Political Integration and Indian Self-Government:

Hegemonic and Counterhegemonic Discourse

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ABSTRACT

The focus of this thesis is on the nature and scope of claims for Indian self-government. In particular, it explores the tension between two modes of discourse - or world views - about Indian self-government: one is that of the Canadian state and the other is that of Indian First Nations.

The first is rooted in conventional Euro-Canadian ideas about local government and the second in Native Indian ideas about national or cultural self-determination. The latter may be the most authentic expression of Native claims, but First Nations are forced into the first mode of discourse. How and why this happens is the underlying theme of the thesis.

It is argued that the two modes of discourse interact in the dynamic struggle of discourse, a process by which imposition and resistance provide for conflict and development between and within cultures. But a full understanding of this process also involves the recognition that the conflict does not involve an even debate between two equal modes of discourse. One mode of discourse (that of the Canadian state) will be in a hegemonic position while the other (the Native Indian) will be in a counterhegemonic position.

It is argued that government policy has consistently attempted to assimilate Native Indians by destroying their culture and traditional political institutions. Though in recent years First Nation cultures have been recognized by the Cana-

dian state as an important element in Canadian society, no longer to be assimilated, it is argued in this thesis that the real threat to First Nations comes from the institutional element of discourse. That is, that the real challenge for First Nations is overcoming the institutional barriers of the Canadian state.

These barriers arise from the fact that the Canadian state is based on the Westminster Parliamentary tradition which sees local government as its creation. In contrast, First Nations see their right to self-government as handed down by the Creator, not Parliament. The current institutional structure of the Canadian state can only provide for a limited decentralized or devolved form of self-government. Most First Nations, however, seek for a meaningful form of self-government based on community control of local economic, social, and political goals.

In order to shed light on this tension the thesis briefly explores two approaches to self-government in British Columbia. The first is that of The Sechelt Band which has attained a form of self-government through the passage of Bill C-93 by the House of Commons on May 21, 1986. The second is that of the Gitksan-Wet'suwet'en peoples who have launched a land claim suit against the province of British Columbia for 22,000 square miles of B.C.. It is argued in the thesis that the first approach, that of the Sechelt Band, is well within the government's mode of discourse and expresses its values, while the approach of the Gitksan-Wet'suwet'en represents the Native Indian mode of discourse.

The thesis concludes that the struggle may threaten the future survival of Native Indian cultures and political institutions if the institutional barriers for meaningful Indian self-government are not overcome. But if non-Natives can

understand that the discursive struggle can create a deeper understanding both of native Indian and of Euro-Canadian cultures and political institutions, they may be able to co-exist as equals.

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To my Mother

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Chapter I

HEGEMONIC AND COUNTERHEGEMONIC DISCOURSE BETWEEN CANADA AND INDIAN FIRST NATIONS: THESIS, ANTITHESIS AND SYNTHESIS?

1.1 A Fable and a Myth

An ancient fable of the tse-shaht people talks about the first boy deer whose name was Ah-tush-mit.[1] Ah-tush-mit had a friend, Ko-ishin-mit the Raven, the greedy one, who always tried to find ways to lure Ah-tush-mit into the woods to gobble him up. The Raven pretended to be the boy deer's friend, and tried many times to deceive him until one day he succeeded. Ko-ishin-mit promised to teach Ah-tush-mit a new game if he would only come with him to the woods. After much persuasion the boy deer went up on the bluff -believing and trusting his friend. When Ah-tush-mit got there he was tricked, and gobbled up in one piece by the greedy Raven. For once the Raven felt full, and in such a state went to sleep. But soon after, Ko-ishin-mit awoke with a terrible belly ache, because Ah-tush-mit's little spikes were poking his stomach out of shape. The crow doctor was summoned and without her even entering Ko-ishin-mit's home, she sang a song which told that the pain was from horns and spikes,(it is said to this day that crows can see into the future and into the past). Since Ah-tush-mit was nowhere to be found, the people guessed what had happened. The men dragged the Raven out of his home

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1 "Ah-tush-mit is gobbled up" in George Clutesi *Son of Raven Son of Deer* (Sidney B.C.: Gray's Publishing Ltd., 1967) p. 77.

and cut his stomach open, freeing Ah-tush-mit who was still alive but very scared. The boy deer promised never to believe Ko-ishin-mit or anybody who would ask him to go to the bluffs.

Canadians long believed that they had gobbled up Canada's Native Indians. Although the latter had perhaps not been fully assimilated, this seemed only a matter of time. The "Indian Question" created some minor visceral discomforts for the Canadian state for over a hundred years, but the discomfort it caused was supposed to be part of a process. The discomfort would eventually go away: Native Indians would give up their ancient beliefs; they would become assimilated. Many believed, as Harold Cardinal wrote once, that "The only good Indian is a non-Indian."[2] However, over the last decade and a half, Canada's Native Indians have experienced a rebirth of their culture and of their quest for self-determination. They have also learned not to trust blindly the promises of the white man. They have begun to assert themselves, to redefine themselves, and to explain with passion and conviction how *they* want to relate to the Canadian state and society. The result of this process has been that Canada's Native Indians have begun to put forward their own mode of discourse[3] about the nature of aboriginal rights, self-government, and of Native Indians themselves as a people. This distinguishes itself sharply from the Canadian governmental and societal mode of discourse. Yet this clash is not new. Indeed, it has always been latent in the resolve of Native Indians

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2 Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians*, (Edmonton: M.G. Hurting Ltd., 1969.) p.1.

3 By mode of discourse we mean a distinct view of the universe which opposes itself to another universal view in a dynamic process called discourse. These concepts are treated at length in the following sections of this chapter.

to preserve their culture and their unique position within the Canadian state. It is important, therefore, to understand the tension between these two modes of discourse. Only then can we begin to understand the dynamics of the clash between the Canadian state and society on the one hand, and Indian First Nations on the other.

1.2 The End of a Myth?

Over the past few years there has been an unprecedented movement by both the federal government and Canada's Indian First Nations to define the nature of aboriginal rights. As Michael Asch explains:

> Aboriginal peoples have long maintained that they have 'special' rights that differentiate them from other Canadians. These rights, which include property rights (such as title to unceded lands), rights to hunt, fish and trap on traditional lands and political rights (such as the right to self-government) are presently called 'aboriginal rights.'[4]

What is most amazing about this movement is that only seventeen years ago Prime Minister Pierre Trudeau was denying the very existence of these special rights:

> It's inconceivable, I think, that in a society one section of the society have a treaty with the other section of the society. We must all be equal under the laws and we must not sign treaties amongst ourselves....I don't think that we should encourage Indians to feel these treaties should last forever within Canada...they should become Canadians as all other Canadians.[5]

This conception of the "Indian Question" rejects that Indian First Nations have any special rights, and asserts that Canada should be ruled under the principle of equality. But in 1983, during the First Ministers Conference on Aboriginal Consti-

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4 Michael Asch, *Home and Native Land: Aboriginal Rights in the Canadian Constitution*(Toronto: Methuen, 1984) p.26.

5 Ibid. p. 63.

tutional matters, Trudeau himself asserted that:

> Clearly our aboriginal peoples each occupied a special place in history. To my way of thinking, this entitles them to special recognition in the Constitution and to their own place in Canadian society, distinct from each other and distinct from other groups who, together with them, comprise the Canadian citizenry.[6]

Only two years ago, in a response to the *Penner Report*, John Munro, Trudeau's Minister of Indian Affairs and Northern Development (DIAND), asserted that:

> The government of Canada is prepared to acknowledge that effective movement to self-government will require substantial restructuring of the current relationship between Indian people and the Government of Canada. Changes are clearly needed.[7]

As Sally M. Weaver suggests, there was a marked shift in the Trudeau years in federal government attitudes towards aboriginal rights. This is symbolized by the gap between the government's 1969 White Paper on Indian Policy and the 1983 report of the Penner Committee on Indian Self-Government:

> The spirit and intent of the *Penner Report* lie in its values which echo the basic policy paradigm of Indians. Placed in the broader perspective of the Trudeau era, if the 1969 White Paper is viewed as the initial 'thesis' of Indian/government relations in Canada, the *Penner Report* is the 'anti-thesis': the values shaping the report are equity, diversity, and collective rights, in marked contrast to the White Paper values of equality, sameness, and individual rights.[8]

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6 Canada, House of Commons, Special Committee on Indian Self-Government *Report* (Ottawa: Queen's Printer, 1983), p. 39. Hereinafter referred to as the *Penner Report*.

7 Department of Indian Affairs and Northern Development, *Response of The Government to the Report of the Special Committee on Indian Self-Government* (Ottawa: Supply and Services Canada, 1984), p1

8 Sally M. Weaver, "A Commentary on the Penner Report,"*Canadian Public Policy*,10, no. 2 (June 1984), p. 217.

9 Department of Indian Affairs and Northern Development (The White Paper), *Statement of The Government of Canada on Indian Policy* (Ottawa: Queen's Printer, 1969.)

In fact, the 1969 White Paper[9] and the *Penner Report* embody two different modes of discourse, which have existed since the first contact between Indians and Europeans. The White Paper epitomizes the traditional attitudes of British and Canadian governments towards Native Indians. These attitudes mix a repugnance towards the 'backwardness' of the Natives, their cultures, and their forms of government, with an urge to assimilate, if not subjugate them. This mode of discourse has taken the form of various assimilationist policies towards Native Indians which reflect the colonial mind of European man. The 'universal' principles of liberalism (principles which saw European culture and political institutions as superior), were seen by many as the legitimate solution to the "Indian Question." On the other hand, from the time of first contact, Native First Nations have attempted to defend and preserve their values and their way of life. Thus from the outset of Native Indian/White relations, there has been the underlying claim for 'special rights.' These special rights have always been related to the maintenance of cultural values unique to Native Indian cultures. We thus end with a clash between (Euro-Canadian) hegemonic and (Native Indian) counterhegemonic values and norms. The battle for aboriginal rights and self-government is then not merely an attempt to secure lands and political autonomy, it is a fight for the survival of a people and a way of life.

But it is often asked: Is this fight a realistic one? Can people live their lives in the old ways at the end of the twentieth century? Won't Native Indians be assimilated in the end? Isn't the counterhegemonic discourse simply too weak? Questions like this often cloud more fundamental issues. For these questions ignore the fact that what Canada's aboriginal peoples are asking for is not to go back to the

old ways, nor to completely reject the Canadian state and society. The issue is *who* is to decide the fate of Canada's Indian First Nations. The claim for aboriginal rights and Native self-government is a question of self- determination, of the recognition of aboriginal peoples special place in Canadian society and of their right to govern themselves. It involves a recognition that the Native Indian mode of discourse is legitimate, and does not represent the claims of an 'uncivilized' people. Thus, whether Native Indians decide to integrate into Canadian society or to resist this integration; or whether they decide to integrate to some extent and resist to some extent, is not the fundamental issue. It is, rather, a question of *who* decides the destiny of the Native Indian people and *which set of cultural and political beliefs is used to decide*. To understand the full meaning of this we must first focus on the concepts of discourse and hegemony. Our contention here is that these concepts illuminate the tension between Indian First Nations and the Canadian State.

1.3 Discourse

A mode of discourse is a set of ideas and beliefs (expressed in the values and norms of a society), which compose a particular view of the universe. In the broad sense in which we use it, it refers to the total 'world view' of Native Indian or European-Canadian society. A mode of discourse is therefore a way in which each of these two societies expresse values and norms integral to their cultural, political, and economic systems. Ever since the Greeks, we have recognized the importance of sets of ideas which influence the way we think and re-assert what we believe to be true. When we study Greek thinkers, for example, we refer to their

cosmologies - to their view of the universe and its composition. What each of these thinkers believed was true about nature, society and human beings, derived from this cosmology. To put it another way, a mode of discourse entails a particular ontology and its epistemological expression - it tells us what exists and how we can know it.

A mode of discourse cannot be conceived as a structure. It is an active and evolving *practice*. Discourse is the process of struggle in which modes of discourse interact. In discourse we thus have the activity of imposition and resistance which provides for conflict and development. A particular mode of discourse may be predominant, but it can never exist in isolation: it is precisely as a practice for overcoming resistances that it becomes effective. There are, thus, discursive struggles *within* each culture as well as *between* cultures like the Native Indian and European.

Michel Foucault's work suggests a way of understanding this struggle.[10] His interest was in the "archaeology" or "genealogy" of ideas. As Mark Philip explains to us:

> Foucault's primary unit of analysis is the discourse. A discourse is best understood as a system of possibility for knowledge....His method is to ask what rules permit certain statements to be made; what rules order these statements; what rules permit us to identify some statements as true and some as false; what rules allow the construction of a map, model, or classificatory system; what rules allow us to identify certain individuals as authors; and what rules are revealed when an object of discourse is modified or transformed...[11]

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[10] It must be noted that Foucault does not define discourse and mode of discourse as we have. What we would refer to as a mode of discourse in this paper he might call a 'discursive formation' or an 'object of discourse'; in the plural he refers to them simply as discourses. We have made this distinction clear simply to eliminate the ambiguity and provide a sharper analytical distinction.

[11] Mark Philip "Michel Foucault" in Quentin Skinner (ed.) *The Return of Grand*

For Foucault the aim is not to find 'the truth' of a particular discursive formation (or mode of discourse), but to understand and expose these statements which allow for 'true/false' statements to be made *within* the discursive formation.

It is when 'fields of knowledge' come into conflict, when the legitimacy of the truth statements made by one mode of discourse opposes itself to the truth statements made by another mode of discourse that we have the dynamics of discourse. In other words, discourse is a moving interactive process and it involves a struggle for the predominance of a particular mode of discourse. As Foucault himself argues:

> What is important to me is to show that there are not on the one hand inert discourses, already more than half dead, and then, on the other hand an all powerful subject which manipulates them: but that the discursive subjects are part of a discursive field -they have their place there (and the possibility of their displacements), their function (and their possibilities of functional mutation). The discourse is not the place where pure subjectivity irrupts; it is a space of positions and of differentiated functions for subjects.[12]

If we understand and accept this, when we speak of the Native Indian mode of discourse, we do not speak of an abandoned or outdated mode which is struggling in a lost battle. It is a mode of discourse which has evolved and adapted with changing circumstances; it has its roots in the past but it challenges the present. We also do not speak of the Native Indian mode of discourse as something that is necessarily incompatible with the Euro-Canadian mode of discourse. In fact we argue that the discursive interaction is an opposition between two modes which at the same time offers a new 'possibility,' a new 'discursive field,' and perhaps a new

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Theory in The Human Sciences, (Cambridge: Cambridge University Press, 1985.) p. 69.

12 Michel Foucault "Politics and the Study of Discourse." in *Ideology and Consciousness* No. 3. Spring 1978, p. 13.

'functional mutation.' So we view the Native Indian mode of discourse as an active and challenging 'possibility for knowledge,' which can enlighten debate on such issues as the nature of Native Indian self-government in Canada and perhaps broader issues such as the nature of local government in non-Indian communities.

A full picture of this dynamic process also requires a recognition that the conflict does not involve an even debate between two equal modes of discourse.Part of the discursive process is that one mode of discourse will have a dominating position vis-a-vis the other. As Foucault argues, the principal objective of the discursive struggle is "to attack not so much 'such and such' an institution of power, or group, or elite, or class, but rather a technique, a form of power."[13] It is this 'form of power' which sets the terms of debate about a given issue (like the nature of Native self-government). In other words, discursive conflict involves a struggle against a particular form of power which dominates to the extent that it defines everything in terms which will perpetuate that power. As Foucault puts it:

> This form of power applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him.[14]

So when we speak of discourse as a dynamic struggle we must add that it is not always an even struggle. Discourse implies as well the dominating hegemonic and a resisting counterhegemonic mode of discourse.

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13 Michel Foucault, "Subject and Power," in Hubert Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press. 1982), p. 212.

14 ibid.

1.4 Hegemony

Just as we recognize the existence and importance of modes of discourse as dynamic sets of ideas and beliefs, we must also recognize that some modes of discourse are dominant. From this arises the concept of hegemony, which for our purposes, describes the dominant role of a mode of discourse and in particular its ability to determine the nature and limitations of debate about any issue. This ability allows a particular hegemonic mode of discourse to set the parameters by defining such things as 'rational,' 'legal,' 'civilized,' or 'scientific.' The concept of hegemony therefore implies the capacity of a mode of discourse to be a dominating force in the discursive struggle by always presenting or accepting debate in its own terms - for only its own terms are 'legitimate.' So in the case of the Native Indian/Euro-Canadian conflict, the dominating Euro-Canadian mode of discourse defines what is 'civilized,' what is 'advanced,' or simply what the limitations of Native self-government can be. To understand better the concept of hegemony we should analyze one particular treatment of it.

Antonio Gramsci presents us with an insightful treatment of the concept of hegemony which arises from the development of Marxist theory in the early twentieth century. Though we will not use the concept within the Marxist theoretical framework of the class struggle, Gramsci's analysis of hegemony and his elucidation of the power of ideas in the form of ideology, directly relates to our treatment of hegemonic and counterhegemonic discourse.

At the center of Gramsci's treatment of the concept of hegemony is his distinction between coercion and intellectual and moral leadership. As Joseph Femia argues:

> The latter type of supremacy constitutes hegemony. Social control, in other words, takes two basic forms: besides influencing behaviour and choice *externally*, through rewards and punishments, it also affects them internally, by moulding personal convictions into a replica of prevailing norms. Such 'internal' control is based on hegemony which refers to an order in which a common social-moral language is spoken, in which one concept of reality is dominant, informing with its spirit all modes of thought and behaviour.[15] (Original emphasis).

The hegemonic power thus presents its moral, intellectual, or cultural values and norms as being naturally superior, or as the highest stage reached by 'civilization.' Though the threat of coercion (or indeed the use of coercion) may be useful to maintain hegemony, a hegemonic power must convince the members of society that its 'world view' is *the* world view in order to maintain a social bond and in order to legitimize its actions.

In his study of the different levels of political consciousness, and the degree of self-awareness and organization of social classes, Gramsci analyzes the various corresponding 'moments' of the 'collective political consciousness.' The most developed moment is that of hegemony in which "one becomes aware that one's own corporate interests, in the present and future development, transcend the corporate limits of the purely economic class, and can and must become the interests of the subordinate groups too." [16] So within Gramsci's framework and his analysis of the class struggle, he argues that there is a stage at which one particular class in society will dominate and control to such an extent that it makes its interest paramount. But no class can do this simply through coercive, economic,

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15 Joseph V. Femia, *Gramsci's Political Thought: Hegemony, Consciousness and the Revolutionary Process* (Oxford: Claredon Press, 1981), p. 24.

16 Antonio Gramsci. *Selections From The Prison Notebooks* Quintin Hoare and Geoffrey Nowel Smith (eds), (New York: International Publishers, 1971), p. 181.

and political means, it must use hegemonic power, that is, it must project its class as the 'universal' class whose values and norms are the only 'proper' choice:

> It is the phase in which previously germinated ideologies become 'party,' come into confrontation and conflict until only one of them, or at least a single combination of them, tends to prevail, to gain the upper hand, to propagate itself throughout society - bringing about not only a unison of economic and political aims, but also intellectual and moral unity, posing all the questions around which the struggle rages not on a corporate but on a universal plane, and thus creating the hegemony of a fundamental social group over a series of subordinate groups.[17]

1.5 Towards a Theory of Hegemonic and Counterhegemonic Discourse.

Though we do not want to use the concept of hegemony within the Gramscian/Marxist analysis of class struggle, by extracting the basic concept of hegemony as the attempt by a portion of society, or of society as a whole, to project its own values and norms, we can then add to our analysis of discourse a very important element. The ability that a mode of discourse may have in imposing itself as a universal discursive formation identifies its hegemonic force. If we are convinced that western values and norms are the culmination of 'universal' history, and furthermore that they have put us at the forefront of humanity, we will inevitably attempt to use our hegemonic force to crush any others who may in any way negate this. Indeed, if what is at stake in advancing this argument for our cultural superiority is our ability to colonize, to exploit the natural resources, and to 'legitimately' expropriate lands from native peoples, then we can see that hegemonic discourse is imperative for the Canadian state and society. We must convince ourselves and those we colonize that our actions are just because they are in the name of 'progress' or they contribute to the advance of 'civilization.'

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[17] ibid. 181-182.

But the conflict of hegemonic and counterhegemonic forces is inherent in the discursive struggle and in the ever changing dynamics of social change. A mode of discourse, in order to attain hegemony vis-a-vis other discursive formations, has to project itself as universal, but in turn a counterhegemonic mode of discourse must resist. So we are left with the dynamics of hegemonic and counterhegemonic discourse - a process in which imposition and resistance are part of a continuous struggle. This imposition and resistance expresses itself in daily life, it limits the actions of individuals and communities and this in turn makes individuals and communities react and resist government actions and policies.

But how does this enlighten us about the apparent progress made by the Native Indian counterhegemonic mode of discourse over the past seventeen years? What does it tell us especially about the dramatic changes in the past few years after the release of the *Penner Report*? Have we reached the stage of the antithesis which Weaver suggests and are we on our way towards a synthesis, or is all the advancement merely apparent? How can our theory of hegemonic and counterhegemonic discourse help us in answering these and other related questions?

Our aim in this thesis is to use the conceptual framework outlined above to shed some light on Native Indian/Euro-Canadian relations. We seek to understand, first of all, the historical roots of this discursive struggle. This is the purpose of the second chapter. Our goal will be to isolate the types of discursive conflicts that have emerged in over one hundred years of British colonial and federal government Native Indian policy. We will identify both a cultural and an institutional element to this discourse. That is, we will identify two of the ways in which

hegemonic discourse imposes itself: through the imposition of (1) a foreign culture and (2) alien political and administrative institutions. In light of this, we will assess the importance and the limitations of recent breakthroughs in Native Indian policy in Canada.

We intend to demonstrate that even though the cultural element in the discursive struggle has been partly resolved (through the recognition of Native Indian culture as a distinct element in Canadian society, no longer to be assimilated), the real threat to Indian self-government comes from the institutional element of discourse. An analysis of the institutional element of discourse will be made in the third chapter. Here we will reformulate our conceptual framework of discourse and hegemony in the language of decentralization in order to apply it to the institutional element of discourse.

In the fourth chapter we will apply this framework to the study two different approaches to self-government in British Columbia. The first is that of the Sechelt Band, which has opted for a municipal model of government and falls well within the federal government's (institutional) mode of discourse. The second one is that of the Gitksan-Wet'suwet'en peoples. Their approach, we will argue, expresses the Native Indian mode of discourse, for it challenges the authority of both the provincial and federal governments within Gitksan-Wet'suwet'en territories under dispute and asserts their culture and traditional governing institutions. Our final chapter will conclude that for Native Indians to obtain meaningful self-government, they must recognize and overcome the government's mode of discourse especially in its institutional elements. In other words, we will suggest that Native Indian thinkers and political representatives should recognize the institutional element as the truly underlying obstacle to their goals for self-government.

Chapter II

THE HISTORICAL DYNAMICS OF HEGEMONIC AND COUNTERHEGEMONIC DISCOURSE: FROM INDIAN NATIONHOOD TO NATIVISM.

2.1 Introduction

The history of Native Indian/European relations has been almost from the outset a history of the clash between two modes of discourse about the nature of Indian culture and the legitimacy of Native Indian self-determination. Ever since first contact, Europeans saw themselves as representing the superior culture. In their view, what Canada's Native Indians were going through was merely a phase of history long surpassed by Europe. [18] From the time of the Royal Proclamation of 1763, which was the first legal document issued by the Crown to 'protect' Native Indians, to the 1969 White Paper, government policy had consistently attempted to integrate Natives into Canadian society and its political system. In following this policy, the colonial and later the federal government attempted to impose a mode of discourse that had both cultural and institutional elements. Ideologically, government policy attempted to impose on Native Indians the basic values derived from liberal concepts of equality, freedom and sovereignty. Institutionally, government policy has sought to impose a limited form of government

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18 For a good analysis of the general attitude towards Native Indians and their alleged racial and historical inferiority as it affected Canadian Indian policy see: L.F.S. Upton "The Origins of Canadian Indian Policy," in *Journal of Canadian Studies*, VIII: 4, (November, 1973), pp. 51-61.

of a municipal nature whose power and authority derive from the central government. Native Indian response has been marked by resisting as well as possible both these elements of hegemonic discourse. For a people whose basic values sharply oppose those of traditional liberalism and municipal-style government, a chance to articulate their own mode of discourse as a body of thought did not arise until after the 1969 White Paper. But resistance to the government's mode of discourse existed implicitly and explicitly since it began to be imposed by the British Colonial government.

To understand contemporary Indian claims it is crucial to comprehend the history of the government's policies and to understand the roots of Native Indian claims to nationhood and self-determination. To this end we shall briefly explore three stages in government policy which have profoundly affected Native Indians in Canada. The first stage is that of initial contact when Native Indians were clearly members of self-determining nations. The second stage, that of the policy of gradual assimilation, begins with the Royal Proclamation of 1763 and ends in the late 1960's. Here,in the interest of brevity,we shall concentrate on the fundamental elements of government policy rather than attempt an outline of two hundred years of government policy. We shall conclude with a third stage, that of the policy of rapid assimilation, which is embodied in the 1969 White Paper. We will then proceed to analyze the counterhegemonic response made by Native Indians, first by attempting to understand the articulation by Native Indians themselves and then by a comprehensive look at the *Penner Report*. Finally we will assess our analysis in light of the emergence of Nativism.

2.2 The Roots of Nationhood

Initially, contact between Native Indians and the French and English was in the nature of a partnership in trade and of a military alliance. At this first stage, there was a relative balance between the two modes of discourse, for the relationship between the Europeans and the Natives was of an international nature. The cultural and especially political beliefs of the Natives were not interfered with directly by the colonial government. This degree of autonomy existed primarily because Native Indians were indispensable to the fur trade and, in eastern Canada, were of fundamental importance as military allies in the French/English struggle for empire in North America, and later in the Anglo-American conflict during the American revolution.[19]. As well, the conflicts of colonization had not yet arisen. Thus the initial contact between Native Indians and Europeans was not marked by the conquest of the former by the latter. This is very important to note because contemporary Native claims for aboriginal rights and self-government stem from the fact that they have always regarded themselves as nations, and more importantly, were treated as such by the British Colonial government. As Rick Ponting and Roger Gibbins argue:

> In the century surrounding the Royal Proclamation, Indian policy was preoccupied by the need to maintain Indians as military allies. Treaties and documents referred to Indians explicitly as allies....The Indian Department formed in 1755 was an arm of the colonial military with the Superintendent-General reporting directly to the Commander-in-Chief of the British forces.[20]

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19 For an historical analysis of this epoch see E. Palmer Patterson II, *The Canadian Indian: A History Since 1500*(Don Mills: Collier Macmillan Canada,Ltd.,1972) Section II, chapters 1 and 2.

20 J. Rick Ponting and Roger Gibbins. *Out of Irrelevance: A Socio-Political Introduction to Indian Affairs in Canada*(Toronto: Butterworths, 1980.) p.4.

This being the nature of the relationship between Native Indians and the British Crown it was not surprising that, in the Royal Proclamation of 1763, George III reiterated the status of Nationhood of Canada's Indian First Nations:

> And Whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, are reserved to them, or any of them, as their Hunting grounds.[21]

Another factor which reinforces the claim for Indian Nationhood is the way in which the colonial government and later the federal government recognized Native Indian land ownership. As Michael Asch argues, we can deduce the government's recognition of aboriginal rights, and thus of self-government, in essentially two ways. First, there is the attitude which the colonists had towards Native Indians. This arises because the colonists always acquired lands through some kind of land transaction, thus recognizing the Natives ownership of the lands in the first place:

> Hence, although the nature of the interest may have remained unspecified, the fact of the transaction itself indicates that it must have existed prior to purchase. In this sense, then, the acquisition of lands from Native peoples could be viewed as the purchase of an aboriginal interest.[22]

Secondly, there is the perception of British and Canadian governments which negotiated land purchases with Native Peoples, often including commitments of a social or of a political nature, not usually found in land purchase contracts. Thus Asch concludes that:

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21 The Royal Proclamation, October 7, 1763 in Michael Asch *Home and Native Land*, Appendix B, p.112.

22 ibid. p. 57.

> An examination of these terms can provide an insight into the government's perception of the content of these rights and help to form an impression of the government's view of the nature and viability of the group that possess them.[23]

Native claims for 'special rights', based on their national status, can thus be derived from the initial relationship which the colonists had with Native Indians from the very beginning - a relationship apparently, and mysteriously, lost over the years in federal policy towards Indian First Nations. The special rights and the national status may have been obscured over time, but they existed all along and were never formally eliminated. Most importantly, however, these factors indicate that Native Indian mode of discourse was initially recognized and respected.

It would be naive to assert, however, that there was a balanced relationship between Canada's Native Indians and the European colonizers. Though the colonial governments of France and Britain maintained international relations with Canada's Indian First Nations at the very beginning, other factors began to change Native culture. From the outset, the European mode of discourse was introduced subtly into Native societies. Two elements of this socialization are prominent: first, the introduction of modern goods such as firearms, and secondly christianization. The former began a dependence on the Europeans primarily through the economics of the fur trade, and the second began to erode aboriginal traditions. Together, these two factors laid the groundwork for later policies of assimilation. What is important for our purposes, however, is that regardless of the influence that European culture had on Indians at the time of first contact, this influence did not extend to the institutional level.

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23 ibid.

The colonial powers treated Canada's Indian First Nations as national entities. Internal Native Indian political structures and customs were left untouched. Thus we can assert that until the Royal Proclamation, Canada's Indian First Nations were accorded internal independence. The erosion of this ability of self-determination occurred with time through a subsequent series of policies by the Colonial government and later the federal government. But never was the basic relationship changed by treaty or by conquest. The Royal Proclamation, however, was important in this respect: although it recognized Canada's Native Indians as members of "nations," they were also dubbed the Kings "subjects." With time this latter title took prominence under the guise of paternalism. In the Royal Proclamation we can thus find the embodiment of the two modes of discourse: the recognition of nationhood and thus of the legitimacy of Native Indian culture and political institutions, and the assertion that Natives were under the 'protection' of the Crown as the King's 'subjects'.

Thus the Royal Proclamation can be seen as the beginning of a policy which would destroy the independence and self-determination of Canada's Native Indians. This is the beginning of the stage of gradual assimilation. There were three pillars to this policy which developed after the Royal Proclamation. As John L. Tobias explains:

> Protection, civilization, and assimilation have always 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.[24]

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24 John L. Tobias, "Protection, Civilization, Assimilation:An outline History of Canada's Indian Policy," in *The Western Canadian Journal of Anthropology*, Volume VI, Number 2, (1976), p.13.

Once the first pillar was established through the Royal Proclamation it did not take long before the other two policy goals were implemented. For once the Colonial government had the task of protecting Native Indians, this immediatly gave them paternalistic authority. If the Crown had to give special protection to Natives it must be because they were incapable of surviving in "civilization"; therefore, to become like other Europeans they must become "civilized." Thus began the clash between two distinct modes of cultural discourse. As the British Colonial government and later the Canadian federal government gained greater hegemonic force, this movement against Native Indians became more potent.

But it must be pointed out that the policies of civilization and assimilation did not gain prominence until the fur trade began to move westward and the military importance of Canada's Native Indians began to decline after the war of 1812. As Ponting and Gibbins argue, "The conclusion of the war of 1812 had ended the prospects for continued military conflict between British and American forces and the stage was set for the emergence of new policy directions."[25] It took only a few years for government policy to begin to erode the position of Native Indians. Upton summarizes it as follows:

> By 1830 The British Empire no longer needed the Indians of the two Canada's. These Indians had been key allies in the struggle for continental power as late as 1814, but except in the memory of a few veterans of the Indian Department, this military potential was of no further use. The only economic interest that the Empire had in the Indians was to arrange for the peaceful transfer of the land to which their possessory title had been acknowledged by the Proclamation of 1763.[26]

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25 Ponting and Gibbins *Out of Irrelevance*, p.4.

26 L.F.S. Upton "The Origins of Canadian Indian Policy," p. 51.

2.3 The Policy of Gradual Assimilation.

The first official attempt at imposing a new mode of discourse on Canada's Indian First Nations came in the form of Christianizing them and imposing on them new social, political, and cultural norms. As Tobias explains:

> The policy evolved slowly as a result of much propaganda in Britain and North America about the need to develop the Indian. Much of the propaganda in North America was made by the Protestant sects which were in the throes of Evangelical and Revivalist movements stressing the need to christianize all men. Many of these sects established missions among the Indians, similar to those the Jesuits and other Catholic orders had been carrying on for generations. Such missions were to teach the Indian not only a new religion, but to encourage him to adopt European or American values.[27]

Of course what makes this "civilizing" attempt qualitatively different from previous missionary endeavours is that for the first time a conscious attempt to impose a new mode of discourse on Native Indians had a legislative basis through which it would be implemented. This included legislation which established isolated reserves within which Natives would be both protected and civilized. Since 1838, Lord Glenelg, the British Colonial Secretary, set the groundwork for this legislation which "established *civilization* and *protection* as the guiding principles of British policy."[28] (Original emphasis). By 1850, however, there was disappointment with the process of civilization through the isolated reserve system. As Tobias explains:

> The evaluation of the program led to the conclusion that the reserve system as then constituted was impractical and a failure. However, rather than repudiate the ideal of the reserve as a school or laboratory for civilizing the Indian, blame for the failure was placed on the fact that such programs were carried out in isolation from centres of European civilization....Therefore, the decision was made to try working with smaller reserves for individual bands located next to or

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27 John L. Tobias "Protection, Civilization, Assimilation" p. 14.

28 Ponting and Gibbins *Out of Irrelevance*, p. 5.

near European-Canadian communities.[29]

Thus in order to "civilize" Native Indians one could not only do it by bringing civilization to them, but also by bringing them to civilization.

A key player in this process was the Indian Agent. The Agent represented the federal government at the local level and was given the task both of "protecting" and in effect of "civilizing" Native Indians. As Robin Fisher explains, "these men were supposed to advise the Indians and protect their interests, but they were also important agents of acculturation."[30] The Indian agent exercised a great deal of control over Indians in nearly all aspects of their life, and is a perfect symbol of the paternalistic policy of the federal government. But more importantly, the Indian Agent was to prepare the ground for the development of the bands and the Band Councils when Native Indians became more "civilized."

The policy of gradual assimilation was thus congealed in legislation. By 1857, the Colonial government passed *An Act for the Gradual Civilization of the Indian in the Canadas.* Of central concern even at this initial stage was to integrate Canada's Native Indians and to facilitate the "Gradual removal of all legal distinctions between them and Her Majesty's other Canadian subjects."[31] Central as well was the goal of facilitating land acquisitions from Native Indians. As Ponting and Gibbins summarize it:

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29 Tobias, "Protection, Civilization, Assimilation," p. 15.

30 Robin Fisher, *Contact and Conflict: Indian European Relations in British Columbia, 1774-1890,* (Vancouver: University of British Columbia Press, 1977.) p. 206.

31 Miller, Kahn-Tineta et al, *Historical Development of The Indian Act* (Ottawa:DIAND, 1978.) p. 26.

> In 1857 the Colonial government introduced legislation that clearly set out the assimilationist character of public policy and put in place some of the methods by which assimilation could be achieved....The act offered monetary, property and enfranchisement inducements to Indians who would choose assimilation and cut their ties with tribal societies - inducements that were to remain important components of Indian policy for the next one hundred years.[32]

The resistance by Native Indians, both politically and culturally, was greater than expected. Canada's Natives clung to their cultural and political institutions with great fervour. They were helped, paradoxically, by the legislation and policy of the Colonial and later the federal government.

At the center of government policy was, as we have noted above, the assimilation of Canada's Natives. But the method used, that of the reserve system, gave Native Indians the environment within which they could protect their culture and in the end thwart the policy itself. This is what Tobias calls the great contradiction in the government's legislation of 1857:

> After stipulating in the preamble that the measure was designed to encourage 'civilization' of the Indian, remove all legal distinctions between Indians and other Canadians, and integrate them fully into Canadian society, the legislation proceeded to define who was an Indian, and then to state that such a person could not be accorded the rights and privileges accorded to European Canadians until the Indian proved that he could read and write either English or French language, was free of debt, and of good moral character...thus, the legislation to remove all legal distinctions between Indians and Europeans actually established them.[33]

If one accepts this line of argument, it is difficult to believe that assimilation was so high on the government's priority list. What was perhaps of more fundamental importance was the desire to destroy the Native Indian way of life so that it would no longer interfere with Canadian economic objectives. As Upton argues

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32 Ponting and Gibbins, *Out of Irrelevance*, p. 6.

33 Tobias, "Protection, Civilization, Assimilation," p. 16.

"the implementation of the idea that the British had the duty to civilize the Indian came into official policy through the back door to self-interest."[34] Thus we can see how the government's mode of discourse was imposed on Natives not only in the name of 'civilization' but also because Native communities were in the way of the central government's plans to colonize and cultivate the land. The power of self-determination was eliminated by arguing that Native Indians were not civilized and could not possibly rule themselves, though they had successfully done so since time immemorial. However, at the root of this policy was the fact that local Native Indian governments would have made broader economic and colonizing policies difficult, if not impossible to implement. What seemed important was that power remain at the center in order for national policies to be implemented. If Native communities were left with semi-autonomous governments, they could in effect block Canada's progress as provincial governments had already done.

Here we can see that Native Indian self-government is a threat to the powers of the central governments (both federal and provincial), a fact that still exists today. It was not the inability of Native Indians to be self-governing that was the problem, but rather the threat they presented *because they could* govern themselves. This is a problem that the Colonial, the federal, and by implication the provincial governments did not have to face with other local governments in non-Indian communities. Political resistance by Native Indians was assisted by the reserve system, but Natives had always resisted to some extent and integrated to another extent. This was and remains at the root of their independence. It is *that they choose in their own way*, within *their* mode of discourse, which gives them self-determination. Besides the structural assistance which Natives got from the

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34 Upton "The Origins of Canadian Indian Policy," p. 56.

reserve system, Native Indians had an attitude which counteracted the government's mode of discourse and its attempts to destroy Native self-determination. As Peterson explains it:

> The depth and intensity of the indigenous culture was either not understood or grossly underestimated. It could hardly have been understood by those who regarded the Indian as a child who needed only to be raised to adulthood or as a blank sheet of paper, culturally speaking, who was to be written upon by European culture. Indians for their part did not indiscriminately accept the superiority of all the new over the old. They did not see an either/or choice: they both adapted and incorporated. Furthermore, the differences between the white and the Indian created barriers which separated the latter from the former even when resistance was neither conscious nor deliberate. All of those factors assisted Indians in retaining their identities as communities.[35]

Tobias argues that the principles of Canada's Indian policy were thus established by the time of Confederation. Only the emphasis on the three policy goals changed over the years.[36] A crucial piece of legislation came in 1869 with *An Act for the Gradual Enfranchisement of the Indians*. The importance of this legislation arises from the fact that for the first time the government sought to interfere directly with the internal political structure of Indian First Nations. The Governor-in-Council was empowered with the authority to impose "the elective system" of government and to remove from office those officials who were deemed "unfit for office." It is clear, however, that this type of local self-government was of a very limited nature. Power resided at the center and allowed Native Indians only minor sub-legislative authority:

> The elected band council was empowered to make by-laws on minor police and public health matters, but before such regulations could be enforced, they had to be approved by the Superintendant-General

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35 Peterson, *The Canadian Indian* p. 109.

36 Tobias, "Protection, Civilization, Assimilation," p. 16.

(the Minister) of Indian Affairs.[37]

When The *Indian Act* was introduced in 1876 (*An Act to Amend and Consolidate the Laws Respecting Indians*), it eliminated the power to impose the elective system, but, in order to encourage bands to apply for this municipal-style government, bands with it were given greater authority. As Tobias points out, "the legislation set out the formula for the number of Councillors and Chiefs a band could have and who would vote in such elections."[38] In the end, the elective system was to maintain the hegemony of the federal government as it gave no power to Native Indians and was modeled on Euro-Canadian notions of what local government should be. It gave no consideration to the Native Indians' traditional forms of government, for they were viewed as inferior. So the central government set the limits of the power of Native local government and defined the elements it should contain.

In fact, the *Indian Act* became the embodiment of the Canadian government's attempt to impose its own mode of discourse. Public policy attempted to impose things such as the elective system, and it tried to induce Natives out of the reserves through enfranchisement and the "location ticket": a process by which, if a Native Indian proved he was "civilized" or if the Superintendent-General deemed him to be so, he would be given a tract of land and would lose his status. In the end what becomes clear is that the Canadian government attempted to impose its mode of discourse on Native Indians if it could not get their cooperation by inducements: assimilation by hook or by crook. Tobias explains the thrust of Canadian Indian policy as follows:

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37 ibid. p.17.

38 ibid.

> What becomes even clearer is the government's determination to make Indians into imitation Europeans and to eradicate the old Indian values through education, religion, new economic and political systems, and a new concept of property. Not only was the Indian as a distinct cultural group to disappear, but the laboratory where these changes were brought about would also disappear. For as the Indian enfranchised, that is, became assimilated, he would take with him his share of the reserve. Therefore when all the Indians were enfranchised, there would no longer be any reserves.[39]

Thanks to Native Indian resistance, however, reserves never disappeared through the enfranchisement policies. When the government offered inducements for assimilation, Native Indians turned them down; when the government changed these inducements into impositions, Natives resisted by electing their Hereditary Chiefs and by maintaining their traditional form of government below the surface. So when the elective system was imposed again under the *Indian Advancement Act* of 1884, entitled *An act for Conferring Certain Privileges on the More Advanced Indians of Canada with the View of Training them for the Exercise of Municipal Affairs*, most bands refused to come under the Act. When it was imposed, Natives subverted it:

> Because many bands merely elected their traditional leaders, who were often unsatisfactory to the government, they were deposed as being incompetent, immoral or intemperate, all grounds for dismissal under the Act. However, these men were usually re-elected which thwarted the government's intentions in deposing them. Therefore, in 1884, the *Indian Act* was amended to prohibit persons deposed from office from standing for immediate re-election.[40]

It is sometimes difficult to understand how the Canadian government believed that it could change, without much resistance, the relationship between Native First Nations and the Canadian state,from nations that were economic and military allies to that of municipalities subordinate to a central government. The pri-

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39 ibid. p. 18.

40 ibid. p. 21.

mary argument behind the assimilationist policy was that Native Indians were inferior. But it seems that they only became inferior after their value as military allies and trade partners diminished. It is more than coincidence that the assault on Native Indian culture and political institutions began when Canada was in its westward expansionist period and when the Canadian federal government was consolidating its power. Natives, who did not consider themselves inferior, could not and did not accept external intrusions easily. They were members of self-governing nations with complex and distinct cultures whose relegation to the status of impotent municipal governments seemed an assault on aboriginal rights. In this context, the hegemonic discourse of assimilation inevitably met with a counter-hegemonic discourse of resistance.

2.4 Hegemonic Discourse and The Policy of Rapid Assimilation.

By the late 1960's Native Indians still had not been assimilated. The policy of gradual assimilation seemed, in the eyes of the federal government, to have created inequalities between Natives and non-Natives, because Natives were treated differently. With the election of Pierre Trudeau in 1968 came the belief that special rights for ethnic groups created individual inequalities. As Trudeau came into office with a strong opposition to the ethnic nationalist claims in Quebec, it is understandable that he would attempt to extend his anti-nationalist beliefs to all levels of Canadian society. Native Indians must have seemed like an obvious target. As well, the 1960's were marked by a movement towards equalizing disparities, best exemplified by the civil rights movement in the United States. All of this, plus the fact that the situation for Canada's Natives had not substantially

improved in one hundred years of federal government policy, indicated a new change for Indian public policy in Canada. As Ponting and Gibbins argue:

> The new Liberal government was imbued with a strong liberal ideology that stressed individualism and the protection of individual rights. Reflecting a combination of North American ideological tenets that can be traced back to the American Revolution, Trudeau's personal ideological beliefs and his deep antagonism to ethnic nationalism in Quebec, the government quickly adopted a new approach to Indian affairs that emphasized individual equality and de-emphasized collective ethnic survival. Indians as individuals were to be helped at the expense of Indians as a people.[41]

Thus on June 25, 1969 the federal government introduced what came to be known as the White Paper on Indian policy. The White Paper marks the beginning of the policy of rapid assimilation. This is perhaps the period in Native Indian/government relations when public policy was expressed most completely in the government's mode of discourse. Here there was no room for Native culture and claims for self-determination. The policy was explicit and immediate. The clash of the two modes of discourse became intense and out of this intensity arose a greater clarity in the position of both camps.

The White Paper finally brought out into the open the policy of assimilation that had existed since the 1830's. Now that Canada's Native Indians no longer served any political purpose for the Canadian state, now that the lands they previously possessed had been duly divided and distributed among non-Natives, Native Indians could be "equal." They had,in fact,become a burden. The distinctiveness of Canadian Indians had served its purpose, and their resistance to gradual assimilation for over a hundred years could no longer be tolerated. Claims to ethnic nationalism also had to be discredited to make the government seem consistent in opposing Quebec Nationalism. The White Paper was thus embued with concepts

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41 Ponting and Gibbins, *Out of Irrelevance*, pp. 25-26.

essential to the government's mode of discourse - equality was the order of the day.

Indian people, the government claimed, had been treated unfairly because they had been treated differently. As the White Paper argues:

> The treatment resulting from their different status has been often worse, sometimes equal, and occasionally better than that accorded to their fellow citizens. What matters is that it has been different.[42]

The solution to the problems which different treatment created was integration into the Canadian mainstream:

> The Government does not wish to perpetuate policies which carry with them the seeds of disharmony and disunity, policies which prevent Canadians from fulfilling themselves and contributing to their society. It seeks a partnership to achieve a better goal. The partners in this search are the Indian people, the governments of the provinces, the Canadian community as a whole and the Government of Canada.[43]

What was fair and just was that Native Indians be treated as individuals as opposed to being treated as members of a community. Here liberal ideology, government discourse, and political expediency seemed the true calculators of the value and the meaning of equality. Yet, somehow, the government claimed that Native Indians could be made equals without losing their identity. The government made no apparent attempt to understand what equality meant to Indians; it just imposed its own mode of discourse:

> The Indian people are entitled to such a policy. They are entitled to an equality which stresses Indian participation in its creation and which manifests itself in all aspects of Indian life.

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42 Canada, DIAND, The White Paper, p. 5.

43 ibid.

> The goals of the Indian people cannot be set by others; they must spring from the Indian community itself - but government can create the framework within which all persons and groups can seek their own goals.[44]

Native Indians could thus participate in society,as all other interest groups do, if they did so within the framework created by the government and by Canadian society.The message was clear: Natives must be equal and must determine themselves, but only in a manner defined by the federal government's mode of discourse.

The most profound contradiction that arises from the statement above, however, emerges from the fact that it was not the Native communities who participated in the creation of the White Paper itself. It was not the Native people who asked for a policy change which would provide for rapid assimilation. As Sally Weaver explains:

> Public controversy concerning the policy was widespread, but much of it centered on the secretive fashion in which the policy was prepared. Despite government commitments to Indians that they would participate in the process, the production of the White Paper had many earmarks of political deception. For its critics, the policy was, at best, a perversion of 'consultative democracy' and, at worst, a case of duplicity.[45]

Subsequent responses to the White Paper demonstrated that Canada's Native Indians would never have made such a policy as that contained in the White Paper. Natives did argue that they had been treated unfairly, but they did not give the same reasons as the government. They felt they were treated unfairly not because they had been treated differently, but because as distinctly *different* members of the Canadian state, they had been treated without regard to their own values and

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44 ibid. p. 6.

45 Sally M. Weaver, *Making Canadian Indian Policy: The Hidden Agenda 1968-70*, (Toronto: University of Toronto Press, 1981.) p. 3.

without regard to the treaties they had signed, in good faith, as national entities. Their ill-treatment arose not from the fact that they were different, and thus treated differently, but precisely from the fact that their difference was not respected.

The White Paper is a symbol of the government's ignorance of this mistreatment, for it imposes on Indian First Nations a mode of discourse foreign to them; it claims that Native Indians should take hold of their own destiny, but the document itself is a negation of this goal. The concrete proposals of the White Paper included the repeal of The *Indian Act*, the transfer of many responsibilities to the provincial governments, the provision of funds for economic development, the elimination of the Indian Affairs Department, and the appointment of a government commissioner to adjudicate Native Claims.[46] What was most surprising about these proposals was how much they departed from the *Hawthorne Report*,[47] a government commissioned national survey on Native Indians released only two years earlier. This report, which had been fairly well received by Native Indians, rejected the assimilationist policies previously proposed: it advocated a "citizen plus" status for Native Indians.

The *Hawthorne Report* became the focus for initial Native Indian reaction to the White Paper. This reaction was perhaps the single most united action ever taken by Native Indians across Canada. Weaver notes that when the Americans had attempted their termination policy in the 1950's, they inadvertently unleashed a wave of ethnic nationalism not seen for a long time; the same hap-

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46 ibid.

47 H.B. Hawthorne, (ed.), *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies* 2 vols., (Ottawa: Indian Affairs Branch, 1966-1967).

pened in Canada:

> The fear and insecurity it brought to tribal communities were so great that nativism was the reaction - a process of cultural re-affirmation which often arises when cultural systems are severely threatened. Instead of seeking equality Indian communities reasserted their cultural uniqueness emphasizing their social distance from the dominating society.[48]

Thus the clash of discourses found expression in a revitalized conflict. The government had finally showed its cards: rapid assimilation was the final and immediate goal. The strong and swift reaction to the White Paper served its purpose, however. By 1971 the government retreated from its policy. The search for a new Indian policy in Canada had to be started again, although now nativism would make its place in the debate over the future of Canada'a Native Indians. The Native Indian mode of discourse would be articulated in a way it had never been before. The tension between the two modes of discourse would continue, but the Native position gained strength. It would in fact find an expression in the *Penner Report* slightly over a decade later. As Ponting and Gibbins conclude:

> The rejection of the White Paper therefore opened up a new and confused policy area; the direction of Indian policy in the seventies was suddenly 'up for grabs'....Through to the publication of the White Paper, Indian policy in the past had been formulated with very little Indian input and frequently in opposition to Indian goals and interests. In the seventies Indians were to be deeply involved.[49]

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48 Weaver, *Making Canadian Indian Policy* p.6.

49 Ponting and Gibbins, *Out of Irrelevance* p. 30.

2.5 A Counterhegemonic Response: Towards The Discourse of Nativism

From this brief outline of the evolution of government policy on aboriginal rights we can see how the Native Indian mode of discourse has gone from a state of relative independence during first contact, to a gradual erosion after the Royal Proclamation, to the attempt by the government to completely eliminate it with the White Paper. It was, however, the Penner Committee, which after a decade of activism, provided the forum for some Native Indians to articulate the most recent expression of the Native Indian mode of discourse. Before we attempt to formulate the expression of the "Indian Question" contained in this report, it would be useful to understand the nature of the Native position. As indicated by the federal government's change in direction, Native Indians have become more active in defining themselves and their aboriginal rights. As well, they have become more active in attempting to influence the federal government to recognize these rights and entrench them in the constitution.

What emerges from Native Indian debate over aboriginal rights is a clear reassertion of what Native First Nations are, what they have been all along, and an attempt to articulate this debate in such a way that Native customs and ways of life become sharply distinguished from the rest of Canada. In the end, these customs and ways of life must be recognized by the Canadian state and society as equally legitimate, because for Indians they offer the basis for a much more desirable way of life. Native Indians are therefore beginning to regain their roots, and are tearing down the myths created over the past few centuries by the colonists. If these basic aboriginal values can be rejuvenated and legitimized, then Natives may persuade us that assimilationist policies merely reflect the colonial

mentality of the Canadian government. In their attempt to entrench aboriginal rights in the constitution and in their effort to fight for self-government, Indian First Nations are not seeking their rights from that document; rather, they are seeking to have their rights, which pre-date colonization, recognized by the Canadian people in the constitution. In their introduction to their book *Pathways to Self-Determination: Canadian Indians and the Canadian State*, Little Bear et al. argue that Natives deny that their right to self-government arises from Parliament, but instead:

> They hold that their right to self-government is an inherent right derived from the Creator, who gave that authority to all Indian people. They point out that this is a right that pre-dates the Canadian government; thus the Canadian government was never in a position to create or grant Indian self-government but merely to acknowledge it.[50]

The clash between the Native Indian and the Canadian modes of discourse emerges clearly in the issue of self-government. Before the colonists came, Indian First Nations had forms of self-government since time immemorial. Many of these forms of self-government were contrary to what the new colonial powers, and subsequently the Canadian government, attempted to impose on Native Indians. As Oren Lyons describes, Natives had a very different process of government:

> This process works through discussion until consensus is reached, not by voting. The problem we have with voting is that you may have more than half the people not agreeing with the decisions of the government....That is why it is important to have a decision-making process whereby you avoid disagreement, and the process Indians advocate is consensus.[51]

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50 L. Little Bear et al. ed., *Pathways to Self-Determination: Canadian Indians and the Canadian State*, (Toronto:University of Toronto Press, 1984). p. xiv.

51 ibid. p. 6.

Opposed to this is the municipal-style electoral system that Ottawa has tried to impose on Native peoples. The imposition of a municipal-style of government, as Paul Tennant argues " is the most consistently maintained element in federal/ Indian policy since confederation."[52] Thus the Canadian government has attempted to impose an alien and unworkable system of government on Native Indians. This system, as we have noted above, was intended to assimilate Indians into the Canadian system. But also, and perhaps more importantly, it was intended to subjugate them to the central state and eliminate the self-governing nature of Native societies. Thus what begins to emerge when we look closely at Native Indian claims is not only a cultural claim for the legitimacy of their history and their way of life, common to other 'minority' groups, but also a claim for the power of self-determination, of local government, which derives from the people in that community and not from the central state.

As Marie Smallface Marule argues, the relation between municipal governments and their central governments is paternalistic, and if applied to Native communities the result would not be the type of self-government that Indians have in mind:

> Canadians today are having serious problems with political institutions. Consider, for example, the municipal government's relationship to the provincial government. These relationships are as paternalistic and bureaucratic as the band council-Department of Indian Affairs relationship. They have serious problems of jurisdiction over resources, indebtedness, dependence, and the alienation of people from the central government....Yet this municipal government structure is now being offered to Indians as an alternative, a *better* alternative, to our existing situation. (Original emphasis).[53]

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52 Paul Tennant, "Indian Self-Government: Progress or Stalemate.", *Canadian Public Policy*, 10, no. 2 (June 1984), p. 211.

53 Little Bear, *Pathways* p. 43.

What is interesting about Marule's critique is that it points out not only the problems of self-government for Natives, but the deficiencies of Canadian local government as such. We would therefore argue that government's mode of discourse opposes itself to the Native mode of discourse not only in terms of European-Canadian culture, but that it also opposes itself institutionally in how it believes government power should be distributed - from the top down.

At the center of the 'value' debate over aboriginal rights there is the clash between the two cultures. Native Indian discourse rejects the principles of individuality, (liberal) equality, and sameness, which Canadian society attempts to impose on them. As Oren Lyons argues,[54] their beliefs in spirituality, (native) equality, and natural law makes them see all things as equal; all things must therefore be treated with equal respect, whether we speak of a tree or a person.

Indian Nations want different things. But most want the choice to follow their own way of life, that is, to determine for *themselves*, at the local level, *what is best for them, using their own mode of discourse*. This happens to be part of their culture and they have retained this belief in self-determination. This is what, we argue, is at the centre of government opposition to Native self-government. The government can perhaps accept Native culture, but it cannot easily accept Native political power at the local level. The nature of the discourse is then not only cultural but also institutional. The *Penner Report* attempted to oppose government discourse at both levels. It attempted to show that Native Indians wanted to integrate into the Canadian society as distinct cultures, but to resist integration if it meant losing that culture. It attempted to show that Indians wanted to integrate into the Canadian state as self-determining nations, but to resist integration as

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54 ibid. pp. 5-13.

Indian municipalities.

2.6 The Penner Report: An Articulation of the Native Indian Mode of Discourse.

Most Native Indians want to retain their world view, but this includes control over their own destiny through self-government. It is this world view that seems finally to have been heard by the federal government. It seems that from the band level up, Native Indians have been able to reaffirm their position and articulate, at least in general terms, their claims for aboriginal rights. Perhaps the most significant result of Native self-awareness and assertiveness was the *Penner Report*. This report was ordered by the House of Commons on December 22, 1982 to "review all legal and related institutional factors affecting the status, development and responsibilities of Band Governments of Indian Reserves..."[55] So for the first time, the federal government took the initiative to review its policies on aboriginal rights with respect to self-government. The committee travelled around the country and heard a total of 567 witnesses. It made 58 recommendations. As Weaver explains:

> The *Penner Report* is a remarkable and significant document. Its foremost contribution is that it provides the first holistic picture of what Indian government 'might look like.' In short, it proposes a model, not a fully detailed plan,of how Indian bands and the federal government's structures could be reformed to bring about Indian self-government.[56]

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55 Canada, House of Commons, *Penner Report* p. V.

56 Weaver, "A Commentary on the Penner Report," p. 215.

What is most important about the *Penner Report* is that it chooses a language that for the first time reflects the values which Native Indians have attempted to secure for many years. The most notable example of this is the reference to Native Indians as Indian First Nations. Following this, the Report recognizes the nature of native self-government and Native values, which although different from those of the Canadian state and society, are legitimate in their own right:

> Most First Nations have complex forms of government that go far back into history and have evolved over time. They often operated in accord with spiritual values, because religion was not separated from other aspects of First Nation life.[57]

The committee concluded that the federal government should initiate a new relationship with Indian First Nations, "and that an essential element of this relationship be recognition of Indian self-government."[58] In order to achieve this, the committee recommended two different routes. The long term goal was that "the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada."[59] The result of this is that a new order of government would be created in Canada. But because this would be a long and arduous process, the committee also made a number of recommendations to correct problems immediately by federal legislation:

> ...as a demonstration of its commitment, the federal government should introduce legislation that would lead to the maximum possible degree of self-government immediately. Such legislation should be developed jointly.[60]

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57 Canada, House of Commons, *The Penner Report* p. 12.

58 ibid. p. 41.

59 ibid. p. 44.

60 ibid. p. 50.

Three legislative measures were recommended: first, the enactment of an Indian First Nations Recognition Act, which would establish the criteria for recognition; second, legislation which would give the federal government authorization to "enter into agreements with recognized Indian First Nations as to the jurisdiction each government wishes to occupy."[61] Last, legislation under section 91(24) of the *Constitution Act* 1867, to permit Indian First Nations to govern themselves and to "ensure that provincial laws would not apply in Indian lands except by the agreement of the Indian First Nation government."[62] The committee also recommended that a Ministry of State for Indian First Nations Relations, linked to the Privy Council Office, be established to "manage and coordinate the federal government's relations with Indian First Nations."[63] Thus it seems, the committee preferred to take this crucial new role away from DIAND. The committee argued that "The Governor General's involvement would symbolize the unbroken link with the Crown and confirm that recognition would continue from government to government."[64]

The committee was explicit about the broad range of powers Indian First Nations should have. It recommended:

> Full legislative and policy-making powers on matters affecting Indian people and full control over the territory and resources within the boundaries of Indian lands...[65]

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61 ibid.

62 ibid.

63 ibid. p. 61.

64 ibid.

65 ibid. p. 64.

Though the exact scope of these powers should be decided through negotiation, the committee affirmed that Native First Nation Governments should be able to legislate "in such areas as social and cultural development, including education and family relations, land and resource use, revenue-raising, economic and commercial development and justice and law enforcement among others." [66] Finally, the committee recommended that a special tribunal should be established to settle disputes between Indian First Nations and other governments. To give a foundation to these new powers, the committee also recommended that measures be taken to provide Indian First Nations with adequate economic resources. This could be done by expanding the land base and through the provision of the necessary funds to achieve economic self-sufficiency. This would be done through a Native Economic Development Fund.[67] As well, a number of recommendations were made reaffirming the right of Native peoples to control their own lands:

> The committee recommends that the federal government promote the constitutional change necessary to recognize in law full Indian First Nation rights to the lands, waters and resources of all areas now classified or in future considered Indian lands.[68]

This would of course take powers from both the provincial and the federal governments, but as the committee argues, the control over lands is the most important move to promote self-government.

The final impact of the *Penner Report* cannot yet be judged, but its significance in terms of turning the debate of the "Indian Question" towards the Native Indian mode of discourse should not be underestimated. What Native Indians

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66 ibid.

67 ibid. p.77

68 ibid. p. 109.

achieved with this report is that for the first time they were able to articulate their views in a comprehensive policy report. Compared to the 1969 White Paper, it is revolutionary. In seventeen years, Indian First Nations have been able to change the agenda from an assimilationist policy to one that recognizes their special rights and the legitimacy of their mode of discourse. What we have seen over those years has been an active, well articulated and unified counterhegemonic force. The 'antithesis' reached by the *Penner Report* must be recognized as a major breakthrough for Indian First Nations. Nevertheless, as with all hegemonic discourse, the federal government's position has not and will not change easily. In his response to the *Penner Report*, Mr. Munro warns Native Indians that their final goal of entrenching aboriginal rights in the constitution may be very difficult. He states that "it is important for us to recognize that any change in the relationship will affect not only the federal government and Indian peoples, but also provincial governments and others." [69]

2.7 From Cultural to Institutional Hegemonic Discourse.

From the outset we have argued that the most meaningful way to look at the relation between the Canadian government and Indian First Nations is that of a tension between two modes of discourse about aboriginal rights and especially about Native Indian self-government. We have also argued that the best way to explain this discourse is to understand it in terms of two components: cultural and institutional discourse. The tension has shown itself as hegemonic and counterhegemonic discourse. The Canadian government (and before it the British Colonial government), has attempted to impose alien cultural values and political institu-

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69 DIAND., *Response* p. 1.

tions. The underlying argument to this imposition has been the 'protection' and 'civilization' of Native Indians through various assimilationist policies. This is the cultural component of this discourse. But we argue that the underlying principle guiding this hegemonic discourse is the attempt by government to retain political power at the center through institutional discourse. This is not to say that cultural hegemony is a smokescreen for something more fundamental, but rather that it has provided justification for the dismissal of Native self-government and the principle of self-determination, something that has served the Canadian state well in its consolidation of centralized political control.

If this is so, then we would expect great resistance from governments (both provincial and federal) to implement meaningful Native self-government (based on local community political authority), as opposed to decentralized municipal-style Native government. This would mean that even if cultural discourse seems to level out, that is, that both cultures appear to be equal, and if the Canadian government ceases its attempt to assimilate Native Indians, this does not mean that meaningful self-government will be achieved. The issue is no longer, and perhaps never was, the level of 'civilization' of Native Indians. The issue is whether centralized governments will allow Native Indian community-based government or whether they will attempt only to decentralize or devolve their authority in a limited form of local (municipal-style) government. The latter seems like a more obtainable goal within the present institutional structure. The task for Native Indians is to understand and challenge this structure or they will be co-opted by it.

In fact, the evidence for the resistance to self-government can be clearly seen in the aftermath of the *Penner Report*. The fact that Mr. Munro did not endorse

the Report's major recommendations is an indication of this resistance. On the one hand, the government praised Native Indian culture and its special position within Canadian society, but on the other hand it did not allow any legislation to come forward which would have recognized the ultimate validity of that position - community based self-government. As Tennant observes, after the 1984 First Ministers Conference on Aboriginal rights,

> A group from the Constitutional unit of the Indian Affairs Department and the public law unit of the Ministry of Justice were by this time drafting new legislation. The group sought to have Parliament approve what the Penner committee had recommended. The draft was rejected by the priorities and planning committee of cabinet, which gave firm instructions that Indian government powers were to be limited and delegated by Parliament.[70]

Rejection was now not based on Native Indian inferiority or inability for self-government, but instead on the principle that power must come from the center. The result was *An Act Relating to Self-Government of Indian Nations*, (Bill C-52) which as Tennant argues was "little more than the old band government legislative approach decked out in a bit of verbal finery borrowed from the Indians and the *Penner Report*."[71]

The outcome of the 1985 Conference on Aboriginal Rights is another indication of institutional hegemonic discourse. At the conference, Premiers Lougheed of Alberta, Devine of Saskatchewan and Bennett of British Columbia, rejected the entrenchment of self-government without prior negotiation with their own governments defining the exact meaning and nature of the term and the effects self-

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70 Paul Tennant "Aboriginal Rights and the Penner Report on Indian Self-Government" in Menno Boldt and Anthony Long, ed. *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights*, (Toronto: University of Toronto Press, 1985), pp. 330-331.

71 ibid. p. 331.

government might have on the current structure. Even if an agreement had been reached to accept and entrench the principle of self-government, it is not clear that this would have led to meaningful self-government for Native Indians.

What is most important to understand about this discursive tension is that the major impediment to granting self-government for Indian First Nations comes from an inability to articulate the Native mode of discourse in such a way that both the cultural *and* the institutional elements of hegemonic discourse are understood and overcome. If the *Penner Report* is the 'antithesis' to the White Paper, as Weaver argues, this does not mean that we are now moving toward the 'synthesis'. For what we must understand is not only the cultural barriers to Native self-determination, but also the barriers which are structural to our federal system. Nowhere within that power structure can we find meaningful self-determination at the local level.

Institutional discourse must be overcome but it must first be understood. Indian First Nations provide us with a unique opportunity to understand this, for they represent the only local states in Canada which have a traditional claim to self-determination. What impedes Native First Nations from obtaining self-government may well be the same thing that prevents other local governments from achieving independence from the centre. The underlying question, however, is whether the government's mode of discourse will not in the end uphold its hegemonic position - whether Native Indians, content with the new recognition of their culture, will not be easily be convinced to accept a decentralized or devolved rather that a community-based form of self-government. A decentralized or devolved form of self-government would negate the nationalistic roots which we have argued Indian

First Nations rightfully have. The nature of hegemonic discourse is not only strength but also, deriving from this strength, the ability to cast the debate in its own terms. Only an understanding of this debate and its components can provide the necessary force to overcome cultural *and* institutional hegemony.

Chapter III

THE INSTITUTIONAL ELEMENT OF DISCOURSE.

3.1 Introduction

Much has been said in the past few years about the need for Canada's First Nations to regain their self-determination and achieve meaningful self-government. More recently, even representatives of federal and provincial governments have argued that self-government must become a reality for First Nations. All agree that the *Indian Act* constrains the economic, social, and political development of aboriginal peoples in Canada and runs counter to Canadian principles of self-determination. There is almost unanimous agreement on the need for change. The federal government accepts that this should include self-government. It argues that Native peoples have lived too long under the paternal direction of DIAND, and that they should be entitled to the same right to local self-government as all other Canadians. No serious attempt is made, however, to understand if Native peoples have a different perspective on self-government. For the federal and provincial governments, Native self-government is something which derives its authority from them. The federal government's conception of self-government becomes clear in the opening statement by Prime Minister Brian Mulroney at the 1985 First Ministers Conference on The Rights of Aboriginal Peoples:

> Different Forms of self-government already exist in Canada and most Canadians take them for granted. Apart from electing their

> federal and provincial governments, Canadians run their own school boards, village and town councils. Canadians have also created regional governments when urban centres became too complex to be administered by a single city council.
>
> In Canada, we assume that we can participate in the charting of our own destinies, in determining how we are represented, in holding our representatives accountable. But the Indians, Inuit and Metis peoples do not feel that they have the same degree of participation...
>
> The Key to change is self-government for aboriginal peoples within the Canadian Confederation. We are a cautious people and self-government is a term which is worrisome to some of us...[72]

Hence, the federal government defines self-government for aboriginal peoples as it defines self-government for other municipal communities in Canada. This, of course, is nothing new, for it is a policy which has existed for over a hundred years. According to this current approach, therefore, Native self-government can only exist in a fashion already defined by the "Canadian Confederation." Hegemonic discourse thus defines and shapes institutional concepts (e.g. self-determination and self-government), which not only suits its own political structures but will reinforce them as well. Native First Nations are not allowed to seriously challenge these structures and institutions or the concepts and the values from which they derive. The terms "self-determination" and "self-government" are used but their meaning usually remains hidden behind the rhetoric; their significance remains buried in hegemonic discourse.

Some First Nations such as the Gitksan and Wet'suwt'en have seen beyond this rhetoric; they have realized that what they are told is self-determination and self-government is part of another culture, another set of values and norms, and

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72 Brian Mulroney, "Notes for an Opening Statement," First Ministers Conference on the Rights of Aboriginal Peoples, Ottawa, April 2-3, 1985.(Ottawa:Queen's Printer,1985), pp.4-5.

another institutional structure alien to theirs - in short, another mode of discourse. These First Nations articulate a counterhegemonic mode of discourse which, in reaction to the Canadian state, attempts to define these and other terms in light of their own mode of discourse. Other First Nations such as the Sechelt, however, speak about self-government in the same general terms as the central governments. What they want is to escape the shackles of the *Indian Act*. To achieve anything beyond this is for them "self-government," and they therefore implicitly accept the government's position. Although they may decide for themselves what they want (i.e. municipal-style government), they do so under the potent influence of the government's mode of discourse.

The question arises as to how the concepts of self-determination and self-government fit within the dynamic process of discourse. The meaning and definition of these concepts entail the institutional element of hegemonic and counter-hegemonic discourse. Of particular interest to us is how the federal government defines these concepts and how they are used to cover their underlying (institutional) meaning. The government may speak of decentralizing or even devolving government powers to Native First Nations (i.e. municipal-style Native Indian Bands), but what does it mean to decentralize or devolve these powers? What degree or what quality of self-determination is generated under these institutional structures? Furthermore, and most importantly, how do these proposals satisfy the demands made by many First Nations which seek meaningful self-government which fits within their own mode of discourse?

These are some of the questions which this chapter will address. To this end, we will attempt to place our discussion of the institutional element of discourse

within some of the literature of decentralization. Our aim is not to give a comprehensive account of this literature, but rather, to pose the concepts of hegemonic and counterhegemonic discourse in terms of the language of decentralization, delegation and devolution. We shall argue that these concepts are inadequate to our discussion of Native self-government because they express a language and a conceptual framework of Euro/Canadian hegemonic discourse; they thus reflect, justify, and perpetuate a particular institutional structure alien to Indian First Nations. We shall then suggest an alternative analysis which should sharpen our ability to understand Native Indian/government discourse. With this new conceptual framework in hand we shall study, in the following chapter, the Sechelt and the Gitksan-Wet'suwet'en approaches to self government.

3.2 Decentralization, Delegation, Devolution and Beyond

Ever since the second world war there has been a marked tendency in most industrial nations to centralize government. This is due in part to the fact that local governments seemed incapable of dealing with the crisis of the great depression of the 1930's and in part due to the fact that most central governments seemed to obtain increased power in dealing with the war. In Canada the central government in Ottawa even began to gain ground on the provinces. The Government of Canada took over the management of income tax, it established national income and security programs, and in general gained strength over the pre-war period. It is not surprising, therefore, that theories and policies which favoured strong central governments (in Canada both provincial and federal), became very popular in the immediate post-war period.

Increased centralization of power seemed more efficient and a sign of the nature of the industrial state. By the late 1950's, however, there began a movement towards decentralization in order to better respond to local problems. The question was how to achieve decentralization without eliminating the coordinating (political) power of central governments. What was the formula by which local and regional wishes could be met while the "proven efficiency" of the central governments and their bureaucracies could be maintained? The issue was thus put in terms of suitable administrative decentralization.[73]

Recently, however, there has emerged another approach which has attempted to address the issue of decentralization.[74] Unlike the administrative approach, which emphasizes bureaucratic decentralization, some recent writers have begun to pose the question of decentralization in terms of political self-determination for the local community through greater devolved powers, whether this be for the rural or urban centers or the neighbourhoods and their community organizations. The issue with these writers is not how to make central governments and their bureaucracies more responsive to local demands, but rather how to create and enhance *local political power* which could determine policies which affect the local community.

The problem is that the central government sees itself as a legitimate elected body which has the mandate to apply its policies based on its perceptions of national, regional, or local goals. To have its authority challenged by local gov-

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73 Besides the two authors we study in this chapter see James W. Fesler, *Area Administration* (University of Alabama Press, 1964); and Charles Perrow, *Complex Organizations* (New York: Random House, 1979).

74 For one such approach see Mathew A. Crenson *Neighbourhood Politics*, (Cambridge: Harvard University Press, 1983).

ernments may threaten its political power and influence. Nevertheless, because decentralization is a desired objective, it seems that administrative decentralization or limited devolution is the most it is willing to offer.

But many question whether, in a representative democratic system, we must accept the assertion that our effective political activity must be limited to voting every few years, writing to the local paper, or joining a political party. If the government attempts to implement a policy which adversely affects us in the local community, is it not the right of that community to oppose it actively until the central government implements a policy which suits local residents? Or more importantly, should not that community be able to define the economic, political, and social goals which affects it locally?

Thus it seems that the current debate can be expressed in terms of the tension between bureaucratic/administrative and local self-determination theories. The purpose of this section is to explore briefly some of the main arguments in this debate. We shall give a comprehensive account of two perspectives which fall within the first set of theories and then give our own account of the second approach.

Before proceeding, however, we must clarify some of the terms used. Following Robin Hambleton in his book, *Policy Planning and Local Government*, when we speak of decentralization, delegation or devolution, we are referring to the distribution of authority, that is, the ability to act without the approval of higher levels of government.[75] As well, we will identify two areas within which this distribution of authority occurs, that is, the administrative and political areas.

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75 Robin Hambleton, *Policy Planning and Local Government* (London: Hutchinson, 1978) p. 72.

3.2.1 Brian C. Smith: Approaches to Field Administration

In his book *Field Administration*[76] Brian C. Smith differentiates between two forms of decentralization:

> One is what is commonly known as *devolution*, wherein the authority to make certain decisions in some spheres of public policy is delegated by law to sub-national territories (e.g. a local authority). The other is *deconcentration* within the bureaucracy involving the delegation of authority to make administrative decisions on behalf of the central administration to public servants working in the field and responsible in varying degrees for government policy within their territories.[77]

So whereas the first kind of decentralization devolves government authority, the second decentralizes administrative responsibilities. Smith's book concentrates on this latter form of decentralization, although he argues that his study "examines both administrative and political factors."[78]

Smith argues that when looking at administrative deconcentration we should not refer only to those decisions made directly by the central government from the capital. He states that "we often overlook the public servants stationed in the provinces who may act, among other things, as intermediaries between members of the executive and localities."[79] Smith concentrates on these officials, as they are in a unique position to apply policies of the central state and provide feedback to it on the one hand, while attempting to respond to local issues on the other hand. The officials he writes about, however, are not the minor bureaucrats, but the more important senior officials acting locally:

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76 Brian C.Smith, *Field Administration*, (London: Routledge and Kegan Paul, 1967).

77 ibid. p. 1

78 ibid. p. 3.

79 ibid.

> In many countries the field service includes some of the government's highest public servants who are important both locally and nationally. These are the officials with whom we are broadly concerned. We are interested in the chief officers in a given administrative territory whether they be generalist administrators or the heads of technical field services, i.e. the regional director, the prefect, the provincial commissioner and so on.[80]

To study the systems of field administration which would shed light on administrative decentralization, Smith proposes an analysis of three types of deconcentrated systems. First, there is the functional pattern of field administration:

> In such a system the chief field agents of the central administration are part of separate functional hierarchies responsible for relatively distinct aspects of government policy, such as health, education or agriculture.[81]

Thus the field administrator acts locally but only in relation to a particular governmental function. The central government has no one particular administrator who can coordinate central government policy at the local level. This system creates problems of coordination, since areal divisions of separate government functions may overlap, or it may be very difficult to create a formal coordinating liaison.

The second form of field administration is the integrated prefectoral system of which the French prefectoral system is an example:

> The term "integrated" refers to a dual relationship in the prefectoral system: between the prefect and other field officers of the central government; and between the prefect and local government.[82]

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80 ibid. p.4.

81 ibid. p.12.

82 ibid. p. 44.

Unlike the functional system, the field administrator in the integrated prefectoral system actually coordinates all the central government's agencies at the local level. So as Smith explains, "in principle, the prefect is the senior government officer in the prefecture and the offices of individual ministers are subordinate to him."[83] Thus the prefect enforces the authority of the central government both administratively and politically. Elected local government officials are left with little power vis-a-vis the central government unless they can influence the center through other means. The system of the Indian Agent which was used in Canada before the Band Council governments were introduced closely resembles the integrated prefectoral system.

The third form of field administration is the unintegrated system. It differs from the integrated system in that the prefect in the unintegrated system is not the only channel between the central government and the local ministries; thus, "the prefect has no overriding authority over their operations."[84] In addition, in relation to local government, the prefect is not the chief executive and does not have the political power which exists under the integrated system:

> The prefect may exercise administrative supervision and control, and even exert a considerable amount of political influence of a very direct kind. But officially his position is solely that of central government agent with local government administrators organized quite separately from the prefecture.[85]

The system, however, can still allow the central government to subordinate local governments "by exercising a high degree of political control, such as the approval of financial estimates, *ultra vires* rulings, inspection or approving joint coopera-

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83 ibid. p. 53.

84 ibid. p. 79.

85 ibid. p. 82.

tion, the prefect may be able to impede the work of a local authority if it is politically opposed to the central regime."[86] This system closely resembles the relationship between the regional office of DIAND and the Band Councils. It is precisely this kind of political and fiscal control that Native leaders have complained about for many years. Though this system is not as centralized as that of the Indian Agent, the basic relationship is the same: the central government and its agents have final control over policy and finances, though perhaps in a less apparent fashion. So the existence of the Band Council in no way ensures greater political control at the local level by Native Indians.

Smith's analysis leads us to recognize the importance of senior government officials who are in charge regionally or locally. But what becomes evident in his description of prefectoral systems is the degree of power which a prefect could have vis-a-vis the local authorities. And although we may argue that there may be unofficial channels through which local elites can influence the appointment or behaviour of the prefect by pressuring the central authorities, it becomes evident that administrative decentralization gives the central government final power. Authority comes from the center and not from the local community. In fact, although the prefect may act as a communicator to the central government of local concerns, from Smith's own description, he can also act to influence local governments or to impose upon them central government policies. It seems that the prefectoral route is a double edged sword.

This form of administrative decentralization generally conforms to the way Indian First Nations have been ruled, through the authority of the *Indian Act* and under the direction of DIAND and its predecessors. Decentralization in this case

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86 ibid. p. 83.

can be seen as the imposition of the governmental mode of discourse, for the principles of administration in the prefectoral system reaffirm the authority of the central government to decide what is best for Native peoples - even if they do not agree. Self-determination and self-government are defined by the central authorities and imposed through the regional or local administrators of DIAND. This form of decentralization is clearly rejected by virtually all First Nations and at least rhetorically by the federal government and some provinces.

Smith's analysis gives a clear indication of how the central government can direct and manipulate local issues and how local governments under administrative deconcentration cannot hope to achieve meaningful self-determination or self-government. Administrative decentralization provides a direct and unbroken line of authority which comes from the center to the local community. The power exercised over aboriginal peoples through this system is so conspicuous that even federal politicians reject it. The question arises as to whether devolution is then the better route. That is, whether the authority to make certain decisions at the local level, in some aspects of public policy, delegated by law to sub-national territories, is a closer expression of what First Nations want and what could best be considered self-determination and self-government. To better explore this question we should proceed to Robin Hambleton's analysis of local government.

3.2.2 Robin Hambleton: From Administrative Decentralization to Devolution

An attempt to move away from administrative theories of decentralization comes from Robin Hambleton in his book *Policy planning and Local Government*, where he describes a movement away from centralized policy-making. In the British context he argues that:

> Essentially, these changes represent a move away from the relatively passive performance of duties imposed by Parliament towards a more purposeful approach in which local authorities attempt to *learn* about the nature and causes of local problems and to *respond* accordingly.[87] (original emphasis)

And it is this learning - what Hambleton calls public learning - which underlies the analysis of his book. Public learning has two facets: first, local government must constantly attempt to understand and reformulate problems at the local level, so this form of learning is "concerned with the ability of government to perceive and understand the true complexity of problems in the community - the way they inter-relate and often reinforce one another and the way they change over time."[88]

The second form of learning follows from the first. Once we recognize the problem we must learn to resolve it. Thus this second form of public learning is concerned with "the ability of government to respond to these differing and changing problems at the appropriate organizational level in a timely and effective manner." [89] Hambleton describes the first form of learning as *problem recognition* and the second as *adaptive capacity*. What is most significant to our theme is that Hambleton argues that although these forms of learning should exist

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87 Hambleton.*Policy Planning* p. 9.

88 ibid. p. 10.

89 ibid. p. 11.

at all levels of government, "the most fertile location is *at the point of contact between policy making and the community.*"[90](Original emphasis). Because it is at the local level that policies have an impact on peoples lives, we can learn better at this level than any other. Hambleton believes that it is at the local level that the division between people and government can be overcome, but he qualifies this by stating that:

> Area approaches must *not* be viewed in isolation from other ways of achieving understanding and guiding action and that attempts to localize control will do little to improve local government effectiveness or strengthen political accountability *unless* they are linked to and can influence decision-making at higher levels of government.[91](Original emphasis).

Hambleton argues that the relationship between central and local government as it has developed in Britain since the second world war, has been marked by the central government's take-over of local government activities. Even so, he writes that local government has not disappeared and it continues to fulfil an important role. But this circumstance has left an apparent paradox, because although certain functions have been taken away from local government, Hambleton argues that local government has had an increasing impact on society; this is shown by the increasing size of its operations. But Hambleton believes that we should change from paying attention to the growth of government to its development.

To achieve this, we must focus on improving central-local relations. While the central government should retain control of economic planning, it should attempt to review its supervision of local government, "with a view to identifying how far these frustrate the development of more corporate approaches by local authori-

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90 ibid.

91 ibid.

ties."[92] Local governments should get greater freedom in redistributing resources. Local democracy should be increased, for "local government strengthens accountability by retaining responsibility at a local level and promotes innovation by experimenting with new approaches to community problems."[93] Finally, local government has the advantage that at this level we can better learn and act upon problems; so Hambleton states that:

> The requirements of learning and action imply both a need to recognize the value of more local government discretion in setting priorities and a need to develop closer joint-working by central and local government on policy analysis."[94]

But although increasing local government control is appealing, there are a number of problems with this position. First, although "public learning" may in fact sharpen the local community's and the central government's awareness of problems which must be resolved, if authority ultimately lies at the center, there is no motivation for the central government to implement changes even if it has a crystal clear understanding of these problems. Ultimately, there is no authority to compel the central government to act locally against its own policies or against its own interests. Thus it does not mean that the second form of learning follows from the first. Once we recognize a problem it does not necessarily follow that we would want to learn how to resolve it. In the history of Indian/Government relations there has been much "problem recognition" but little "adaptive capacity."

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92 ibid. p. 39.

93 ibid. p. 40.

94 ibid. p. 41.

Though we agree with Hambleton that it is at the local level that the division between people and government can be overcome, and we agree that local government effectiveness will not improve unless it can influence higher level of government, we disagree that "improving" central-local relations is the proper route if it is done within the framework of powers "devolved" from the center. As well, we disagree that local governments will improve their capacity to resolve problems locally if the central government merely increases local government "discretion." If authority is derived from the center, it is defined locally from the center. A local government may have authority (that is the ability to act without the approval from higher authorities), but this may be only to regulate garbage distribution or to enact By-Laws which prohibit public vendors; in any case it will have only the authority devolved by that same central government.

A Native Indian community that had devolved powers from the central government might be able to regulate some aspects of fishing, mining or logging, but this would be subject to the authority of the central government. Self-determination in this most vital sense would not exist. But Indian First Nations had, as we argued above, the authority to regulate these local matters before, and for a time after initial contact. Other local governments in Canada never did, because they *were* created by the central governments. The latter local governments were based on the assumptions of the Westminster Parliamentary system which treat local government as a Parliamentary creation and therefore as a subordinate institution. Insofar as this view sees authority arising from the local community, it sees it as coming from *individuals* who vote once every four or five years but never from the *communities* from which they come. The trap we find

here is that we automatically assume that the central government *creates* authority, and we never even consider the possibility that the local community can have its own sphere of authority which derives from the local community and not from the center.

The main aspect of Hambleton's analysis which sheds light on this problem is his distinction between decentralization, delegation, and devolution. Hambleton's analysis goes beyond Smith's in that it better captures the range of possibilities in the distribution of authority. Thus, decentralization has two meanings. It can either mean the physical dispersal of government services or it can mean the delegation of authority. But delegation can in turn mean two things: not only administrative but also political decentralization, "as when authority for certain decisions is delegated to an area committee of councillors."[95] This form of delegation, however, itself overlaps with devolution, "which involves transfer of authority to a body which may or may not be separate from the local authority."[96] (See figure 1). These three terms are discussed in terms of the distribution of authority, "the ability to take action without prior confirmation from a higher level."[97] But decentralization, as Hambleton himself argues, more often occurs in terms of "decentralization/delegation/devolution of influence rather than authority."[98]

The reason that decentralization, delegation, and devolution occur through influence rather than authority is because of something implicit in Hambleton's analysis and in Figure 1. That is, the whole issue of the distribution of authority is

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95 ibid. p. 72.

96 ibid.

97 ibid.

98 ibid.

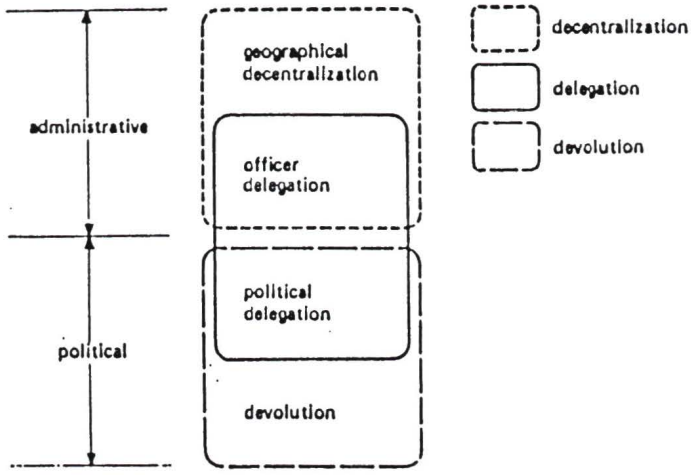

Figure 1: Hambleton's model of Decentralization, Delegation, and Devolution

posed in such a way that we do not question the fact that authority is decentralized, deconcentrated or devolved *from the central government to the local government*. So even political devolution entails the ultimate subordination of the local government to the center. Local governments are therefore relegated to the use of influence rather than authority to deal with issues which may impact locally because central governments are unwilling to devolve any significant powers. It is precisely this assumption that underlies the federal government's approach to Indian self-government in Canada: political devolution is the absolute limit of the government's model for self-governing First Nations because it assumes that political authority derives from Parliament and not from the local community.

Many Indian First Nations, however, are unwilling to accept this model of devolution, for they deny that their right to self-government, and hence the right to exercise authority in their communities, derives from the central governments. Unlike other local communities in Canada, Native peoples were self-determining and self-governing *before* their local government system (the Band Council) was imposed on them. Most never accepted this foreign intrusion on their traditional governing institutions and most resisted these intrusions. Their claim to self-determination and self-government is one which demands recognition of local authority and not mere devolution. For them authority arises from within the local community, not from without it.

3.3 Conclusion.

From this analysis we have two approaches to the concepts of self-determination and self-government. The first, that of Smith and Hambleton (and that of the Canadian state), defines these terms within the limits of the institutional structure of our Parliamentary system. To have self-determination, to attain self-government, the authority must be devolved by the central governments. That is, the local community has little say *qua* community as to the scope and depth of local political powers. Ultimately, the authority of "self" in determination and government is very narrow indeed. If the ability of a community to determine its own local aspirations, to define itself within the larger community, is too narrow, then the word "self-determination" loses its meaning. If the authority within which a community governs itself is limited merely to issues which other levels of government do not want to bother with (e.g. garbage collection); and

if a local government cannot translate its economic, political, and social goals into policies which define and establish the community's needs and wants, then the concept of "self-government" is a hollow receptacle for the distorted echoes of political rhetoric.

The second approach to self-determination and self-government attempts to explore the significance of community based political authority. It questions, and indeed challenges, the wisdom of a political structure which pretends to provide local governing institutions, but which merely subjects them to its higher will. This approach intends to see the community as a local polity with not only individual voters, but with an expression of local interests and goals which must be defined and carried out locally; it wishes to see the community not merely as the sum of individuals, but as a community of individuals acting *qua* community. The concept of self-determination would broaden to encompass a community definition of economic, social, and political goals.

This approach would define the authority of government as something which arises locally, from within the community, rather than from the central government. This would entail a qualitative shift, a different institutional view of how authority is established and maintained. The ultimate goal of this approach is to establish the legitimacy of self-determination and self-government as something which would be defined and established locally. It would not mean a rejection of regional or national governments, their goals and aspirations. But it would recognize the fact that since all policies must have their ultimate effect locally at some point, the community has a legitimate say in these policies and goals through meaningful self-governing institutions.

Two opposing institutional models thus underlie the present debate over self-government. Whereas the federal and provincial governments attempt to impose the first approach (which entails the government's mode of discourse), many First Nations propose the second (which entails the Native Indian mode of discourse). For these First Nations, the second approach is an expression of their mode of discourse. It reaffirms that self-determination and self-government arise from the Creator and not from the Canadian state.

If this is the case, then for Native Indians to accept the first approach would be to give up the claim to an independent source of authority; it would be to abandon their own mode of discourse and be drawn into the government's mode of discourse, thus subjecting themselves to its hegemonic force. The important issue is then to recognize the meanings behind the concepts of self-determination and self-government. Let us then proceed to two concrete examples - the Sechelt and Gitksan-Wet'suwet'en approaches to self-government. As we will show, the one is adopting the government's approach and the other is attempting to resist it.

Chapter IV

THE SECHELT AND GITKSAN-WET'SUWET'EN APPROACHES TO SELF-GOVERNMENT.

In this chapter we will look briefly at two different approaches to self-government in B.C.. The first is that of the Sechelt Band located on the Sunshine Coast, north of Vancouver. This approach has consisted of the Band requesting the federal government to enact enabling legislation in order to establish a municipal-style of government on the reserve. With the passage of Bill C-93 in the House of Commons on May 21, 1986, the Band's request has been met.

The second approach is that of the Gitksan-Wet'suwet'en peoples (comprising several bands) who are located in the north-west portion of B.C., in the Bulkley Valley, the Upper Skeena, and Upper Nass watersheds. This approach differs greatly from that of the Sechelt band. Rather than requesting the federal government to enact legislation establishing Native self-government, the Gitksan-Wet'suwet'en have launched a land claim suit against the province of British Columbia claiming exclusive jurisdiction over their traditional lands - 22,000 square miles of reserve and non-reserve lands. In making their claim, the Gitksan-Wet'suwet'en deny that the federal and provincial governments can define or create their government which was handed down to them by the Creator.

Our goal will be to use the conceptual framework put forward in the previous chapter in order to understand the kind of self-determination and self-government

which might be attained in each of the two approaches. We will argue that whereas the Sechelt approach expresses the federal government's view of self-government, one which reflects the limitations of all local governments in Canada, the second approach is posed in terms of the Native Indian mode of discourse. This approach goes beyond the municipal-style proposals to envisage a form of self-government which recognizes that authority should flow from the community to the "higher" levels of government, rather than the other way around. The Gitksan-Wet'suwet'en approach thus expresses a counter-hegemonic discursive position vis-a-vis the Canadian state, while the Sechelt approach has given way to it.

4.1 The Sechelt Approach to Self-Government.

The most concise way of describing the Sechelt Band proposal for self-government is to say that it is almost entirely an attempt to escape the restrictions of the *Indian Act*. As early as 1976, the Band's rejection of the *Indian Act* was very clear; then Sechelt Band Chief Clarence Joe stated that "we feel the *Indian Act* has been a barrier to advanced bands across Canada."[99] This rejection, however, did not mean a rejection of the institutional structure of the Canadian state. As Gilbert Joe, Chairman of the Indian Local Government Committee and Sechelt Indian Band Councillor, stated before the Penner Committee, "We would like actually to opt out of the Indian Act but still maintain a jurisdictional situation with the federal government."[100] There is no lack of clarity as to how the

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99 "Indians Seek Self-Government," *Victoria Times*, June 21, 1976 p. 9.

100 Canada, House of Commons, Special Committee on Indian Self-Government: (The Penner Committee), *Proceedings* (Ottawa: Queen's Printer, 1982-83), number 6, p. 107.

Sechelt Band wanted to achieve this opting out: through a municipal-style of government. In a brief submitted by the Band to a meeting of the federal caucus on June 19, 1976, their aspirations were made clear:

> It is our belief that an Indian community cannot successfully put on the cloak of a provincial municipality. Yet we believe that Indian communities are sufficiently like provincial municipalities that a satisfactory relationship for amicable interaction between Indian communities and adjacent provincial municipal communities can be established.[101]

The strong reaction against the *Indian Act* arises primarily because over the years the Sechelt Band's authority under the Act has increased to the point where it could go no further within its rigid structure. The Band's choice for a municipal model of government, therefore, is designed to meet its goals and needs which it cannot achieve under current legislation. For years, the Sechelt Band has consistently proposed this model of government for itself. The underlying principles of the Band's approach to self-government are to be found in three principal sources: the 1981 *Report of The Tripartite Local Government Committee Respecting Indian Local Government in British Columbia*[102] (a report in which the Sechelt Band was intimately involved and which was approved by it); the Sechelt Band's 1983 presentation to the Penner Committee, and Bill C-93, the *Sechelt Indian Band Self-Government Act* passed on May 21, 1986 in the House of Commons.

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101 "Proposed Local Autonomy For Indians Draws Mixed Reviews from Liberals," *Vancouver Sun*, june 21, 1976.

102 Province of British Columbia, *Report of The Tripartitie Local Government Committee Respecting Indian Local Government in British Columbia*, (Victoria: Queen's Printer, 1981).Hereinafter referred to as the *Tripartite Report*

4.1.1 The Tripartite Committee Report.

The Tripartite Local Government Committee Respecting Local Government in British Columbia was formed in 1980. The Committee was composed of members representing DIAND, members representing the provincial government (Ministries of Municipal Affairs, Finance, and Attorney General), and members representing the Indian Local Government Committee composed of four bands (Westbank, Kamloops, Sechelt, and Kitamaat) out of 195 bands in B.C.. Terms of reference for the committee were adopted on July 2, 1980. The general objective of the committee was "to determine the needs of the various Indian bands for local government-type services, and explore alternative means by which such services may be funded and provided."[103]

From the outset, however, it was clear that "local government-type services," really meant "municipal-type services." The terms of reference themselves defined the very nature and limits of "local government." There was no attempt, as we shall see clearly below, to articulate the Native Indian mode of discourse, or even to allow discussions of that nature, thus placing the whole exercise within the government's mode of discourse. The whole report merely adapted the municipal model of government to the Native Indian communities of British Columbia. For example, section 3 of the terms of reference states that:

> The Committee's research effort will focus on the general ramifications of various revenue arrangements including:
>
> (i) A total or partial vacating of the property tax field by the Provincial and/or municipal governments in respect of non-Indian occupiers;

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103 ibid. p. 3.

> (ii) The extension of municipal-type grant and loan programs to Indian reserve communities;
>
> (iii) The extension of Provincial tax credits to Indian homeowners to help offset their share of local government costs;
>
> (iv) The formal provision for contractual arrangements by which local government services will be provided by the Province, regions, improvement districts and/or various municipalities on a fee-for-service basis or other appropriate basis;
>
> (v) The development of property tax collection agreements between the Province (and/or various municipalities) and the Indian bands;
>
> (vi) Provision of Provincial and or municipal services in exchange for federally-funded grant payments (in lieu of property taxes).[104]

All of these financial arrangements fit well within the municipal model of government. From the definition of the terms of reference, therefore, there is not even an attempt to explore any other revenue arrangements which may arise from such things as logging, mining, fishing, and income tax - revenue arrangements which would challenge provincial or federal jurisdiction are not even discussed. The whole issue of the scope and nature of Indian self-government is not even put forward for discussion: Indian local government is simply defined as municipal in nature.

In light of the framework established in the terms of reference, it is not surprising that the report's "alternative Indian government solutions" are set in very strict perimeters. Indeed, the four options presented are dealt with not in terms of what Indian self-government should be, but rather of how it can best provide municipal services. The Report thus defines its task as the exploration of:

> Alternative methods of providing and financing general municipal services for Indian reserve communities. The objective is to define a new set of working relationships between Indian bands and the Fed-

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104 ibid. p. 4.

> eral and Provincial Governments capable both of meeting reserve community local service needs and of resolving the controversy over non-Indian occupier property taxation.[105]

The four options explored are:

1.- Extension of existing services.

2.- Tax revenue sharing.

3.- Reserve community improvement areas.

4.- Full local government status.

The first option merely extends the provision of local government services by a local municipality to Indians on the reserve on the same basis as for non-Indians. As the Report states, "advantages of this option would include total reserve community access to all available local services at costs which reflect the various forms of municipal financial assistance provided by the Province."[106] The second option would maintain the "status quo." Non-Indians would continue to be serviced by local authorities while Native Indians would be serviced by the Band. This option, however, would "appear to provide very limited support for reserve local service improvements,"[107] according to the Report. The third option would make it possible to create a new local government unit which would expand services on an "object-by-object" basis. This "local government unit," would entail an Indian/non-Indian Local Services Commission which would be able to provide special services to a specific area in the community. The committee concluded that:

> The advantage of this option is that it provides a means of addressing reserve community local service needs which are not met by existing arrangements. It does not necessitate a complete transfer

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105 ibid. p. 17.

106 ibid. p. 18.

107 ibid. p. 19.

> of local service responsibilities, but would be combined with option 1 to allow the full benefits of municipal financial assistance provided by the Province.[108]

The final option presented by the committee, that of "full local government status," essentially describes a municipal-style government which would provide services to both Indian and non-Indian residents. This option would define the Indian local government as a *de facto* municipality. Three points are made which make this clear and set the stringent limits of the new local government: first, the local government would "be provided with full municipal-style authority to raise revenue."[109] This would include the power to establish property taxes, frontage and parcel taxes, utility connection charges, business tax and licence fees, and net earnings of utility and corporate holdings. The authority to raise revenue is thus "within the general framework established by the *Municipal* and *Taxation Acts*."[110]

The second point made in describing option 4, was that the local government "become directly entitled to the various forms of municipal financial support provided by the Province."[111] These would include basic grants, revenue sharing grants, conditional grant programs, and Indian resident home owner grant entitlements. Finally, the third point states that the new "reserve unit should be provided capital infrastructure financing through the Municipal Finance Authority (MFA)."[112] This provided that the *Municipal Act* limits on borrowing and stan-

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108 ibid. p. 20.

109 ibid. p. 21.

110 ibid.

111 ibid.

112 ibid.

dards of financial accountability are maintained.

The committee concludes that the federal and provincial governments should act swiftly to review the four options presented. The Report states that although there was provision for minority opinions, "this has not proved necessary; the Report is presented without dissent."[113] Thus the Sechelt Band, which was a member of the Indian Local Government Committee, endorsed the report. Indeed, the legal advisor both to the Band and to the Indian Local Government Committee, Graham Allen, was a member of the Tripartite committee. In addition, Gilbert Joe, Chairman of the Indian Local Government Committee and member of the Sechelt Band Council was on the Tripartite Committee as well. The Report thus is a clear indication of the Band's vision of self-government.

4.1.2 The Presentation Before The Penner Committee.

The Sechelt Indian Band incorporated the *Tripartite Report* into its proposal for self-government. Its choice was to adopt option 4 of the Report and attempt to have it implemented as soon as possible. Two years later, before the Special Committee of The House of Commons on Indian Self-Government (the Penner Committee), both Mr. Allen and Mr. Joe strongly recommended to the Committee that they read the *Tripartite Report* to understand better the Sechelt position.[114] It was during this presentation that the Sechelt Band position on self-government becomes even clearer both by the testimony given and by the introduction of the Band's own draft of the "Proposed Indian Band Government Act."

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113 ibid. p. 29.

114 Penner Committee *Proceedings* p. 113 and pp. 114-115.

During the presentation, Chief Calvin Craigan made clear that the Sechelt Band had taken its authority under the Indian Act to its limit. He stated that "even now, we are the only band in Canada to have been delegated every possible authority under the *Indian Act*."[115] Thus the Band proposed that enabling legislation be enacted to "allow bands, at their option, to opt out of the *Indian Act* and go under a different administration."[116] The band proposed four main items which would be included in their band charter: control over band membership, title to reserve lands, payment of income taxes by Indians on the reserve, and local government.[117]

The only option which the band considered for self-government was based on the municipal model of government:

> We propose the establishment of full local government, similar in powers and structures to a B.C. municipality, but established under federal jurisdiction...
>
> Implementation of all this would leave us free of the Department of Indian Affairs and in control of our own destiny, but still enjoying the aboriginal and Constitutional rights of indigeneous people.[118]

From all this it is clear that the Sechelt band proposal is meant to act within the institutional structure of the Canadian state's mode discourse. As Stanley Joe Dixon, now Chief of the Band, said to the committee, "we are not out to form a third level of government."[119]

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115 ibid. p.96.

116 ibid.

117 ibid. pp. 96-97.

118 ibid. p.97.

119 ibid. p. 105.

So, as we would expect from the tone of this presentation, the "Proposed Indian Band Government Act", presented to the Penner Committee by the Sechelt Band, provides for enabling legislation which would maintain the central government's control over the nature and scope of the Indian Band government. The proposed Act would provide DIAND with the legislative facility to establish Indian Band governments which would be out of the jurisdiction of the *Indian Act*, but not of DIAND itself, as Chief Craigan asserts. This ultimate control becomes evident in section 4 of the proposed Act which states that, in respect to any band which applies for this form of self-government, the Minister must, in effect, be satisfied with the Band's ability to govern itself before he will recommend the approval of the Band Charter and remove the Authority of the *Indian Act*.[120] Furthermore, the Band Charter must be approved by the Minister before it is put forward to the band members for their approval through a referendum.

4.1.3 Bill C-93.

In light of the above, from the *Tripartite Report* to the presentation to the Penner Committee, it is not surprising that Bill C-93 (*An Act Relating to Self-Government for The Sechelt Indian Band*) would take the form of a strictly regulated municipal-style government. It is exactly what the Sechelt Band wanted, but more importantly, it is the most the federal government was willing to give and the provincial government willing to tolerate.

The whole nature of the legislation can be seen in the title alone. When the Bill was introduced for its First Reading on February 5, 1986, the title was *An Act Relating to The ESTABLISHMENT of Self-Government for the Sechelt Indian*

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120 ibid. pp. 22-23.

Band. (Our emphasis). In a paper written for the Continuing Legal Education Society Conference "Indians and The Law III," Graham Allen wrote that the language of the title caused some problems for the Band:

> The language caused some concern to the Band; like most other Indian people, the Sechelt had been completely self-governing for centuries before contact with the European newcomers....Happily the word does exist that more accurately conveys what Bill C-93 is doing. The word is "restoration."...In consequence, it is the intention of the Sechelt Chief and Council to request the Standing Committee to amend the above wording to reflect the reality of what is happening, as acknowledged by the minister, by substitution of "restoration" for "establishment" and "to" for "for."[121]

But the Standing Committee and Parliament apparently did not agree that this was what Bill C-93 was intended to do. The final title as passed on May 21, 1986 was *An Act relating to Self-Government for The Sechelt Indian Band.* Often the presence of one word in a piece of legislation carries with it much importance and meaning, and has great influence in subsequent years. But often the omission of one word is a more insidious thing. The compromise apparently reached of eliminating the word "establish" rather that replacing it with the word "restore," sets the tone for what the federal government actually means by "self-government." Here hegemonic discourse establishes the limits of institutional relations by not accepting the fact that it is "restoring" authority. With the omission of one word hundreds of years of Indian self-government vanish from the memory of Euro-Canadian history.

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121 Graham Allen, "Bill C-93 Sechelt Self-Government Legislation," prepared for "Indians and The Law III", a seminar presented by the Continuing Legal Education Society of British Columbia on April 12, 1986, p. 2.

122 Canada, House of Commons, Bill C-93, *Sechelt Indian Band Self-Government Act*, passed by the House of Commons on May 21, 1986.

Bill C-93[122] is very complex legislation comprising 61 sections. The sections of the Bill that are of central concern to us are those which establish the nature of the Sechelt government and those which transfer title of Reserve lands to the Sechelt people. There are two governing bodies: The Sechelt Band Council and the Sechelt Indian Government District Council (which would have attached to it an advisory board called the Local Services Commission).

The first step towards self-government is to establish the capacity and powers of the Sechelt Indian Band. The latter will replace the *Indian Act* Sechelt Band after proclamation of the *Sechelt Indian Band Self-Government Act*. Section six of the Bill establishes the Sechelt Indian Band as a legal entity. The band can now enter into contracts, acquire and hold property, borrow money, sue or be sued, and have "all the powers and privileges of a natural person." The Band must carry out its powers and duties through the Sechelt Indian Band Council. Its members are elected and must act within the provisions of the Band Constitution. This Constitution, however, the limits of which are defined by section 10 (1) (a) to (f) of the Bill, can only come into force if the Minister of DIAND approves it. Section 10 requires that the Constitution establish such things as the composition of the Band Council, provide for a system of financial accountability, include a membership code, establish rules and procedures for referenda and the disposition of lands, and set out specific legislative powers over the matters which the Bill allows the Band to legislate. Section 11 (1) states that:

> The Governor in Council may, on the Advice of the Minister, by order, declare that the Constitution of the Band is in force if
>
> (a) The Constitution includes or provides for the matters set out in paragraphs 10 (1) (a) to (f); and

(b) The Constitution has the support of the electors of the *Indian Act* Sechelt Band or The Sechelt Indian Band; and

(c) The Governor in Council approves the Constitution.

With sections 10 and 11 we can see how much control the Minister of DIAND and in the end the federal cabinet have over the nature and the limits of the Band Council's legislative authority and the Band Constitution itself. Not only does section 10 define what the constitution can establish or provide for, but section 11 in effect gives veto power to the federal government, even within the confined limits of section 10 itself. Furthermore, section 12 provides the Minister with the same power for any amendments to the Constitution.

Having established the scope of the Constitution, the Bill goes on to define the legislative powers of the Band Council. Section 14 authorizes the Band Council to make laws with regard to 21 matters. These include things such as zoning, taxation for local purposes (of interests of Sechelt lands), the administration of Band property; education; health; social and welfare services for Band members; and the operation of businesses, professions, and trades. Virtually all of the delegated powers are those in effect in other B.C. municipalities. Though the federal government establishes these powers, laws within this section are not subject to ministerial approval. As well, under section 14 (3), the Band Council has the power to adopt B.C. government laws as their own. As Allen argues:

> Instead of seeking ways in which to apply British Columbia's *Condominium Act* to [the] reserve...the Band can now adopt this law as its own. Consequently, it would be able to create strata developments on Sechelt lands.[123]

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123 Ibid. P. 7.

In addition, The Band Council can, under section 15, "exercise any legislative powers granted to it by the government of B.C..

Besides establishing the nature of the Constitution and the Sechelt Band Council and its legislative powers, Bill C-93 also creates the Sechelt Indian Government District and a District Council. The federal government can establish Band Governments over Indian people, but it seems that it cannot do so with non-Indians living on reserves. Faced by section 91 (24) of the *Constitution Act* 1867, the District Council attempts to solve the jurisdictional problem. Allen suggests, that

> Certainty in this area would require legislation by both the Provincial and Federal Governments. The Federal statute would spell out the framework of this new government body; the Provincial statute would breathe life into it and flesh it out.[124]

Under section 19 (2), the members of the Sechelt Indian Government District Council will consist of the same members as the Sechelt Indian Band Council.

Yet another body, the Local Services Commission would have to be established to represent non-Indians. As Allen explains:

> It was never intended that non-Indian lessees could be elected to [The Sechelt Indian Government District Council] nor even vote for it. Instead, their democratic interests would be represented through the mechanism of the Local Services Commission, a popularly elected body, both Indian and non-Indian, serving in an advisory capacity to the District Council. The Band is looking to the Province to pass the necessary legislation to establish this Local Services Commission.[125]

The Sechelt Indian Government District cannot come into effect until and unless the federal government (under section 21 of Bill C-93) allows it to come into force, even after the passage of Bill C-93, for it is also required that the

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124 ibid. p. 8.

125 Ibid.

province pass legislation establishing the district and the District Council. As Allen concludes, "everything to do with the Sechelt Indian Government District depends upon the Provincial Government's willingness to pass complementary legislation."[126] The Sechelt Band is therefore subject to the authority of both the federal and provincial levels of government. As was evident from the Tripartite Committee Report, the provincial government would maintain a firm grip on the local government authority.

The proposal for self-government inherent in Bill C-93 does not even approximate a Native Indian mode of discourse. It does not envisage the local community as exercising the authority of community *qua* community. All of the terms, conditions, limitations, and definitions of local government are subject to the "upper" levels of government. Those areas that are left within the authority of the Band Council under section 14, stretch the limits of the concepts of "self-determination" and "self-government," for the authority to legislate does not challenge federal and provincial powers. Even those subsections which give the Sechelt band authority to legislate over such things as the preservation and maintenance of natural resources, the protection of fur-bearing animals, fish and game on Sechelt lands, only apply to reserve lands. But these reserve lands are not large enough to threaten the provincial or federal government's authority over resource management.

But perhaps the crucial section for the Sechelt Band contained in Bill C-93 is section 23 which transfers the title of reserve lands to the Band. With the enactment of this section, the Band will be free of the restrictions of the *Indian Act*. As Allen proclaims:

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126 ibid. p. 9.

> This is the major accomplishment sought by Sechelt leaders for years: The band will become the first in Canada to hold title to its own lands. With this one sub-section more than a decade of struggle culminates in success.[127]

But once again, even this success has its severe limitations. Under section 24, the title to land (which it must be noted is only for reserve land) is subject to the *British Columbia Indian Reserves Mineral Resource Act*, the federal government's *Indian Reserves Mineral Resources Act*, and any subsequent amendments; as well as the B.C. Order-in-Council number 1036 of July 29, 1938, and its subsequent amendment, Order-in-Council 1555 of May 13, 1969.

Yet even with all these limitations, the Bill seems to fulfil the basic needs of the Sechelt people.These needs arise primarily out of the unique economic base of the Band. Their location on the sunshine coast, just North of Vancouver, and above all their waterfront property, puts them in an excellent position to lease beach-front cottages on the Reserve. From 1972, when the Band was given the approval for a land administration and management pilot project, to 1982, the Band's income went from $18,000 to more than one million dollars.[128] Besides this, the Band has plans for a 500 boat marina[129], an eighty hectare gravel extraction project, sixteen luxury apartments, a forty-eight lot residential subdivision, a new Band Headquarters and commercial building.[130] So as the current Chief of the Band Stanley Joe Dixon concludes:

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127 ibid. p. 19.

128 "Band Calls Its Own Shots," *Vancouver Sun*, June 25, 1982, p. B1.

129 ibid.

130 "Sechelt Band Chief Works With The System to Go it Alone," *Vancouver Sun*, November 27, 1985, p. B7.

> Why did we select the municipal model? Quite frankly, it was the logical, practical, and pragmatic choice.
>
> Our economic resource base relies heavily in the provision of leasehold interest in our land. In this, we compete with Non-Indian communities which surround us. Our location and economic base demands we choose a system of government similar to those of our competitors. In our opinion, it is a reasonable conclusion and because it is reasonable in our circumstances, the potential for its achievement is increased...
>
> For us the current situation under the *Indian Act* tramples on our initiative, eliminates pride in ourselves and denies us the opportunity to direct our own destiny.[131]

4.1.4 Conclusion

For Dixon and his people, therefore, the municipal model of government is a practical option which will free them from the *Indian Act* but not from the federal government through DIAND and from the provincial government. Self-determination and self-government to them mean freedom and self-rule outside the *Indian Act*. But what the Sechelt are choosing, based on what we saw in the previous chapter, is to go from the prefectoral model described by Smith, to a limited devolved local government as described by Hambleton. Thus Chief Dixon could assert that the Sechelt Band is "trying to work within the system." [132]

In the end, the Sechelt are choosing the first option we presented in the conclusion of the previous chapter, that based on the values and norms of the Canadian State. Whether under the authority of the *Indian Act* and DIAND,or under the authority of Bill C-93 and DIAND (as well as the provincial government), the Sechelt Band will be greatly constrained in what they can and cannot do.

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131 Stanley E.J. Dixon, *A New Beginning* (Sechelt: Sechelt Indian Band, 1984), p. 41.

132 "Sechelt Band Chief Works With the System to Go it Alone"

So this municipal-style government in effect leaves them within the same constraints of the *Indian Act* to the extent that anything they may want to do beyond the limited constraints of Bill C-93, is at the will of the the Minister of DIAND, the federal government, and the provincial government.

We would argue that to call this approach "self-government" for an Indian First Nation is truly to stretch the concept to its limits. Bill C-93 establishes a very limited form of government which has one principal goal for the Sechelt people: land development. It is therefore not much more than a land development Bill by which the Sechelt Band can sidestep some of the restrictions of the *Indian Act*. The goal of self-government for the Sechelt people is therefore clear: as Chief Dixon said "Once we get self-government, just watch our smoke, this place will change from an old folks home to Las Vegas of the North.[133]

The acceptance of this limited form of self-government shows that the Sechelt Band has given way to the powerful forces of the government's hegemonic discourse. In all their presentations and arguments for self-government, there is hardly mention of anything which would express the Native Indian mode of discourse. Here we can see how the government has imposed the institutional element of hegemonic discourse to the extent that the only option the Sechelt Band wants is well within the government's institutional framework. The Sechelt Band has accepted the authority of the central governments and has in effect forgotten the roots of its traditional governing institutions and the culture that spawned it. In the end the Sechelt Band has gotten what the federal government was willing to give since at least the *Indian Advancement Act* of 1884. It is difficult to see Bill C-93 as a triumph for Native peoples in Canada.

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133 ibid.

4.2 The Gitksan-Wet'suwet'en Approach.

The Gitksan-Wet'suwet'en approach to self-government is diametrically opposed to that of the Sechelt people. For the Gitksan-Wet'suwet'en Tribal Council, the issue of self-government is intimately and inextricably bound to its claim for title for off-reserve lands. As Neil Sterritt, President of the Tribal Council, said to the Penner Committee, "in negotiating our land claim we are actually defining Indian Government."[134] Thus, unlike the Sechelt Band, the Gitksan-Wet'suwet'en do not have a concrete proposal for self-government. The articulation of the nature and scope of their self-government, however, is presented in the context of their land claim proposal. In order to understand their position on self-government we will analyze their presentation to the Penner Committee in which their views are clearly stated. Secondly, we will briefly outline the main arguments for self-government as outlined in their presentation to the Federal-Provincial meeting of officials on Constitutional matters held on November 16, 1983. Finally we will outline the main arguments in the suit of the Gitksan-Wet'suwet'en against the Province of British Columbia for 22,000 square miles of land. We will then conclude with a brief assessment of their overall approach to self-government.

4.2.1 The Gitksan-Wet'suwet'en Presentation to the Penner Committee.

The Gitksan-Wet'suwet'en presentation to the Penner Committee is perhaps the most comprehensive articulation to date of their approach to self-government. It is the articulation of the Native Indian mode of discourse which opposes itself to the mode of discourse of the Canadian State. The approach President Sterritt

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134 Penner Committee, *Proceedings* volume 8, p. 34.

took in his presentation was, first of all, to explain the nature of the Gitksan-Wet'suwet'en traditional form of government in order to familiarize us with the underlying principles of their approach to self-government, though he warns us that he cannot but give us a "snap shot" of this traditional form of government. Secondly, he explained what were the influences on Indian government since contact and what Indian government is today. Finally, he briefly speculated about what Indian self-government may be in the future for his people.

At the core of traditional Gitksan-Wet'suwet'en government was the extended family. Each extended family has a Head Chief whose name stays forever on the land occupied by his family. The families are divided into four Clans: Eagle, Wolf, Frog, and Fireweed. For the Gitksan-Wet'suwet'en, government was conducted in the Feast or Potlatch. As Sterritt explains:

> The Feast Hall was our seat of government. It filled a legislative and judiciary function. It taught us why and how we govern. It is the place where you learned how to assume your seat if you were going to be a hereditary Chief and govern your people.[135]

It was at the Feast that disputes were settled, succession was established, and it was the place where title to land was passed. But one of the most important functions of the Feast was that it provided witnesses for these functions so that these activities could gain legitimacy. In an oral tradition, where there is no written law, only those things which were legislated publicly could have any force: as Sterritt states, "your witness was your community; the whole community came to witness."[136]

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135 ibid. p. 9.

136 ibid. p. 10.

Within this form of government there was a hierarchy. At the top were the *simgiget*. Sterritt tells us that the "*sim*" in front of the "*giget*" is very important "because it speaks to the truth, it speaks to what is real."[137] These, then, were the people with authority and power. Below the *simgiget* were the *lixgiget* who were simply "people without authority." Both would gather at the Feast to carry on the business of the community which could also include marriages, divorce, or the handing of a new name. What is most important about Sterritt's "snap shot" of this traditional form of government is that he argues that it still exists today. This is of extreme importance to the Gitksan-Wet'suwet'en people, because it indicates that they have an unbroken form of government which has existed and evolved since contact.

Central to Sterritt's argument, therefore, is that because the Feast also provides for the succession of land, and since succession Feasts have existed all along, the Gitksan Wet'suwet'en could never have given up the right to their land; their form of government has ensured ownership and succession of land in their territory. As well, the Feast provides for a form of taxation, for some of those who attend pay into the Feast. The successor to a High Chief, for example, pays for the privilege of governing, while the witnesses get paid for attending according to their rank. Sterritt concludes that:

> So we the Gitksan-[Wet'suwet'en] say we own 22,000 square miles, and we are paying for it. We have paid for it for thousands of years. It is also important to note that it is the extended family, the Hereditary Chief, who owns the land and owns the resources and is responsible for them, and we have approximately 100 families, 5,000 people, who all have title, one way or the other, in the land.[138]

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137 ibid.

138 ibid. p. 12.

With this description of the traditional form of government of the Gitksan-Wet'suwet'en, we begin to see the articulation of the Native Indian mode of Discourse. Not only is this form of governing seen as legitimate for them, but they still preserve it today as an important part of their governmental system. The Feast is seen as legitimate even though the federal government and the provincial government have not "devolved" it. Indeed, the Feast has survived even though the federal government attempted to destroy it.

For the Gitksan-Wet'suwet'en, there are two forms of government: the Feast presided over by the *simgiget*, and the Band Councils (which in turn form the Tribal Council) which were created by the federal government. As Sterritt tells us:

> Let us talk about Indian government today. First of all the remnant of pure Indian government exists in the Feast Hall. It is important to note that there is no connection between that and the Band Council....So the power, the authority with respect to land, resources and local needs, rests with the *simgiget*, the High Chief - and that exists today. But there is nothing, there is no bureaucracy, for them to deal through.[139]

So a Band Councillor might be a *simgiget* and attend a Feast, do his duty there, and it would have nothing to do with the federal government or DIAND or the Band Council. For the Gitksan-Wet'suwet'en, this form of government is theirs, it devolves from no Parliament, from no legislature. There is little doubt that the Band government is seen as an external and unwanted intrusion, for it is directed by the federal government to fulfill *its* objectives:

> Band Councils do not set their goals according to the needs of the community. They are the needs perceived by the DIA, and if [the Band Councils] do define their goals, their policies, and their plans according to their needs, they are stopped when they try to get support financially. They cannot do it. Economic development, social development, you name it - they cannot get it, if it is going to deal

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139 ibid. pp.13-14.

with the real needs of the community.[140]

As the Gitksan-Wet'suwet'en people see it, there are therefore two hierarchies: their own, which derives from their traditional government, and the one imposed by the federal government. In figure 2 we see the view of these two hierarchies as presented to the Penner Committee. The smaller triangle represents the traditional hierarchy, while the larger represents the federal government's hierarchy. The problem is that the two forms of government that these hierarchies represent are almost entirely detached and there is, as Sterritt puts it, "a questionable link with the traditional system that is almost totally divorced."[141] The question therefore arises as to how the Gitksan-Wet'suwet'en see the resolution of the current problem.

The most significant issue is that of land title. Owning the land means having traditional jurisdiction over it, and regaining the wealth which can be extracted from it. But the extraction of wealth would be done in a much different fashion than it is done today. If someone wanted to extract wealth from Gitksan-Wet'suwet'en territory, part of that wealth would have to go directly to the Indian people. As Sterritt sees it, his people are accountable now to the federal government, because it provides the funding:

> As long as the Government of Canada gives us some money, we are accountable for whoever gives it to us. I just do not see how you can get around that....And the people of Canada will judge that. So what is wrong with that is the source.[142]

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140 ibid. p. 16.

141 ibid.

142 ibid. p. 23.

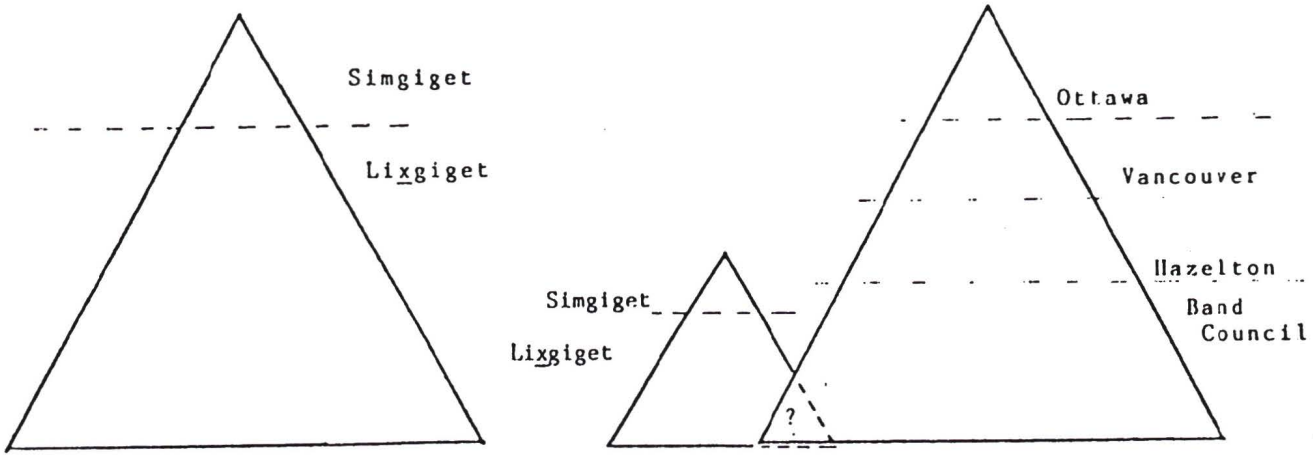

Figure 2: Traditional and Contemporary Hierarchies of the Gitksan-Wet'suwet'en.

The issue here is that the Government of Canada funds the Gitksan-Wet'suwet'en people, but this happens because they have no control over the wealth extracted from their own land. If they did, they could benefit from the wealth created by the land. So what they seek is to regain the political authority to benefit from the wealth of their land:

> Now, we are not opposed to Alcan or other people developing in our land, but we are poor people because of this relationship. Our objection, first and foremost, is possible environmental damage, and secondly, that they are taking our wealth out of our land, and they have to pay us for it first.
>
> It should come direct to us. The wealth over and above that which goes to fulfilling our needs can go to the province, can go to the feds...[143]

With this description, the Gitksan-Wet'suwet'en essentially argue that they must have the authority to define and carry out the needs of the community. This would be done within the community, in part through their traditional governnment, in part through their Tribal Council and Bands. But there is the recognition that escaping the *Indian Act* and DIAND does not resolve the problem, for the federal hierarchical system would remain in place. In response to a question from a member of the Penner Committee who suggested that there should be an Indian Fiscal Arrangement Commission and that Indian Nations deal directly with Treasury Board, Sterritt responded as follows:

> We should be getting royalties directly from our activities in our area, because we also pay taxes through the economic activities of our people, we pay taxes in Canada...You cannot just cut the DIA and think that you are going to solve the problem...
>
> An Indian Commission to deal with it? I would really fear some of those single bodies that may be set up in Ottawa to solve problems....That is not the answer. If we are a nation, then the nation has to deal with it; we cannot leave it with someone in Ottawa. We as a nation have to be able to define that.[144]

In making this statement, Sterritt is arguing that the Gitksan-Wet'suwet'en should have the authority over their territory, and that authority should flow from within the community to the "upper" levels of government. As he told a reporter on the

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143 ibid. p. 23.

144 ibid. p. 24-25.

day the land claim suit was launched, "the federal government position is based on offering us social and economic welfare programs instead of local autonomy."[145]

4.2.2 A Statement of Nationhood.

The kind of authority sought becomes clearer in the Gitksan-Wet'suwet'en presentation to the Federal-Provincial Meeting of Officials on Constitutional Matters held in Winnipeg, Manitoba, on November 16, 1983. At the center of their presentation was the claim that in spite of their contemporary relation to Canada they consider themselves sovereign groups. As well, they argued that regardless of outside government interference with their traditional form of government, it still operates today. For these reasons they consider themselves nations and based on this they proclaimed the following rights:

> From nationhood flow certain rights that enable the people to maintain themselves as a nation and to develop in the nation's best interest. the rights that develop specifically to title concern the control of access and use of resources. Other rights include freedom of language, freedom of religious expression, freedom of the nation to choose a particular form of government,freedom of the nation's people to live by a certain set of laws,and the freedom to educate the nation's children in a particular way. These rights are internationally recognized as basic to the survival of any nation.[146]

But in order to lay claim to nationhood, the statement argues that two components must exist: title or ownership of land and the existence of a people "who share a common language, history, and culture and who identify themselves as a

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145 "New Land Claim Launched by Northern B.C. Indians," *Vancouver Sun*, October 23, 1984.

146 "Views of the Gitksan and Wet'suwet'en on First Nation's Title and Government," A summary of the presentation made by Neil Sterritt to the Federal-Provincial Meeting of Officials on Constitutional Matters held in Winnipeg, Manitoba, November 16, 1983. MIMEO.

147 ibid. p. 1.

distinct political unit." [147] The argument for the title of the land is based on three elements: ownership of land *through time*, the existence of an indigenous well defined political structure, and the exercise of specific laws relating to land use and access to land.

According to the Gitksan-Wet'suwet'en, there is a consistent history of land ownership *through time*. As we have seen above, land ownership exists through the Houses. The transfer of title occurs at the Feast, which has consistently existed even when it had to go underground:

> Each High Chief can point to certain specific evidence to demonstrate the the legitimate claim by his House to title of a certain portion of the entire Gitksan or Wet'suwet'en territory. The evidence is in the form of House history, which is passed down from Chief to Chief and is related at the Feast; the totem poles and crests which symbolically devote the House history on the land; the lament song, which is sung at the feast; and the ability of each chief to identify very specifically the boundaries of his House territories, including hunting grounds and fishing sites.[148]

What is most important in this statement, for our purposes, is the reaffirmation of the Native Indian mode of discourse. The basis for the legitimacy of the claim to title is expressed in terms of the Gitksan and Wet'suwet'en customs and laws. The statement reaffirms that they have not abandoned their mode of discourse, though it may have evolved and changed since initial contact.

This statement expresses counterhegemonic discourse. It implies that the Gitksan-Wet'suwet'en have not recognized the Canadian intrusions into their land both by denying their legitimacy and by consistently sustaining their own legal transfer and management of land. This was based on *their own* governmental system and not on that imposed by Ottawa. The Gitksan-Wet'suwet'en simply bypassed the Band government and exercised their own title transfers. This com-

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148 ibid. p. 2.

prises the second element which the Gitksan-Wet'suwet'en claim is necessary to support title, for in order to transfer land title there must be government. This government has also existed *through time* to the present day:

> The Gitksan and Wet'suwet'en power and authority is very complex and highly sophisticated. Furthermore, it is well-suited to maintaining a good relationship between the Gitksan and Wet'suwet'en and their natural environment in which they live.
>
> It can very basically be described as depending on the reasoned exercise of authority by the High Chiefs over their own House members and lands, and on the consultation and cooperation of the High Chiefs themselves. It is a system that has operated effectively for thousands of years and that continues today.[149]

The third and final element which the Gitksan-Wet'suwet'en claim as supporting title is the consistent exercise of specific laws regarding access to land and the use of resources. In this regard it is the High Chiefs, who, in effect, own the land on behalf of their Houses, and who are responsible for ensuring enforcement of laws. Though these laws are not codified, they are understood and respected by the Gitksan-Wet'suwet'en people:

> The laws underlie the critical allotment of land and resources among the people. As well, the exercise of certain laws regulates social relations, both internally and with other Indian Nations.[150]

These three elements, which according to the Gitksan-Wet'suwet'en support title to land, are intimately tied to their world view and to their daily lives as expressed in their own culture and institutions. The conclusion to this presentation thus states that based on these arguments the Gitksan-Wet'suwet'en are nations and must be treated as such by other governments. The struggle for self-determination and self-government is not expressed in terms of having other lev-

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149 ibid. p. 3.

150 ibid.

els of government devolve powers, but rather that other governments recognize the unceded rights which emerge from self governing nations. Thus the statement concludes:

> In order for Native nations to survive, other governments must recognize the existence of the components of nationhood among the various native groups.
>
> Furthermore, other governments must entrench the recognition of these rights that flow from nationhood. Only then will justice be done; and only then will the survival of Native nations be guaranteed.[151]

4.2.3 The Land Claim

On October 23, 1984, The Gitksan-Wet'suwet'en filed a suit against the government of British Columbia for 22,000 square miles of B.C. Land. The suit was made by forty-eight High Chiefs on behalf of all the members of their Houses. The claim stated in paragraph 54 that the High Chiefs have owned and exercised jurisdiction over the disputed lands:

> 55. Without restricting the generality of paragraph 54 since time immemorial the Plaintiffs and their ancestors have:
>
> a) lived within the territory;
>
> b) harvested, managed and conserved the resources within the territory;
>
> c) governed themselves according to their laws;
>
> d) governed the territory according to their laws and spiritual beliefs and practices;
>
> e) exercised their spiritual beliefs within the territory;
>
> f) maintained their institutions and exercised their authority over the territory through their institutions;
>
> g) protected and maintained the boundaries of the territory;

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151 ibid. p. 4.

> h) expressed their ownership of the territory through their regalia, adawks kun'xa songs;
>
> i) confirmed their ownership of their territory through their totem poles.[152]

Based on this they claim that the High Chiefs continue to exercise jurisdiction over the territory according to their own laws and practices. The suit as well states that the Gitksan-Wet'suwet'en still enjoy the rights recognized and confirmed by the Royal Proclamation, which they argue applies *inter alia* in B.C. as it is part of the Canadian Constitution. So paragraph 63 states that:

> 63. ...by virtue of the Royal Proclamation of 1763, the Plaintiffs enjoy the rights hereinafter set out
>
> 1. A right of ownership to the territory and to the territorial waters and resources, and
>
> 2. A right to jurisdiction over the Plaintiffs and their descendants, the territory, waters and resources of the territory, and
>
> 3. A right to the Crown's protection in reserving the aforementioned rights to the benefit of the Plaintiffs until, through the informed consent of the Plaintiffs, the same rights are surrendered to the Crown.[153]

Besides the rights claimed through occupancy (including self-government and the rights derived from the Royal Proclamation), the Gitksan-Wet'suwet'en also argue that they have title and jurisdiction over the land based on section 91 (24) and of section 109 of the *Constitution Act*, 1867; by the *Terms of the Union of British Columbia*, 1871, which promised a "liberal policy" towards Native Indians (that of the Royal Proclamation); and the rights derived from sections 25, 35, 37,52 of the *Constitution Act*, 1982. Finally, they assert that these rights super-

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152 Statement of Claim in the Supreme Court of British Columbia filed at Smithers B.C., on October 23, 1984: DELGAM UUKW vs. Her Majesty the Queen in Right of the Province of British Columbia, p. 7.

153 ibid. p. 9.

sede federal and provincial laws which may conflict with those rights. Another important point is made in the suit. Section 69 states that:

> 69. The Plaintiffs have never ceased to assert their aboriginal title, ownership and jurisdiction, and right of possession over their territory in accordance with their aboriginal laws and practices.[154]

Based on this, therefore, the Gitksan-Wet'suwet'en are denying that the provincial government has any rights to their lands and to make any laws within those lands:

> 70. Any Laws of the Province of British Columbia are subject to the reservation of aboriginal title, ownership and jurisdiction by the Gitksan and the Wet'suwet'en Chiefs and do not confer any jurisdiction over or interest in the said lands to the Defendant.[155]

What is most interesting about the approach taken in this suit is that, first of all, it reaffirms the Native Indian mode of discourse. This is done by claiming the legitimacy of the Gitksan-Wet'suwet'en jurisdiction and ownership of the land based on *their own* system of land title; for the suit is made by the High Chiefs who own the land on behalf of their Houses and it is not done on behalf of the Band government established by the federal government. Secondly, another of the principal arguments for land title is the rights affirmed by the Royal Proclamation, which recognizes the national status of First Nations. So although the Canadian legal system is being used - which is a vehicle of hegemonic discourse - yet the basis of the suit affirms the Native Indian mode of discourse. It exemplifies as well that this mode of discourse is adaptive, and as long as it remains true to its roots, as long as it maintains the dynamic struggle, it can act within the sphere of hegemonic discourse without losing itself in it.

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154 ibid. p. 10.

155 ibid.

The nature of this hegemonic force becomes evident when one begins to see the implications of the land claim. Unlike the Sechelt Band, the Gitksan-Wet'suwet'en want to apply and enforce their laws and customs within their territory in place of many of the federal and provincial laws which now exist. In a series of backround papers written after the law suit against the province was filed, the Gitksan-Wet'suwet'en make it clear that they want to manage their own affairs in their own way, based on the principles derived from their world view.

Part of that world view is intimately tied to the land they live in and to their beliefs of how people should use that land. As one of the backround papers states, "to the Gitksan-Wet'suwet'en the concept of land ownership means that it is held in trust for future generations and it is productively maintained. It cannot be sold or traded." [156] As we have seen above, it is the duty of the High Chief to take care of his House's land: this is the guardianship approach to land management. Opposed to this approach is the land management system imposed by the federal and provincial governments, which is a system of land resource allocation that contravenes Gitksan-Wet'suwet'en principles. The backround papers emphasize that these latter principles are designed to maintain the productivity of all resources:

> Large scale economic development puts down individual and collective rights for the benefit of the short term economy. Our system protects and enhances those rights while safeguarding long term economic stability.[157]

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156 "Aboriginal Title Action Against the Province of British Columbia: Backround Papers," (Hazleton: Gitksan-Wet'suweten Tribal Council, 1985), "Visions of the Future," p. 3. MIMEO.

157 ibid. p. 4.

In light of this, the Gitksan-Wet'suwet'en argue that their land would be better managed to the long term benefit of all concerned, but especially to the benefit of the local communities (both Native and non-Native) who would have a diverse and well maintained resource base.

The problem with the current system is that the wealth and benefits go outside of the area, yet all the problems that the government's resource management policies create are left in the communities. So the benefits go out of the community, while the harm to the environment stays behind. The community is powerless to stop this if it has no authority to do so. Neil Sterritt concludes that:

> What would change would be the rights and authority to the surrounding so-called Crown land now vested in the province. This land would be managed according to aboriginal principles....But through it all, we are guided by the principles of respect and sharing which have governed our relationship with the land and with each other for centuries.[158]

4.2.4 Conclusion

For Sterritt and his people, self-government is something which is intimately tied to land title. This reaffirms their ties to the land, to their culture, and to their traditional form of government - in effect, to the Native Indian mode of discourse. The authority which they seek to have recognized would emerge from the community, from its history, and from its traditions. In the end, the Gitksan-Wet'suwet'en are choosing the second option presented in the conclusion to the previous chapter. This option sees authority arising from the community; this would not only liberate them from the *Indian Act* and DIAND, but also from the constraints of the institutional structure of the Canadian state.

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158 ibid. p. 5.

This approach would allow the Gitksan-Wet'suwet'en to define their community goals and control the development of their culture and their land. So this approach to self-government effectively places them outside of the institutional element of the government's mode of discourse. In this way, we would argue that the Gitksan-Wet'suwet'en are seeking meaningful self-determination and self-government, with the underlying goal not only of gaining wealth, but of protecting their culture and their heritage.

The long and hard route which the Gitksan-Wet'suwet'en have taken shows that they have not given in to the powerful forces of hegemonic discourse. The approach which they have taken indicates a clear rejection of the structures and laws imposed on them and a reaffirmation of their own mode of discourse. Nevertheless, the Gitksan-Wet'suwet'en are willing to live in the Canadian state and accept their place within it as a nation, and in this sense, as an equal. Thus, community-based authority and jurisdiction over their lands, does not mean an opting out of Canada; rather, it means an opting for meaningful community based self-determination and self-government which expresses their mode of discourse.

Chapter V

BEYOND THE CONFLICT OF DISCOURSE

From the outset of this paper we have attempted to describe a struggle and its hidden dynamics. It is important to see this struggle as a *process* in which Native Indian and Euro-Canadian modes of discourse engage in the dynamics of a discursive conflict. This struggle threatens the future survival of Native Indian cultures and political institutions. But there is also another possible outcome, based on a better understanding of the nature of this discourse. The conflict can create a deeper understanding both of native Indian and of Euro-Canadian cultures and political institutions and how they could come to co-exist as equals.

If we accept the necessity of discourse, if we recognize that out of the discursive conflict can arise an "new possibility for knowledge," as Foucault suggests, then perhaps we could begin to see the Native Indian mode of discourse not as a threat, but as an enrichment of the Canadian discursive field. We must recognize that by attempting to destroy Native Indian culture and political institutions, Canada will not grow and improve; it will only be impoverished. At the very least, the Native Indian mode of discourse has enlightened us about such things as the limitations of Canadian local governments, and about the shortsighted resource management policies that are derived from the central governments.

What this should tell us is that the Native Indian mode of discourse is not a dying subject, of interest only to historians. It is active and alive; it has not only

survived, but also grown since exposure to the Euro-Canadian mode of discourse. Native Indians are therefore not tied to the world view of one or two hundred years ago. They confront and challenge modern society with their own mode of discourse in order to survive, to improve, and to develop. It is this struggle which sets in motion a productive and exciting process which may lead us to a new "functional mutation." Non-Natives should therefore accept the Indian struggle for self-determination and self-government as part of the positive and evolving dynamics of social change involved in discourse.

Being able to view the tension between First Nations and the Canadian State has allowed us to see concrete ways in which discourse and hegemony express themselves. In our historical analysis we saw how government policy attempted to eradicate the culture and political institutions of Native Indians. The culture of First Nations was seen as inferior and underdeveloped; it was believed to be primitive and unacceptable within the modern Canadian state. Once non-Natives began to recognize that First Nation cultures were not inferior and should not be subject to destruction through assimilation (perhaps through our own discursive growth), then we opened the door to a more fundamental issue: Canadian assumptions about the inferiority of Native Indian cultures were motivated by the fact that Native political institutions posed a threat to the westward expansion and settlement of Canada and to the legitimacy of the Westminster Parliamentary system of government. Thus the issue never was that Native Indians were primitive and incapable of governing themselves; rather the issue was that *because they could* govern themselves, *because they could* threaten the structure and legitimacy of the central governments, they had to be considered culturally and politically inferior.

In our analysis of the institutional element of discourse we attempted to show that it is precisely the strength First Nations have to be self-governing as communities *qua* communities, that still poses a threat to the Canadian state. The problem of achieving meaningful self-government for First Nations arises from the institutional structure of the state - a state which cannot allow any serious challenges to the authority of the centre. It is therefore dangerous to assume that because Canadians have begun to recognize the legitimacy of Native Indian culture and that federal and provincial politicians now speak of "self-government," that First Nations are no longer threatened with extinction through assimilation. In fact, they may now be threatened by a more insidious tactic: assimilation through devolved self-government. Under the Band government system paternalism at least is apparent; under the municipal model of government, however, there is the appearance of independence. Devolution is the limit of the Canadian state's transfer of authority, but First Nations need more than this to survive as peoples.

Our brief study of the Sechelt approach to self-government made clear the nature and the severe limitations of devolved Indian self-government for the Sechelts. Though on the surface this proposal seems to be a breakthrough for Native Indians, a close analysis shows that the Sechelts will continue to be under the jurisdiction of DIAND in all but a few designated legislative areas. More importantly, the new government structure allows the province to legislate directly on reserve lands. It seems that now there will be dual paternalism. The Sechelt approach shows the surrender of the Native Indian mode of discourse to the powerful hegemonic forces of the Canadian state. Although there is no doubt that the new institutional arrangement slightly improves on that of the *Indian Act*,

fundamentally there is no difference. The Sechelt Band still exists under the jurisdiction of DIAND and will now be subject to provincial government legislation. In the final analysis, submission to hegemony does not provide for discursive growth either for Native Indians or for Canadians at large. The process of discourse must include the dynamics of struggle and growth or both modes of discourse will suffer: one through its destruction, the other through parochialism.

This is why the Gitksan-Wet'suwet'en approach offers us a very important alternative. In their struggle for their land and self-government, they must challenge the structure and underlying assumptions of the Canadian State. In articulating their position, they present a problem to non-Natives who must understand and evaluate the claims of the Native Indian mode of discourse and propose a response. A fair hearing of this position will then put in question many Euro-Canadian values and norms which may well be outdated and stale. So in the attempt to respond, non-Natives may find growth and development within their own discursive field.

From our brief analysis of the Native Indian mode of discourse, for example, we saw the limitations of the municipal model of government, not only for First Nations but for Canadian local governments as well. We have seen that if we recognize the limitations of a political community merely as an addition of individuals (as we normally see local political entities in Canada) to that of a community *qua* community (as Native Indians see local government), then perhaps the problems of political impotence and alienation from government that many Canadians feel could be overcome.

With the analysis of the Gitksan-Wet'suwet'en approach for self-government we also learned of a different approach to resource management. This approach sees the local community as an important actor in defining and establishing policies for its ecological and economic survival. We saw the unfairness of a resource management policy which is defined and implemented for the benefit of those who live outside the local community, but to the detriment of that community. This insight may derive from the Native Indian relationship with their land, but it applies to the problems of a modern industrial state which must depend as well on the proper management of its natural resources.

For many Native Indians, control over natural resources and their economic management is a matter of survival. For unlike non-Natives, they cannot just leave their communities when things get tough without risking the final abandonment of their culture and their heritage - their culture and heritage is tied to the land. The issue of self-government for First Nations is then intimately tied to both the protection of their culture and heritage, and to the development of their economic independence. What First Nations need to survive is the political authority to protect their culture and heritage, to define their own economic development, not as a result of devolution from "higher" levels of government, but rather as a result of the recognition by other governments that First Nations have the right to define their social, political, and economic goals. Without this, they will not survive.

The conflict between Indian First Nations and the Canadian State continues to threaten the former with final assimilation. The question is whether First Nations can cope with the hegemonic powers against which they have struggled for so

many years. As the discursive struggle is still working itself out, this must be an open question. But here it is best perhaps to turn to an insight of Native Indian thought. As Oren Lyons explains to us, one of the main features of this thought is the belief in natural law, which is rooted is survival:

> We Indians are in the spiritual centre of the world. We must hold on to what we have because we have 'the natural law.' The one thing you want to understand about nature and its laws is that there is no place for mercy, no compromising. It is absolute. If you don't wear enough clothes when you go hunting, you will freeze to death. The natural law prevails, regardless of what any international tribunal may decide. The natural law, in its most basic form, is simply that if you do not eat food, you will die; so will a dog, a deer, and anything that lives. We are all bound by this law. There is no way that you can violate this law and get away with it. It is basic, it is simple, and it is eternal.[159]

The fight for aboriginal rights - to resolve land claims and achieve meaningful self-government - is thus a fight to the death. If First Nations are not strong enough they will simply die as a people. But their determination to survive has lasted for hundreds of years, and it will not die easily. Non-Natives have not much to lose if Natives achieve self-government; in fact, they may see their culture and political institutions enriched. But Natives have all to lose if they do not achieve these things. Who will endure and struggle the most?

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159 Leroy Little Bear et al. *Pathways to Self-Determination* p. 12.

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