve our attention here. In Forms of Aboriginal Self-Government, David A. Boisvert identifies 15 models of self-government by looking at authority, participation, dimension and territoriality.⁷²

Figure 8

Models of Aboriginal Self-Government

		Power		
		Autonomous	Semi-Autonomous	Dependent
Regional	Ethnic	Model A Nishga proposal		
	Public	Model B Nunavut proposal Denendeh proposal Yukon proposal Greenland		Model C Kativik Regional Government ONS Experiment Nishnawbe Aski Nation agreement (Ontario)
Local	Ethnic	Model D AFN proposals NCC proposals MNC proposals Penner Report recommendations	Model E James Bay and Northern Québec Agreement (Québec)	Model F Existing Indian band governments
	Public			

Source: Hawkes, 60.

David C. Hawkes also classifies six models of self-government by emphasizing two factors; i.e., power (autonomous, semi-autonomous, or dependent), and the nature of local government (ethnic or non-ethnic).⁷³ (See Figure 8.)

A report commissioned by the Special Committee on Indian Self-Government of the House of Commons found five major models of aboriginal political institutions in the western democracies, Japan and the U.S.S.R.. These were: the equality model (Sweden and Norway); the hierarchical model (Japan and the Indian bands in Canada); the integrated model (New Zealand); the multi-level model (Australia); and territorial self-government (Greenland).⁷⁴

What would happen if aboriginal self-government was established in Canada? There are two contrasting views on this question. One view is very negative. For instance, M. Boldt and J.A. Long predict a conflictual relationship between the native communities and the Canadian government.

The most critical political and legal objections of the Canadian government are directed at Indian claims to European-Western-style sovereign statehood, not at the principle of self-determination. In a struggle to achieve sovereign statehood Indian people could very well provoke a full-scale power struggle with the Canadian government.⁷⁵

In contrast, others believe that the creation of self-government would not hurt the unity and integrity of Canada at all. David Crombie, the Minister of INDIAN AFFAIRS, rejects the Boldt-Long-type prediction. He was asked by a CBC interviewer to comment on aboriginal self-government in April 1985.

Crombie: Gosh, no. I guess there's a couple of things that are worth mentioning. Anybody who's [sic] been on the great majority of Indian reserves, or visited a Metis community, or have gone through the wee villages that you find dotted throughout Canada's north, by Inuit people, to suggest, anyone to suggest, that somehow they're taking anything away, more than their share, from Canadians; is to speak to people who know nothing of these matters. ... The issue here first of all, is as a minimum, equality. And secondly, and in a sense a far more important one in the long run, and maybe they're fighting a battle for all of us, and that is, not only the right to be equal, but the right to be different. ... It's the right to be different.⁷⁶

The new national chief of the AFN, Mr. G. Erasmus, also expresses a similar view. "That's nothing more than the First Nations asking for what they already have and own as their right. It's not taking anything away from Canada."⁷⁷

According to a Gallup Poll conducted in the spring of 1984, 57 per cent of the people responded in favor of native self-government. Whether it can be said that 57 per cent is enough to conclude that the Canadian public will totally accept self-government, it would appear that the public is not completely negative towards the aboriginal demand.⁷⁸

If the idea of self-government remains unclear, then, how could it be entrenched into the Constitution? Contrary to our general perception, the federal government is prepared to accept entrenchment first, and define the concept later. In other words, the principle of self-government would be constitutionally recognized as the first step, and substantial definitions could be worked out as the second step.⁷⁹ This is called a "top-down approach" and is being employed by the federal government, the AFN, ICNI, and NCC. In fact, the 1984 and 1985 federal proposals followed this approach. There is another proposal which is mainly

supported by the Métis National Council (MNC) and that is the "bottom-up approach." The MNC has attempted to define their system of self-government first, then exercise constitutional entrenchment as the second step. Currently the western provinces including B.C. agreed to work with the MNC in order to facilitate the bottom-up approach.⁸⁰

The top-down approach appears to be more appropriate in that a single definition of self-government would not sufficiently identify all the systems of native autonomy. It is each aboriginal community's responsibility to define its own form of self-government. For instance, small bands can create a tribal council by unifying their financial and organizational resources and this tribal council may become their self-government. On the other hand, a big band can create its own self-governing system. Depending on location, size, resources, and political/administrative devices, various types of self-government are possible.

The basic objections to the top-down approach are twofold. First, it is impossible to recognize "native sovereignty," as such, from the perspective of the equality model. Premier Lougheed of Alberta, in a TV interview in April 1985, replied to a question of native sovereignty in the following way:

Lougheed: We don't believe that there should be a third sovereign order of government. In a federal system there is the federal government and there are the provinces, and under the provinces we, of course, have municipalities. I don't accept that we should be having another level of sovereign government.⁸¹

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Another objection is that there is a possibility that the courts may decide the context of the aboriginal rights in the future and the provinces may have no say in this matter. The Alberta Premier has stated that "We want to know how that will work out. I've been around this constitutional business. I know what happens when we sign one of those documents. The courts then start interpreting them in about three out of four cases. I want to make sure that what I've signed I know what it's going to mean to the province I represent."⁸²

According to Professor Valentine, we can identify three types of relationship between the Canadian political system and aboriginal self-government. First, the status Indians, especially the treaty Indians, wish to establish a third level of government in Canada. This seems to imply that aboriginal self-government would establish its own political status, yet it would not be a part of provincial or municipal governments. When we recall the vertical model, the idea of the third level of government may be more clearly understood. Second, the Inuit in the N.W.T. do not have to create a distinctive political status, because the territorial political unit itself can be modified in order to implement self-government such as Nunavut. Third, the western Métis do not necessarily want to establish their own sovereign status. While retaining their distinctive identity, their self-government could be a part of the provincial political system.⁸³

Two major conceptual problems of self-government are membership and protection of non-aboriginal members in native communities. In attempting to deal with the first problem the federal government proposed the elimination of Section 12(b)1 of the Indian Act in 1985. Based on the universal recognition of sexual equality, the federal government was keen to repeal this section, and most native organizations were in favor of that decision. However, the Native Women's Association of Canada, and the AIN rejected the idea indicating that it was the right of the native groups to decide their membership, and the government had no say in the matter at all. In June 1984, Bill C-47, which was opposed by Senator C. Watt, died in the Senate yet another bill of the same type introduced by the Conservative government, Bill C-31, was passed by the end of June 1985.

The second major conceptual problem is the rights of non-aboriginal citizens in aboriginal communities. This is a serious problem in the N.W.T. where native-controlled self-government proposals try to address this issue. One solution is the creation of "public government" which gives citizenship rights to aboriginal and non-aboriginal citizens while retaining a sort of native control as a whole. The Dene Nation proposal and the Nunavut proposal spell out this principle in the following manner:

The establishment of a government in the style and tradition of the Dene is fundamental to the future of the Dene as a people and a nation. There is no reason why this should be any threat to the vast majority of non-Dene Northerners who have decided to make their permanent homes here. What is required, and what we are inviting is the active participation of all Dene and non-Dene residents of the North in the task of

designing and creating the future Government of Denendeh.⁸⁴

Nunavut would affirm the will of all its inhabitants regardless of origin, to live and determine their future together in a territory/province based on the consent of its peoples and on the principles of democracy and responsible government.

Nunavut would honour the contribution of Inuit in founding the territory/province and in enriching the cultural inheritance of Nunavut.

Nunavut would welcome the more recent contributions to Nunavut of non-Inuit which have further enriched Nunavut's inheritance.⁸⁵

Is aboriginal self-government possible? From the perspective of the vertical model, this could be accomplished as long as the Constitution recognized aboriginal rights. Following that recognition each aboriginal community could decide to form its own self-government taking into consideration its size, resources, location and political and administrative environments. For the majority of Canadians, it would take some time to accept the concept of aboriginal rights, and if, after a time, the situation stabilized, entrenchment could also be accomplished. Aboriginal self-government would also be identified within the framework of the hierarchy of Canadian federalism.

The final report of the Special Committee on Indian Self-Government, recognized as one of the best analyses on self-government, identifies a process of native autonomy. First of all, the report recognizes the importance of self-government.

The Committee recommends that the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada. The surest

way to achieve permanent and fundamental change in the relationship between Indian peoples and the federal government is by means of a constitutional amendment. Indian First National governments would form a distinct order of government in Canada, with their jurisdiction defined.⁸⁶

The report describes the process of self-government as follows:

- creation of a Minister for State for Indian First Nations Relations linked to the Privy Council⁸⁷
- This Minister will be responsible for funding, economic development, policy coordination⁸⁸
- creation of a special tribunal which will solve disputes between Indian First Nations and other governments⁸⁹
- Improvement of the land-based economy (size and resource management)⁹⁰
- direct grants to Indian First Nations⁹¹
- promotion of the fair and just resolution of claims settlements (creation of a neutral agency responsible for this issue, and inclusion of pre-Confederation treaties, for example)⁹²
- renewed recognition of the trust relationship between the federal government and Indian First Nations⁹³
- transfer of control from DIAND to Indian First Nations, and elimination of DIAND's program responsibility⁹⁴

Throughout this report, a kind of administrative devolution offered by DIAND is strongly criticized. The only solution is the creation of a distinctive order of Indian First Nations within the federation of Canada.

VI. Summary and Conclusion

In this chapter we attempted to identify legal and constitutional implications of aboriginal self-government and sovereignty in a comparative perspective. The second section reviewed the definitions and sources of aboriginal rights. While there is no legally-defined concept of aboriginal rights, it was suggested that D. Sanders' definition seemed to be the most useful because his definition was multi-dimensional; i.e., the recognition of aboriginal self-government, the recognition of customary aboriginal law, the recognition of aboriginal land rights, the recognition of land-based rights. The Canadian courts historically regarded "aboriginal title" and "usufructuary right" as the components of aboriginal rights.

In the comparative context, both the U.S. and Denmark (Greenland) have recognized native customary laws as legitimate, and a kind of legal dualism has been maintained. The rationale behind the separation of justice administration has been based entirely on the different notions of "criminal justice." The Euro-Anglo-American administration of justice has paid more attention to "punishment" while, on the other hand, the aboriginal customs are concerned about "rehabilitation" and "compensation."

On what grounds are aboriginal rights valid in Canada? Historically speaking, the European colonial powers, and later American and Canadian authorities recognized the land rights of Indians on different occasions. For instance, a

Spanish theologian, Francisco de Vitoria, in 1537 confirmed the Indians' land ownership, and this was followed by Pope Paul III's Bull Sublimis Deus in 1537. The British Crown in 1763 affirmed the land ownership of the Indians in the Royal Proclamation. This is important in Canada because the new Constitution of 1982 recognizes this proclamation as a source of the aboriginal rights (Section 25(a)). Although Canada was not required to follow United States court decisions formally, some decisions have strongly influenced Canadian courts in the past. Chief Justice Marshall of the federal Supreme Court formulated a theory of aboriginal rights in two cases: Johnson vs. McIntosh (1823) and Worcester vs. Georgia (1832). He recognized the Indians' land ownership, but the aboriginal claim was deleted when North America was discovered by European powers. The only status that the Indians could retain was that of a "domestic independent nation" subject to the U.S. constitution and laws.

G.S. Lester is very critical of the Marshall doctrine when it is used as a source concerning aboriginal rights in Canada. He is of the opinion that the establishment of sovereignty in North America by discovery is not always applicable in Canada, especially in the case of Inuit. Because of the differing modes of interactions between the White and aboriginals in different areas, the unrestricted use of the Marshall theory is not desirable in Canada.

The third section examined the idea of aboriginal sovereignty. The Indian political structure is

characterized by the absence of the hierarchical power relationship between the ruler and ruled. Instead, consensus and harmony among the members are very much emphasized. "Aboriginal sovereignty" refers to an ability to engage in treaty-making and an ability to decide domestic matters. Why is this type of sovereignty supported by the aboriginal Canadians? Many of them insist that the quasi-international relationships of the sixteenth and seventeenth centuries are still valid today and aboriginals have not necessarily been incorporated into the White society.

Having identified the idea of aboriginal sovereignty, two models seem to explain entirely different conceptualizations of aboriginal sovereignty and they are illusion (the Whites) versus inherent right (the aboriginals). A model that identifies the majority of Canadian points of view on aboriginal sovereignty is called "an equality model." In this model, everyone has the same political and constitutional rights, and as long as the aboriginal peoples are citizens of Canada, they cannot possess their own sovereignty. The native perception can be called "a vertical model" where two distinctive societies maintain an equal power relationship. If we fail to understand the differences between the two models, any discussion on aboriginal sovereignty would be beyond comprehension.

The movements toward constitutional reform by Prime Minister Trudeau were examined in the fourth section. He

seemed to change his position from an initial strong objection to the recognition of "group rights" in a liberal democracy to an acceptance of the native demands.

The participants at the First Ministers' Conferences on aboriginal rights were reviewed as well. While the term aboriginal rights needs to be defined and elaborated upon in the future, it is somewhat surprising to see that aboriginal rights are now entrenched in the 1982 Canada Constitution Act. Ten years ago, no one would have predicted this kind of constitutional change.

The approaches to self-government were discussed in Section V. The federal government and the Assembly of First Nations seemed to agree that "aboriginal self-government" should be recognized in the Constitution first, then various models of self-government could be arranged later. In other words, no single definition of self-government embedded in the Constitution would make self-government work under all circumstances. On the other hand, the Métis National Council and the western provinces were interested in the creation of native local governments first, then the constitutional recognition of self-government would follow. The first approach is called "the top-down approach" and the latter is identified as "the bottom-up approach." As we discussed in previous sections, many studies on (future) aboriginal self-government were discussed within the framework of the equality model, and they failed to see the issue of self-government from the perspective of the vertical model.

On the whole, many points about aboriginal self-government will have to be discussed in the future, but generally speaking the concept may not be completely alien to most Canadians.

In this chapter, constitutional aspects of the four characteristics are as follows: C9 on equality, C10 on domination, C11 on pluralism, and C12 on assimilation:

C9: The aboriginal people have the same constitutional rights like the other Canadians.

C10: The aboriginal people have no constitutional rights unlike the other Canadians.

C11: A distinctive constitutional right of the aboriginal people is entrenched.

C12: A distinctive constitutional right of the aboriginal people is denied.

As far as the status Indians and Inuit are concerned, C9 and C10 may not be relevant because it was separation and maintenance of duality that characterized the legal aspects of the White-aboriginal relationships. The denial of federal voting rights up to 1960 and the concept of enfranchisement clearly indicated dualism: as long as he or she remained an Indian, no federal voting right was granted. From a liberal integrationist perspective, this arrangement was discriminatory. But for some Indians, separation rather than integration was a desirable policy option. (The Inuit were physically separated from the White Canadians, and there was no need to integrate them with the mainstream society.) But the 1960 franchise seemed to deny dualism: the aboriginals became the Canadian aboriginals. If we use our model, the pre-1960 era is characterized by

"the control model" (pluralism, high; domination, high) whereas the post-1960 period is identified as "the melting-pot model" (assimilation, low; equality, low). However, the constitutional entrenchment of aboriginal rights in 1982 seems to imply a departure from the melting-pot model. When aboriginal self-governments are accomplished in Canada, then we can say that the consociational model will be the best model that describes the aboriginal-White relationship. At this moment, however, we are not sure which way the self-government issue is heading.

3 The Métis seemed to fall into the category of the melting-pot model (assimilation, medium; equality, medium) up to 1982 because any distinctive aboriginal rights had been denied by the federal government, and the federal voting right was granted to them as it is to other Canadians (C9 is applicable here). It should be remembered that the Métis land question in Manitoba is a prime example of an assimilatory policy of the federal government (assimilation, medium; equality, medium). Up to 1985, the position of non-status Indians could be characterized by assimilation (denial of the Indian status) and domination. As problems of sexual inequality seem to indicate, legal and constitutional rights of the non-status Indians remain confusing and contradictory. In this sense, the assimilatory model appears to be best suited.

Like the status Indians and Inuit, the Métis have succeeded in establishing their distinctive aboriginal rights in the 1982 Constitution. The non-status Indians may follow the Métis although their legal and constitutional status may not be identical to that of the Métis. If the 1985 Indian Act is able to grant Indian status to those who were formerly denied it, then they can be treated the same as the status Indians.

Unlike Chapters 4 and 5, regional variations are not critically visible here. Will the natives in Newfoundland and Labrador be given Indian status in the future? Will the federal government recognize the western Métis as a distinctive group? We are unable to comment on these questions at this point.

As a whole, 1982 saw a dramatic change in the status of the aboriginal peoples in Canada. Namely, it was a change from C12 to C11. Can we apply the consociational model? It is fair to conclude that Canada's native groups fall into the melting-pot model at this moment, and may move to the consociational model if they can achieve "their" self-governments in a "satisfactory" manner. But obviously to achieve "their" self-governments in a "satisfactory" manner is not an easy task.

Figure 9

Aboriginal Peoples and the Constitution

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I. Introduction

In this thesis, an attempt has been made to examine Canada's aboriginal issues theoretically and comparatively by introducing a two-dimensional model. This final chapter will discuss four subjects in order to assess our inquiry and these are: assessment of the model; aboriginal identity in advanced western nations; group rights and liberal democracy; and aboriginal self-government in Canadian politics.

First, was our model introduced in Chapter 2 relevant in the context of the arguments presented in Chapters 3 to 6? Several advantages and shortcomings of the model, which were identified in Chapter 2, have to be critically evaluated once again. The second subject of this chapter is the issue of aboriginal identity in advanced western nations. Some scholars see the rise of ethnicity or minority problems negatively, whereas other scholars emphasize the importance of the ethnic identity in liberal democracies. The question must then be asked; is it relevant to refer to these arguments when we deal with the aboriginal identity in the western nations? Third, we will discuss "group rights" in liberal democracies; i.e., what are "group rights" in liberal democracies in general? Are group rights compatible with liberal democracy? Fourth, we will identify some hypothetical options of aboriginal self-government in Canadian politics.

II. The Assessment of the Model

Chapter 1 examined definitions, demography and government policies concerning aboriginal citizens in the western countries and indigenous international development. With regard to the definitions, four types of definition were identified: 1) no formal recognition; 2) indirect formal recognition (Sweden and Norway); 3) limited direct recognition (Canada and the U.S.); and 4) full formal recognition (Australia and New Zealand). While some countries have established particular departments within their public services in order to assist their aboriginal peoples (Canada, the U.S., Australia and New Zealand), other countries have not created such departments. The Inuit in Greenland and Alaska have obtained a framework for the development of their local autonomy, although their local governments are subject to the ultimate rulings of their central/state governments respectively. Indigenous international development does not seem to have provided an immediate policy resolution to the problems of aboriginal peoples. However, this development is not totally without success. Three main reasons for limited successes are as follows: the changing nature of the international community; Canada's contribution to indigenous international development; and the short-term and long-term effects of international accusation strategy.

Chapter 2 tried to develop a frame of reference for Canada's aboriginal issues by reviewing several points such as the relationships between inter-group relationships and

political régimes, various models of inter-group politics and three analytical problems of inter-group relationships. Discussion of these points has made it clear that a single model would not be appropriate in the study of our subject. In other words, a multi-dimensional model is required in order to deal with the complex aboriginal-White relationships in Canada. As a result, a two-dimensional model was introduced, and consequently four types of inter-group relationship were presented: the consociational, control, melting-pot, and assimilatory models. In order to make our model work it was necessary to identify 12 conditions.

As an advantage over the others, dynamism and complexity of various cases and historical transformations of inter-group relationships could be adequately dealt with by our model. On the other hand, three problems were also pointed out: there were no clear criteria to measure the degree of the four characteristics (pluralism, domination, assimilation and equality); policy implications of each were not identified; and domains of inter-group conflicts would have to be clarified.

In order to see whether or not our model could deal with the dynamism and complexity of inter-group relationships, the aboriginal peoples in advanced western countries were examined in the context of our model. The result seemed at least reasonable, because our model was able to identify various types of interactions between the aboriginal peoples and their host societies comparatively.

A single model such as internal colonialism may not be able to identify variations of inter-group relationships sufficiently.

Chapter 3 reviewed the historical transformation of the aboriginal-White relationships in North America. Contrary to a commonly-held view (Indian subordination to White Europeans), interactions between aboriginals and Europeans were more complex and diverse. In this chapter, three factors of interactions were identified; i.e., attitudes and policies of colonial powers, socio-economic conditions of frontier societies and political power of the aboriginal peoples.

It was pointed out that at first the colonial powers were more or less accommodative toward the Indians because White Europeans either had to rely upon the Indians to a large extent (fur trade, -for instance) or had to respect the Indian's military capabilities. Indian treaties and several diplomatic measures were taken in order to obtain Indian friendship or pacify the Indian military threat. But when the Indian's skill and military threat became irrelevant to the Europeans, the Indians became a ward of Anglo-European institutions in North America.

The second advantage of our model (historical transformations of inter-group relationships) seemed valid when we applied the model in Chapter 2. While each aboriginal group was incorporated into the North American society, patterns of non-incorporation were not identical at all: the Indians fell anywhere from a quasi-international

status to the control model; the Inuit fell anywhere from the absence of interaction to the melting-pot model; the Canadian Métis and urban natives fell into the assimilatory model.

Chapter 4 attempted to reveal the complexity of administrative relationships between the aboriginal peoples and the federal and provincial governments. According to the BNA Act, the federal government is responsible for the status Indians and Inuit, and one particular department, the Department of Indian Affairs and Northern Development, is charged with the responsibility of carrying out this mandate. As a result, one could assume that there is a simple bilateral relationship between DIAND and the status Indians/Inuit in Canada. To some extent, this was a correct assumption up until the second world war. However, the situation became complicated especially in the 1970's and early-1980's with the introduction of functional decentralization of government activities, federal-provincial coordination, and native participation in decision making. First, several federal departments and agencies began to provide their services to the native Canadians including Métis and non-status Indians, and DIAND was no longer the single department in the federal government responsible for the care of aboriginal Canadians. Second, several areas such as education and administration of justice are administered by provincial governments under federal-provincial agreements. While some Indians do not appreciate this trend, federal-provincial cooperation seems

to be inevitably changing Canadian federalism as related to Indian affairs. Third, the aboriginal peoples have begun to participate in processes of program delivery by indicating their preferences and objections.

Throughout Canada, there is no single policy that explains DIAND's Indian and Inuit programmes. Each region has its own policy orientation and goals. For instance, no status Indians and Inuit of Newfoundland are formally recognized by the federal and provincial governments, whereas Manitoba Indians are being asked by the regional DIAND office to carry out various programmes on behalf of the Manitoba Indians. In addition, several provinces such as Quebec, Ontario, Saskatchewan and Alberta have established provincial native affairs branches in order to promote effective policy coordination and planning.

In Chapter 5, the relationship between the aboriginal peoples and the Canadian political system was discussed. At the national level, there were several aboriginal associations identified that play important roles such as lobbying and public relations activities. While it is clear that the contribution of aboriginal organizations cannot be minimized, they seem to suffer from internal conflicts that lessen their effectiveness with the exception of the Inuit group. The status Indians and Métis, in particular, have to deal with all types of internal rivalries.

The native Canadians have been successful in retaining rather harmonious relationships with the federal Parliament and MPs. In fact, when the Special Committee on Indian

Self-Government of the House of Commons published its final report in 1993, many Indian leaders evaluated the report positively because their wishes to establish self-government were recognized in the report. In addition, it was suggested that some native leaders maintain close political ties with the federal Liberal Party. Native electoral power as such is almost meaningless in Canadian provinces. For example the aboriginal peoples are not interested in local politics and do not hold the same political views as other Canadians. Consequently, the lack of collective voting power, non-participation in provincial/local elections and gerrymandering of voting districts makes native electoral power almost invisible. However, in the Northwest Territories, native voters constitute the majority of the territorial electorate and their power is impossible to ignore.

Do the status Indians currently enjoy "local autonomy" in Canada? The answer was considered in Chapter 5 to be negative for various reasons. For example, the band government is allowed to create by-laws, yet every decision can be scrutinized by the Minister of Indian Affairs and Northern Development, economic transactions can be controlled by provincial governments and the Department of Indian Affairs and Northern Development does not have the interest nor the programmes to promote long-term economic development.

The issue of land claims settlement can be solved either through courts or the Office of Native Claims of the

Department of Indian Affairs and Northern Development. The Office of Native Claims deals with two types of claims: the specific and comprehensive claims. For the federal government and the native associations, the Office of Native Claims is considered to be efficient in finalizing disputes in terms of financial costs and predictability of results compared with land claims settled through litigation.

The James Bay and Northern Québec Agreement of 1975 granted "local autonomy" to the Cree Indians and Inuit. The Cree Regional Authority and the Kativik Regional Government take care of Cree Indians and Inuit respectively. When their local governments were established, both Cree Indians and Inuit expressed their dissatisfaction. Poor program implementation by the federal and provincial governments and lack of adequate funding to local governments are considered to be the major obstacles to native-controlled political-administrative systems in northern Québec.

Chapter 6 reviewed constitutional issues concerning the aboriginal peoples including aboriginal rights, "aboriginal sovereignty" in Canada, constitutional reform and aboriginal self-government.

The concept of aboriginal rights remains vague and unclear to many Canadians, and this makes the issue of constitutional entrenchment of "aboriginal rights" very difficult. However, D. Sanders' analysis seems useful because he provides us with a multi-dimensional definition: (1) the recognition of aboriginal self-government; (2) the recognition of customary aboriginal law; (3) the recognition

of aboriginal land rights; and (4) the recognition of land-based rights. Historically British and Canadian courts considered aboriginal title and usufructuary rights as the main elements of aboriginal rights.

There are various sources of aboriginal rights such as the 1763 Royal Proclamation and the Marshall Doctrine of the United States, and many native Canadians insist on their distinctive status in Canada. A concept of "sovereignty" was discussed in Chapter 6: the Euro-Anglo-American sovereignty and the aboriginal sovereignty (an ability to engage in treaty-making and to regulate domestic matters). It was also pointed out that there is a perception of a gap between the aboriginal Canadians and the majority of Canadians with regard to the relationship between the two.

Is aboriginal self-government possible? We have found that there are two types of approach to this question; i.e., the top-down and bottom-up approaches. The federal government and the status Indians would like to employ the first approach by initially recognizing a principle of self-government in the Constitution, and then variations of the self-government system can be arranged later. On the other hand, the western Métis are concerned with the build-up of their self-government first, and constitutional entrenchment can be worked out later.

In order to evaluate our model, it seems useful to consider each group's problems one by one. The first are the problems of the status Indians. With regard to administrative and political aspects, we have found that the

control model is relevant: pluralism, high; domination, high. But in Chapter 6, we showed a changing pattern of inter-group relationship, namely from the control model to the melting-pot model. Up until 1960, voting rights of the Indians/Inuit had not been granted, and there existed a kind of dualistic legal and constitutional arrangement. From 1960 to 1982, the aboriginal peoples became the Canadian aboriginals, and equality between the majority of Canadians and aboriginal peoples was accomplished.

In addition, the 1982 Constitution Act added a new dimension. What we found here was a departure from a liberal integrationist policy where the group rights of the aboriginal peoples were recognized in the new Constitution. The problem is, however, definitions and contents of such aboriginal rights remain unclear.

What are the aspirations of the status Indians in Canada? Our analysis in Chapters 4 to 6 indicated that their main concerns are twofold: first, it is essential to establish their distinctive political unit/legal rights and second, it is necessary to accomplish equality between themselves and the majority of Canadians. In other words, an institutionalized system of separation and equality have to be established. In this sense, the consociational model could justify the aspirations and goals of the status Indians: pluralism, high; equality, high.

If the 1985 Indian Act revision is successful (non-status Indians were to receive Indian status), perhaps the problems of the non-status Indians would not be so important in our analysis.

The Inuit's administrative and political positions are different from those of the Indians. While they do not have institutionalized systems of separation such as reserves and band governments, they are relatively free from domination or dependency. This is the reason why the melting-pot model rather than the control model is chosen for them. But their constitutional rights are identical with those of the Indians: from the control model (up until 1960) to the melting-pot model (1960-1982). Needless to say, the 1982 Constitution Act introduces a new perspective.

What would be the main goal of the Inuit? Unlike the Indians, the Inuit may not have to worry about establishment of their political unit -- thanks to their remoteness from the mainstream society and institutions, they can create their frame of reference for political autonomy without difficulty. In this sense, the degree of pluralism may remain low, unlike the status Indians.

The Métis' administrative and political features are characterized by both assimilation and domination. In spite of their wish to have a distinctive Métis identity in Canada, they have not been able to do so in the past. The 1982 Constitution Act is a significant accomplishment for the Métis in that they were finally able to establish their group rights like the status Indians and Inuit. Their primary goal seems to be the establishment of political units and the pursuit of their own way of life as Métis. However, as we have seen in Chapter 6, they are not opposed to having their political units as part of provincial

political systems. In other words, they do not necessarily want to create their own sovereignty or a third level of government in Canada. In this sense, the degree of pluralization may be low, unlike the status Indians. As far as the equality-domination dimension is concerned, the Métis appear to choose equality rather than domination as a main feature of inter-group relationship.

How do we evaluate the shortcomings of our model?

First, while our close examination and subjective judgement may not be accurate every time, our conclusions in Chapters 3 to 6 seem reasonable and comprehensible. That is to say, the complexity of our subject can be properly dealt with by observation and subjective analysis, and a quantitative measurement may not be the best method for our study. Second, while precise policy implications of each box are not defined in Chapter 2, we have been able to see program/policy implications of the consociational, control, melting-pot, and assimilatory models. Needless to say, we have just referred to one particular example (the aboriginal-White relationship in Canada) and it would be difficult to generalize about our examination more or less systematically. Third, we have attempted to study different areas of conflict, and depending on the area inter-group relationships seem to take different forms.

In order to elaborate on our model, in the future it will be useful to examine other plural societies such as South Africa, Lebanon and India, where inter-group relationships become more violent and explosive. And it may

also be interesting to examine variations of inter-group relationships in some socialist countries such as Yugoslavia and the U.S.S.R. where socialism and elements of pluralism (ethnicity, race or religion) seem conflictual and contradictory.

Figure 10

Status Indians and the Model

Figure 11

Inuit and the Model

Figure 12

Métis and the Model

III. The Aboriginal Identity in the Western Countries

How do students of inter-group relationships see the problems of ethnic identity in advanced western nations?

M. Novak, in The Rise of the Unmeltable Ethnics, advocates the importance of group distinctiveness in order to eliminate existing social problems and discrimination. In other words, if the uneven situation among various groups is overcome, then such problems could be eliminated as well.¹ Others insist that such "ethnic identity" would simply camouflage social inequalities and stress the importance of the universal application of democracy and citizenship. This idea is supported by S. Steinberg and J. Porter, for instance.

The trouble with American pluralism derives from the fact that it was built upon systematic inequalities that constituted an untenable basis for long-term ethnic preservation. This was the pitfall -- and fatal flaw -- that robbed ethnic pluralism of its cultural innocence.²

The ultimate ethnic myth, perhaps, is the belief that the cultural symbols of the past can provide more than a comfortable illusion to shield us from present-day discontents.³

Thus the United States and Canada, both societies within the western liberal tradition with ethnicity as a salient feature, seem to be faced with a dilemma: on the one hand if they value and emphasize ethnicity, mobility and opportunities are endangered, on the other hand, if they emphasize mobility and opportunity, it will be at the cost of submerging cultural identity.⁴

A founder of the Chicago School of Sociology, R.E. Park⁵, and a Swedish social scientist, G. Myrdal⁶, share a similar view; i.e., a liberal integrationist perspective. Recently, Myrdal criticized the rise of ethnicity as "upper-class intellectual romanticism" because it fails to consider the problem of poverty among lower-class Americans.⁷

The problem that we have raised here is very general; i.e., a dispute between those who advocate ethnic identity and those who support liberal integration. Is this applicable in our study of aboriginal identity in particular? What we have documented in Chapter 6 is that the aboriginal Canadians do not think that they are incorporated into the mainstream society at all. They believe that they still retain their distinctive identity in North America. In this sense, a clash between the majority of Canadians and the aboriginal peoples would be inevitable, although this clash may be peaceful and violence-free.

Let us assume that a clash between the two is inevitable. The questions which should be posed are as follows. Do the aboriginals belong to the western countries or the third world? Will it be relevant to retain their traditions and aboriginal identity in Canada where society is being transformed into that of "a post-industrial society?"⁸

There is one view that supports the idea of a fourth world. That view is that aboriginal peoples belong to neither the advanced western nations nor the third world.

The Aboriginal World has so far lacked the political muscle to emerge: it is without economic power; it rejects Western political techniques; it is unable to comprehend Western technology unless it can be used to extend and enhance traditional life forms; While the Third World can eventually emerge as a force capable of maintaining its freedom in the struggle between East and West, the Aboriginal World is almost wholly dependent upon the good faith and morality of the nations of East and West within which it finds itself.⁹

Is the aboriginal fourth world concept relevant in Canada?

From a comparative perspective, although the aboriginal Canadians are accorded low prestige and social status by the mainstream society, they do not necessarily belong in the category of the poor third-world nations. To illustrate this, we have chosen two indicators here: life expectancy and infant mortality rates. In 1971, the life expectancy of male Indians at one year of age was 60.2 years and that of the national population was 69.3 years. In Canada, therefore, the male Indians' life expectancy was approximately 10 years less than that of the national average.¹⁰ The male Indian's life expectancy in the early-1970's was comparable to that of other countries such as Mexico, Argentina, Paraguay, Surinam, Venezuela, China, South Korea and Mongolia.¹¹ These countries are relatively developed in the non-western world; however, there are many other countries where male life expectancy is far behind that of Canada's male Indian life expectancy. With regard to infant mortality rates (deaths per 1000 population), Canadian data are as follows. In 1976 the mortality rate among Indian infants was 32.1 whereas the national rate was 16.0.¹² Countries which have comparable Indian infant mortality rates are Costa Rica, Honduras, Kuwait, Hungary and Romania.¹³

In addition, being in the advanced countries, the aboriginal peoples have easy access to advanced technology, democratic institutions and information that is equally shared by the majority of the population.

In terms of economic participation, many aboriginal citizens play a minor role in capitalist economies such as

trappers, hunters, fishermen, and unskilled labourers. According to Indian Conditions, economic marginality of Indians is pointed out as follows:

This increase in the working-age population is taking place in an on-reserve employment market unable to satisfy current requirements and an off-reserve employment market already saturated by the previous national "baby boom" population.¹⁴

Indian unemployment remains at about 35 per cent of the working-age population, including those following traditional life styles.¹⁵

Despite improvements, Indian participation in the national economy remains characterized by inexperience and caution on both sides.¹⁶

Should every segment of a post-industrial society be urbanized and industrialized? If the answer is yes then the aboriginal peoples can play only a marginal or peripheral role in modern economic systems. Therefore, when we emphasize political and economic marginalities of the aboriginal peoples in Canada, the concept of the fourth world seems relevant and valid.

IV. Group Rights and Liberal Democracy

Can modern liberalism deal with an issue of group rights properly? Are aboriginal rights irreconcilable with liberal democracy? One view concerning group rights in liberal democracy supports the point that the group rights of ethnic or aboriginal groups are not adequately protected as long as liberalism depends on individuals as a unit of analysis.

Without challenging the importance of the struggle for human rights of an individual nature, it is still possible to suggest that the status of groups, particularly communities, has been neglected at some risk to the integrity and consistency of democratic and ethical principles, notably those of equality and justice.¹⁷

Popular democratic theory in the United States has assumed that any apparent dispute between the claims of individualism and communalism is really based on a misunderstanding of the nature of communalism, for there really can be no such thing as a communal interest; communities are merely aggregates of individuals.¹⁸

Similarly, V. Van Dyke raises a question of group rights and equality. "The political philosophers who have ignored or neglected groups, including Locke, Rousseau, Mill and Rawls, have thereby simplified their task but the problem remains."¹⁹

Potential contradictions obviously exist between the proposition that individuals are entitled to equality, without "distinction" as to race, language, or religion, and the proposition that groups identified by these characteristics may have special legal status and rights.²⁰

Is it possible to identify group rights clearly? Van Dyke thinks this is rather difficult. "In fact, the groups that possess rights vary widely in their characteristics, and the sets of rights they possess vary too... Different

sorts of groups must be placed in different categories, and the appropriate rights for each category will differ."²¹

Here it seems relevant to discuss group rights themselves rather than to continue an endless philosophical discourse on group rights and liberalism as Professor K.D. McRae has already discussed this subject historically.²²

How have group rights or the special status of Indians been maintained or rejected in the past? In other words, did liberal democracies such as the U.S. and Canada accept or reject Indians' group rights? J.H. Clinebell and J. Thomson raise a few points concerning qualifications for recognition of a state and these are: permanent population, territory, effective government, and foreign relationships. (These qualifications are identified in Article I of the Montevideo Convention on the Rights and Duties of States). The two authors propose that the American Indians could satisfy such conditions.

There is no serious dispute that Native American nations have for centuries had, and still have, permanent population.²³

Before the European arrival natives had the use of the entire North American continent and controlled activities within that territory.²⁴

Although there existed a wide variety and diversity of systems, almost all tribes, bands and villages regulated activities and relations among their members with one degree of formality or another.²⁵

For centuries Native Americans have entered into treaties with the U.S. and other countries.²⁶

They conclude that before the Europeans arrived, native Americans had states that were qualified as such, and European/American authorities respected this fact. But due to circumstantial changes, "Native Americans are now, at

best, dependent nations subject to the will of the United States government."²⁷ Therefore, historically, according to our definition, the vertical model was replaced by the equality model.

One method to approach "duality" is to study citizenship. In the case of the U.S., K.W. Johnson wrote an essay entitled "Sovereignty, Citizenship and the Indian," in which he identified possibilities of obtaining citizenship. Theoretically we could assume three patterns of citizenship; i.e., exclusive Indian citizenship, both American and Indian citizenship and exclusive American citizenship.

Figure 13

Citizenship in the United States

A rule of citizenship by birth, which was established in the fourteenth amendment of the U.S. Constitution, would not seem to apply in the case of the American Indians: "the Court held in Elk vs. Wilkins [1884] that an Indian born within the United States was excluded from achieving

citizenship upon birth or by subsequently renouncing his allegiance to his tribe."²⁸ Also tax exemption was considered by a judge of this case to constitute the lack of American citizenship.

Another method of obtaining citizenship is "naturalization." The U.S. Congress had established certain conditions for naturalization and these were: oath of allegiance to support the U.S. Constitution; an ability to communicate in English fluently; understanding of American history and society; disposed to the good order and happiness of the United States.

The Indian occupied an anomalous position in the naturalization process. Indians were classed as "nationals," so that they could not fall within the provisions established by Congress to naturalize "aliens."²⁹

An act of 1924 created a rule of citizenship "providing that all Indians born within the United States were thereby granted citizenship: it required neither the tribal leadership nor the individual members to manifest consent to be governed."³⁰ Interestingly enough this act did not "require relinquishment of the individual Indian's allegiance to the tribe or dissolution of the tribe itself."³¹ In other words, the Indians were not asked to give up "Indianness" in order to become American citizens.

K.W. Johnson thinks that this is rather inconsistent.

As the foregoing study illustrates, the "grant" of citizenship to Indians, who still owe at least partial allegiance to the pre-constitutional sovereign tribes, is at odds with the framers' concept of membership in the American political community. Nor does it accord with the fourteenth amendment's prerequisites for citizenship.³²

What he found was a duality of citizenship and he was inclined to eliminate the special status given to the Indians. "But if the Indian is considered to have manifested his consent to be governed under the Constitution of the United States, then, he must join the rank of the citizenry: his wardship will have to come to an end."³³

In Canada, it was the White Paper of 1969 that suggested the elimination of the special status given to Indians. According to the paper, the special status was regarded as an obstacle to equal participation in Canadian society with other non-aboriginal citizens, and a liberal integrationist perspective was presented. "The policy rests upon the fundamental right of Indian people to full and equal participation in the cultural, social, economic and political life of Canada. To argue against this right is to argue for discrimination, isolation and separation."³⁴ What were the policy recommendations in the 1969 paper? Six major issues were identified in the paper: legal structure (discriminative laws to be abolished); Indian cultural heritage; programs and services (DIAND-type services to be eliminated); enriched services; claims and treaties; Indian control of Indian lands.³⁵

The native reaction was bitter and critical. A counter proposal made by the Indian Chiefs of Alberta, Citizens Plus³⁶ did not address the philosophical argument at all -- rather it suggested programs of the federal government that should be delivered to the status Indians. It was Professor A. Cairns, a political scientist at the University of

British Columbia, who introduced the notion of "citizens plus" in the 1967 Hawthorn report. By reviewing the rights of the status Indians, especially treaty rights, he concluded that the Indians' position in Canada was unique and exceptional.

The position we strongly hold is that Indians are citizens plus: that in addition to the normal rights and duties of citizenship they also possess certain rights simply by virtue of being Indians.³⁷

Why was this possible? He emphasized the Indians' weak and disadvantaged status in Canada: "At the present time a post-war version of egalitarianism is responsible for a very desirable attempt to see that Indians are brought within the framework of all normal public programs which are not inherently incompatible with their unique status."³⁸

At least two questions seem to emerge from his conclusion. First, if the Indians become rich, would they be allowed to maintain their status? In other words, does the "citizens plus" status refer to both economic and political/constitutional special status at the same time? The second problem is eligibility for the status of "citizens plus." Can this concept be applicable to the Inuit, Metis, and non-status Indians?

According to our vertical model, the two societies are different and there should be no overlapping of citizenship at all. If this is true, Indians should reject any program offered by the Canadian government because such government programs would jeopardize their sovereignty. This is the case of the Haudenosaunee Confederacy that insists on the complete independence of their nationhood in North America.

But many native groups do not assert such a position. While they support the vertical model (namely separation of two different societies), they also recognize Canada's existence by accepting Canadian citizenship in various ways. In this sense, the vertical model does not necessarily justify the reality of the "citizens plus" position.

Is the idea of the vertical model completely irrelevant in Canada? R. Michael Stevens' new concept, "asymmetrical federalism," offers us an interesting view. He undertook a study of the relationship between Puerto Rico and the U.S., and later his research became a dissertation entitled "Federacy: The Federal Principle in the Post-Colonial Era." What he studies are patterns of relationship between a dominant government and a weak/minor government in terms of size and resources -- asymmetrical federalism.

Federacy is an unrecognized form of federalism which joins separate, distinct communities of disproportionate size and resources in a political association designed to maintain the integrity of the smaller community.³⁹

Why is this important for us? He thinks that this model "permits relatively small communities to maintain their cultural identity through a separate political organization while retaining ties -- economic, political, military, and so on -- to larger, more powerful nation / states."⁴⁰ Twenty examples are identified and terms of "associated state" (weak government) and "associated power" (major government) are identified: Aaland-Finland, Andorra-France, Antigua-U.K., Antilles-Netherlands, Berlin-West Germany, Bhutan-India, Brunei-U.K., Cook

Islands-New Zealand, Dominica-U.K., Faroe Island-Denmark, Guernsey-U.K., Jersey-U.K., Liechtenstein-Switzerland, Isle of Man-U.K., Monaco-France, Puerto Rico-U.S., St. Kitts Nevis-U.K., St. Lucia-U.K., St. Vincent-U.K., San Marino-Italy. In many cases, geographically associated states are far from associated powers (mainly islands). But Liechtenstein, Monaco and San Marino are contiguous to associated powers, and population size is relatively small (21,350; 23,400; and 17,000 respectively). What is the relationship between the two associated entities? "The most striking constitutional safeguard for the small community in federacy contracts is the guarantee of the right of unilateral withdrawal by the associated state from the association."⁴¹ But Stevens assumes that the right of unilateral withdrawal is unlikely to be used in many cases. Another characteristic is distribution of authority.

This role of the associated power follows from the disproportion of resources possessed by the two constituents. The appeal of federacy for the associated state is the provision of services the smaller community needs but cannot afford. Functions often performed by the associated power for the federacy are defense and diplomatic representation, but quite frequently these functions are qualified or excluded from the authority of the associated power. More often, the federacy contract creates authority for the associated power to provide common services in customs, mail and communications, and the regulation of currency values, interstate transportation and telecommunications.⁴²

With regard to citizenship, smaller units are allowed to define their own citizenship that is "not reciprocated to the citizens of the associated power."⁴³ While citizens of the associated state have access to resources of the associated power, the smaller unit may reject the

encroachment of the associated power (acceptance of military protection from the associated power but exemption from conscription, for instance):

To what extent is R.M. Stevens' conceptualization useful for us? "Federacy is a significant alternative model to the commonly perceived alternatives of either independent nation-statehood, or continued colonial dependence, or integrate as a subordinate province of another country."⁴⁴ By maintaining this relationship, federacy will solve "the dilemma of attaining self-government while lacking the resources to sustain independence in the modern world of nation-states."⁴⁵

To draw a parallel between Liechtenstein and an Indian reserve may sound ridiculous and nonsensical. But another academic source seems to confirm the same pattern. The authors of The Road: Indian Tribes and Political Liberty, R.L. Barsh and J.Y. Henderson introduce a notion of "Treaty Federalism." They try to find a relationship between "Indian sovereignty" and "the Government of the U.S." and state that Indian sovereignty is hard to maintain under the federal authority. So they propose that "there are two means of absorbing new subfederal sovereignties, by contract, into the Union."⁴⁶ (statehood and treaty federalism) The domestic dependent nations thesis of John Marshall is understood in the following way:

What made them (Indians) domestic was their permanent inclusion within the national territory of the United States, and what made them dependent was their recognition by treaty of federal supremacy.⁴⁷

Instead of this conceptualization, "Treaty Federalism" may correct the situation of "domestic dependent nations."

There are two kinds of subfederal political relationships today. The relationship of each state to the general government is defined by the Constitution. The relationship of tribes to the United States is discernible only in the hundreds of treaties which link them and give authority to federal supremacy.⁴⁸

To put this idea into R.M. Stevens' terminology, perhaps we can say that Indian autonomy would be classified as that of the "Associated State" and the U.S. government would become "Associated Power," and various Indian treaties would legitimize the creation of the union.

Interestingly enough, Prime Minister Trudeau rejected this idea in 1984. By referring to Monaco and San Marino, he objected to this type of relationship because such an arrangement would deny to Indians the dual identity as a Canadian and an Indian.

Not that there is anything dishonourable with this position, but it seems to me it is not as satisfactory as being Canadians at the same time as you are Indian. If you give up Canadian sovereignty in order to establish another form of sovereignty, then you don't have much say in the conduct of Canada.⁴⁹

Diversity of Canada's aboriginal population makes it difficult to use this analogy in the Canadian context, but the basic idea seems valid and useful. Next we will discuss practical aspects of our subject by looking at constitutional reform and proposals for aboriginal self-government.

V. Pluralism, the Aboriginal Peoples and Canadian Politics

When one refers to "pluralism," one can easily point out three types of pluralism. The first type was introduced and elaborated upon in the United Kingdom. British pluralists included J.N. Figgis, H. Laski and G.D. Cole, for instance, and their major concern was "with voluntary associations as alternative foci of citizen loyalties and bulwarks of liberty against the danger of a too-powerful state."⁵⁰ The second type of pluralism refers to the concept of American interest group politics which appears as a pattern of multiple decision-making centres. American pluralists include A.F. Bentley, D. Truman and R. Dahl and they have refined the essence of American politics. The third type of pluralism was introduced by those who tried to analyze plural societies: plural or fragmented societies where various cleavages (ethnicity, race, language, religion and ideology) divided their populations. A. Lijphart's consociationalism can be seen as one of the theories of plural societies.

From a methodological point of view, there are many approaches to define plural societies.⁵¹ According to various studies, it seems reasonable to indicate that Canada is one of the plural societies in the world: English Canada and French Canada (religious, linguistic and territorial fragmentations); provincial autonomy and federalism; and variations of ethnic/immigrant groups in Canadian society, for example.⁵² In addition, the federal government has established and implemented a policy of bilingualism and

multiculturalism since the early 1970's.⁵³

Do the aboriginal peoples belong to the pluralistic Canadian society and politics? As far as the relationship between French Canada and the rest of Canada is concerned, "accommodation" is the best term to describe the interaction between the two groups. In the past, the French Canadians were forced to accept decisions made by the English Canadians, yet it has been "accommodation" and "cooperation" that have characterized the relationship between the two. It is important to note that the majority of French Canadians have never supported the separation of Quebec from the rest of Canada and some influential leaders such as H. Bourassa⁵⁴ and Pierre E. Trudeau⁵⁵ have advocated a bilingual and bicultural Canada.

The aboriginal peoples, on the other hand, do not belong to the mainstream society, and it was either domination or assimilation that the native Canadians have had to choose in the past. In other words, one could indicate that the aboriginal peoples were not a part of the pluralistic Canadian society and politics at all. In the future, will it be possible to include aboriginal Canadians as one of the participants in Canadian pluralism? At least six options are identifiable here. The first option is for aboriginals to abandon their distinctive aboriginal identity voluntarily and to integrate with the white society. While this option may not be so popular among them, theoretically it is a possible option (a melting-pot solution). The second and third options derive from the consociational

7

model. The second option is to establish their political institutions, but these institutions, in fact, would have to be "non-ethnic" and "public". This "municipalization" option would be easy to pursue because the majority of Canadians would accept this type of government without hesitation. The third option could be called "a consociational option." The aboriginal peoples would establish ethnicity-based political institutions, and the relationships between the aboriginal peoples and Canada would have to be rearranged. With this option, they could obtain a framework of local autonomy and equal partnership with the majority of Canadians. But at the same time, they would not be able to assert their "sovereignty" any longer.

The fourth option is an assimilatory option. Obviously many native Canadians would reject this type of option as it introduces almost nothing of benefit for native Canadians. The fifth option is a control model solution. However, while these systems of institutionalized separation can be enhanced and a greater degree of autonomy can be granted, such aboriginal governments (especially on-reserve Indians and band governments) have to rely on the federal government to a large extent due to lack of self-generated financial resources. The federal government's current policy towards "self-government" or "decentralization" seems to imply this kind of solution. In other words, in spite of local autonomy, financial and political dependency of the aboriginal communities will not be eliminated in the future.

The sixth and final option is "an associated states option." While the aboriginal people's could retain their sovereignty as they did in the seventeenth and eighteenth centuries in North America, many Canadians would not support the necessary financial assistance given by the federal government to the newly-formed aboriginal self-governments because the aboriginals would no longer be included as constituted parts of the Canadian federalism. If complete political independence is granted to the natives, then the federal government would not be obliged to fund such "foreign governments" formally. The trust responsibility of the federal government over the treaty Indians would have to be terminated. But as other examples of associated states-associated power relationships indicate, it would be possible to create a new relationship between Canada and aboriginal self-governments.

Which option will be chosen in the future? The choice primarily depends on the political elites of Canada (federal, provincial and aboriginal leaders), and various types of solution will eventually be decided upon. But the political elites have to solve many difficult problems such as allocation of financial resources, constitutional disputes, institutional realignment of political systems, and alter the attitudes of the majority of Canadians as well as the aboriginal Canadians. Each option with the exception of the assimilation option would be costly, and no single remedy as such is available. Perhaps we should conclude that this is a difficult and time-consuming experiment in a

plural society like Canada, for no single remedy would resolve the issues we have raised in the study of our subject. As we have discussed in Chapters 4, 5 and 6, administrative, political and constitutional settings surrounding the aboriginal peoples are extremely complicated and a piecemeal arrangement rather than a drastic overhaul of the system would seem to be a realistic alternative for dealing with the relationships between aboriginal Canadians and the majority of Canadians.

Figure 14

Six Options of Self-Government

● associated state option
(arrangements between independent states)

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List of Interviews

Some interviews were conducted under a condition that interviewees should remain anonymous. In order to respect this request, their identities are not revealed in this list except for their individual status or title.

1. Senior Analyst, Circumpolar Affairs, DIAND, Hull, Quebec, August 20, 1984.
2. Policy Advisor, the Constitutional Directorate, DIAND, Hull, Quebec, May 13, 1985.
3. Senior Policy Advisor, the Office of Native Claims, DIAND, Hull, Quebec, May 15, 1985.
4. Senior Policy Advisor, the Government of Northwest Territories, Ottawa, Ontario, May 15, 1985.
5. Senior Policy Advisor, the Native Law, the Department of Justice, Ottawa, Ontario, May 22, 1985.
6. Mr. E. Morawski, Committee Clerk, the House of Commons, Ottawa, Ontario, June 3, 1985.
7. Policy Advisor, the Programming Planning and Policy Coordination Branch, DIAND, Hull, Quebec, June 6, 1985.
8. Mr. K. Penner, MP, Liberal Party Indian Affairs Critic, Ottawa, Ontario, June 6, 1985.
9. Senior Policy Advisor, the Native Citizens Directorate, the Department of the Secretary of State, Hull, Quebec, June 10, 1985.
10. Senior Policy Advisor, the Office of Aboriginal and Constitutional Affairs, the Federal-Provincial Relations Office, Ottawa, Ontario, June 11, 1985.
11. Mr. S. Herbert, Assistant to Mr. J. Manly, MP, NDP, Indian Affairs Critic, Ottawa, Ontario, June 13, 1985.
12. Mr. B. Groves, the Native Council of Canada, Ottawa, Ontario, June 17, 1985.
13. Policy Advisor, the National Association of Friendship Centres, Ottawa, Ontario, June 17, 1985.
14. Senator D. Steuart, Ottawa, Ontario, June 18, 1985.
15. Mr. A. Goodleaf, the Assembly of First Nations, Ottawa, Ontario, June 19, 1985.

16. Ms. L. Archibolt, the Inuit Committee on National Issues, Ottawa, Ontario, June 29, 1985.
17. Mr. M. LeClair, the Métis National Council, Ottawa, Ontario, July 2, 1985.
18. Professor V. Valentine, Carleton University, Ottawa, Ontario, February 24, 1986.

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