Aboriginal Policy Development within the BC NDP: 1969 – 1990

by

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to the required standard

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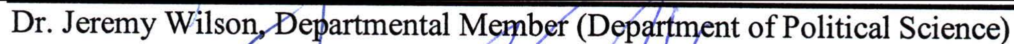

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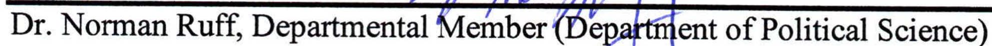

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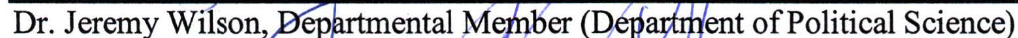
ABSTRACT

This thesis tracks the development of Aboriginal policy within the British Columbia (BC) New Democratic Party (NDP) between 1969 and 1990. In this period, the BC NDP (the Party) begins to turn away from its traditional integrationist values (founded on principles of legal, political, and economic equality) towards a vision which recognises distinct Aboriginal rights (specifically, Aboriginal title, the inherent right of Aboriginal self-government, and the necessity of the province to enter treaty negotiations to address these rights). In addition to the influence of prominent Party members (such as Bob Williams, Norm Levi, George Watts, Bob Skelly, and Mike Harcourt), significant actors on the Party's immediate periphery (the major BC Aboriginal political organisations, the Federal government, the BC Social Credit Party, and the provincial and federal courts) play an import role informing the Party's Aboriginal policy. Because the Party lacked a definitive policy process (and thus a definitive policy statement on Aboriginal issues) until the leadership of Mike Harcourt, the Party's policy voice was found in a wide variety of sources including resolutions, initiated government policy, campaign literature, press releases, and leadership pronouncements. From this cacophonous and often contradictory collection of policy visions, the Party gradually, unevenly, and reluctantly adopted a new vision for Aboriginal / non-Aboriginal relations based on inherent Aboriginal rights.

Examiners:

Dr. James Tully, Supervisor (Department of Political Science)



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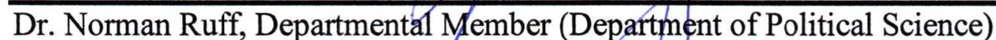

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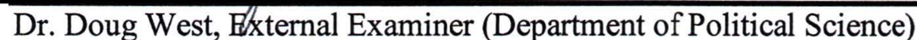

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Introduction

In 1969 the federal Liberal government of Pierre Trudeau produced a new policy direction for the Federal Government's relations with Native people. The 'White Paper', as it became known, sought to end what the Liberal Government saw as the paternalism of the century old Indian Act. Instead of keeping Indians separate from the rest of society, the White Paper would bring Indians into the mainstream of Canadian social, economic, and political life. It introduced measures that would provide formal legal equality for Native people and eliminate those laws that treated Aboriginal people different (and less than) other Canadians. The White Paper represented the views of most non-Aboriginal people on how to address the plight of Native people. To the extent to which the White Paper was considered at all, most members of the British Columbia (BC) New Democratic Party (NDP) supported its assimilationist goals and accepted the liberal notions of equality, which underlined them. At the BC NDP annual convention of 1990, the leader and chair of the Aboriginal rights policy committee, Mike Harcourt, outlined the five principles the BC NDP (the Party) had established for future relations with First Nations. They were:

> 1. recognition of aboriginal title and aboriginal peoples' inherent right to self-government;
> 2. provincial participation in modern-day treaty negotiations to achieve a just and honourable settlement of the land question;
> 3. third-party interests in negotiated treaties on the land question;
> 4. sustainable economic development initiatives in both aboriginal and non-aboriginal communities resulting from settlement of the land question;
> 5. renewal of constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada.[1]

[1] BC NDP "Towards a Just and Honourable Settlement: Indian land Claims in British Columbia". Vancouver, 1990 (1).

These principles represented both a refinement of previous Party positions on Aboriginal rights and the work of the two year policy renewal process. Although not without opposition, the principles represented a general consensus on Native policy within the Party.

This thesis examines how the assimilationist orthodoxy of the BC NDP of 1969 was challenged, defended, and gradually replaced with the Aboriginal rights perspective defined by the Party's five principles of 1990. That is, it explains the transformation of Aboriginal policy within the BC NDP between 1969 and 1990. This transformation is reflected not only in the shifting of formal statements and policy positions, but is also apparent in changes in other aspects of the Party's formal and informal structures. In order to track this change, the paper considers elements like individual Party member's resolutions, the influence of Aboriginal issues during elections, and the attitudes of the Party's leaders and senior Party members. Although concentrating on the events and actors that lead to the paradigm shift inside the Party, I also consider those influences on the Party's 'significant periphery'. They include: the impact of major Aboriginal court rulings, the influence of BC Native organisations, the changing stance of the federal government, and the positioning the BC Social Credit Party. Understanding these actors impact helps to illuminate the wider context in which the Party operated and brings into focus some of the other important factors that shaped the larger discussion on Aboriginal rights. The goal of this work is to explore the conditions that led to the paradigm shift on Aboriginal rights within the BC NDP. As the actors that participated in the transformation of Aboriginal policy within the Party are many, the dynamics that explain their actions are equally

complex. For most of the period under study, Aboriginal policy development was haphazard. No one body or agent was responsible for its development; no clear records of development are available. Instead, policy developed through numerous means. It grew, for example, through individual party resolutions, impassioned Party member speeches, election promises, back-room deals, Party leader pronouncements, and only occasionally through formal channels. In this 'policy world', the decisions, practices, language, political calculations, and Party recommendations changed over time. Sometimes a 'policy' was the result of meeting between the Party leader and a First Nation leading up to an election, such as was the case when BC NDP leader Dave Barrett met informally with representatives of the Haida nation prior to the 1979 election and promised to enter treaty negotiations with them. Sometimes policy divisions pit members against the Party executive, such as was the case in the policy resolutions of 1974 – 1976. Sometimes leaders would take positions that were simply there own personal vision, such as when Bob Skelly made himself the Party's official Native Affairs critic in 1984. Furthermore, attempting to define the changes that occurred within the Party on Aboriginal issues is difficult not only because there are few definitive statements that identify 'official Party policy' at a given moment, but also because the BC NDP is a complex mass political machine that constantly responds to changes occurring outside of itself. The dynamics are complex, fluid, and are a result of events, actors, and expectations that lie both inside the Party and without.

Because Party policy was in constant flux, this paper attempts to examine not the specific attributes Aboriginal policy was allotted at a given time, but to consider

the reasons for the transformation of goals over a twenty-year period. The thesis, in other words, tracks a conversation. This dialogue, especially in the beginning, had few participants and was not well understood or widely discussed amongst the majority of Party members. As the issue of Aboriginal rights grew in importance, so too did the Party's need for policy clarity. As a result, the BC NDP did not have an official statement of its Aboriginal policy until the issue was considered important enough to warrant the effort. The statement that did finally emerge in the 1990s had its roots in the work of Thomas Berger, the speeches of George Watt, the policies of Norm Levi, and the personal leadership of Bob Skelly and Mike Harcourt. The five principles of the 1990 convention are the result of years of slow, uneven, and painful debate that occurred within the microcosm of the BC NDP and in the larger Canadian context.

In this respect, Party 'policy' was always weighted with the burden of electoral politics – Aboriginal policy could only develop as fast as the BC NDP's 'political universe' could keep up. In order to better understand the emerging Aboriginal rights conversation and how it changed over time, I use language that is less formal than standard academic work. This is done in order to mimic a way of thinking about politics that is particular to the political actors under study. I assume that how people talk about something, (the questions asked, the words used, the 'common sense' implied), shapes how they think about it. Thus, for example, my interviews with Bob Williams are conducted in a manner that asks questions which are framed with the back-drop of electoral consequences and strategic political consequences ("if we agree to this we will gain this group's support, but

potentially threaten another group's support"). The conversation within the Party occurs not only with political strategists like Williams, but also with a wide spectrum of people who speak with a variety of motives and a diversity of tongues. I hope to be sensitive to the various vernaculars while assuming that this discourse occurs within a political unit attempting to garner mass public support.[2]

The paper is divided into five chapters. The story begins with Thomas Berger as leader of the Party resisting the Trudeau Government's White Paper and ends with Harcourt leading the policy renewal at the Party convention of 1990. These are the paper's bookends. In the first chapter, the predominance of an integrationist perspective within the Party despite the efforts of Berger is examined. The Aboriginal policy divide within the Barrett Cabinet is explored in the second chapter. The following chapter, a period of quiet for Aboriginal issues within the Party, looks outside to the change occurring within Aboriginal organisations as a result of efforts to patriate the new Charter of Rights and Freedoms. In the fourth chapter, the rise of Bob Skelly is examined including his efforts to raise the profile of Aboriginal rights within the Party and amongst the public, the important legal decisions of the period, and the reaction of the governing Socreds. Harcourt's efforts to remake the Party, renew the policy development process, and entrench Aboriginal rights into the main of Party policy are considered in the final chapter. The aim of this thesis is to track a transformation of values within the BC NDP around Aboriginal rights.

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[2] The terms Aboriginal, Native, Indian, and First Nation are used interchangeably. I acknowledge the potential for misuse under some contexts. No ill intent is meant. Moreover, the thesis mimics (though not absolutely) the rise of the terms "Aboriginal" and later "First Nation" as the terms "Indian" and "Native" fade from common political diction.

In recent years, numerous scholars from diverse intellectual backgrounds have examined Aboriginal / non-Aboriginal relations. Historians, such as Robin Fisher[3] and R. Cole Harris[4] have challenged Eurocentric historical assumptions of the early history of Aboriginal / non-Aboriginal relations. Political historian Paul Tennant[5] has furnished a lasting account of the development and major challenges of BC Aboriginal political organisations. Legal scholars, such as Frank Cassidy[6], Kent McNeil[7], Michael Asch[8], Dara Culhane[9], and Thomas Berger[10] have attempted to define and advocate Aboriginal rights (particularly Aboriginal title and self-government) in light of a series of significant provincial and federal court decisions. In parallel fashion, theorists Alan Cairns[11], Will Kymlicka[12], and Jim Tully[13] have sought to address the implications of Aboriginal title and self-government on the Western liberal constitutional tradition. In addition to these scholars, John W. Kingdon's work on agenda setting informs some of the observations I make

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[3] Robin Fisher. Contact and Conflict. Vancouver: UBC Press, 1992 (1977).
[4] R. Cole Harris. The resettlement of British Columbia: essays on colonialism and geographical change. Vancouver: UBC Press, 1997. R. Cole Harris. Making Native Space. Vancouver: UBC Press, 2002.
[5] Paul Tennant. Aboriginal Peoples *and* Politics: The Indian Land Question in British Columbia, 1849 - 1989. Vancouver: UBC Press, 1990.
[6] Cassidy, Frank. "*Aboriginal Land Claims in Canada*" in Ed. Ken Coates in Aboriginal Land Claims in Canada: A Regional Perspective. Toronto: Copp Clark Pitman Ltd, 1992. See also Frank Cassidy and Fober L. Bish. Indian Government: Its Meaning in Practice. Vancouver: Oolichan Books, 1989.
[7] Kent McNeil. "The Meaning of Aboriginal Title" in Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference. Ed. Michael Asch. Vancouver: UBC Press, 1997 (pp.. 135 – 154).
[8] Michael Asch, Ed. Aboriginal Treaty Rights in Canada. Vancouver: UBC Press, 1999.
[9] Dara Culhane. The Pleasure of the Crown: Anthropology, Law and First Nations. Vancouver: Talon, 1998.
[10] Thomas Berger. The Long and Terrible Shadow: White Values, Native Rights in the Americas, 1492 – 1992. Vancouver: Douglas & McIntyre, 1991.
[11] Alan Cairns. Citizen plus: aboriginal peoples and the Canadian state. Vancouver: UBC Press, 2000.
[12] Will Kymlicka. Finding Our Way: Rethinking Ethnocultural Relations in Canada. Toronto: Oxford University Press, 1998.
[13] James Tully. Strange multiplicity: constitutionalism in an age of diversity. New York: Cambridge University Press, 1995. See also An approach to political philosophy: Locke in contexts. New York: Cambridge University Press, 1993.

throughout this text.[14] Although I do not rely on the Kingdon's model for my analysis, I apply his approach in my conclusion in order to help shed new light on the work I have done.

I am indebted to all of these scholars and others,[15] but I see my work as unique in its scope. That is, while some writers have drawn out fascinating and relevant discussions on Aboriginal rights within various fields of study, no one has yet considered the development of Aboriginal rights from the perspective of BC partisan politics. Popular literature has been produced that touches on reigns of various provincial premiers, but these works – although insightful – lack focus.[16] They serve as broad surveys of topical events within a given administration. My thesis differs from these works because I attempt to explore a single topic, the development of Aboriginal policy, across a vital period of its evolution within the BC NDP. Unlike more traditional academic authors, I engage this discussion with an eye always towards the inner workings of party politics and electoral success. This approach provides new insights into the way rival views of Aboriginal rights are formulated and developed into policy, and provokes unique questions as British Columbia continues to grapple with the reconciliation of Aboriginal rights and Crown sovereignty.

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[14] John W. Kingdon. Agendas, Alternatives, and Public Policies. New York: Harper Collins, 1995.
[15] In particular, Jeremy Wilson. Talk and Log: Wilderness Politics in British Columbia 1965 - 96. Vancouver: UBC Press, 1998.
[16] See Allan Garr. Tough Guy: Bill Bennett and the taking of British Columbia. Vancouver: Key Porter Books, 1985. Lorne Kavic and Garry Nixon. The 1200 Days. Coquitlam: Kaen Publishers, 1978. Daniel Gawthrop. Highwire Act: Power, Pragmatism, and the Harcourt Legacy. Vancouver: New Start, 1996. Stan Persky is the most thorough of these commentators. He has published both popular political writings and detailed legal commentaries. His work includes: Bennett II: the Decline and Stumbling of the Social Credit Government in British Columbia, 1979 – 1983. Vancouver: New Star, 1983; Fantasy Government: Bill Vander Zalm and the Future of Social Credit. Vancouver, New Star Books, 1989; and, Delgamuukw: the Supreme Court of Canada Decision on Aboriginal Title. Vancouver: Greystone Books, 1998.

Chapter One: Berger, the White Paper, and Assimilationist Aspirations.

"It's a kind of dangerous philosophical divisiveness that is creeping into the vision of mankind. Because the idea, which is totally repugnant to me, with the immigration of peoples, the conquering of peoples, the mixture of blood lines, the continuation of blood streams, which has happened all over the world, for us to dip back for a particular ethnic group, and say 'you were here first', or 'you came by foot and the rest of us were boat-people', or 'you have a different race', that kind of thing ... it still appalls an old socialist".
Former BC NDP Attorney General,
Alex MacDonald[17] (November 19, 1990)

Introduction

The period between 1969 and 1972 is remarkable because it notes the beginning of a departure within the BC NDP from its traditional integrationist views on Aboriginal policy. This chapter will outline a series of events, proposals, and promises which illustrate the Party's first moves away from its integrationist past. To be clear, the changes in this period are minor. If anything, the period is remarkable because it results in the Party paying attention at all to Native affairs. Where the changes come, they come as a challenge to the Party's traditional views on Aboriginal people's future, their rights as Native people, and their interest in the land. But

[17] Gerry Scott's interview with Alex MacDonald November 29, 1990. When I contacted MacDonald in 2002, he was unwilling to be interviewed.

these challenges, for the most part, are not well defined.[18] The influence of this new vision, an Aboriginal rights perspective, is just beginning to take root in the Party. Nonetheless, the seeds of an alternative to the integrationist approach are evident in the words of Thomas Berger and Frank Howard, in the Party's policy papers, resolutions and conventions, and its campaign material.

To unearth those elements which challenged the traditional Party views on Aboriginal issues, I examine four main areas where those elements are found. First, I explore the Native policy debate prior to 1969 with particular attention to the contrast between the dominant integrationist perspective and the view of 1969 BC NDP leader, Tom Berger. Second, I discuss the Federal government's 1969 'White Paper' in the context of its integrationist goals and the resistance it produced. Third, the election materials relating to Native issues from the 1969 and 1972 are compared. Fourth, the resolutions and materials from the Party's 1972 and 1973 conventions are discussed in light of the divergent Aboriginal policy directions they support. Each area highlights a contrast, a challenge, a change from the integrationist view to an alternative vision. As a matter of clarity, I begin this chapter with a brief outline of the main tenets of integrationist thought within the Party. Following this, I provide a few cautionary remarks on the context, structure, and significance of resolutions and conventions within the development of Aboriginal policy within the Party.

As was made clear above, there was no singular point where a 'great leap' was made in the development of Native policy within the BC NDP in the era before the Barrett Government. Instead, small, subtle, and un-coordinated events are beginning to undermine a trusted paradigm within the Party.

[18] Thomas Berger's remarks standing out as an obvious exception.

The Integrationist Model: Leveling a Path to Equality and Opportunity

The development of Aboriginal policy within the BC NDP is marked by two main paradigms, or ways of thinking about Native policy. For the purposes of this thesis I will define them as the integrationist and the Aboriginal rights approaches. This chapter examines the first attempts to impose the latter view as the dominant paradigm for the Party. In order to better appreciate that rise, it is important to have a sense of the main beliefs, aims, and foundations of the former.

The integrationist perspective saw the decline and gradual absorption of Native people as an inevitable facet of the 'modern world'.[19] To them, segregation was a license for discrimination, as had been the example in the American South. In a fairer world, all people would be united by equality under the law. In an ever Westernising world, integrationists argued that a forward looking Canada would be a cultural melting pot devoid of the racial divides. As Alan Cairns notes, the integrationists saw practical "limits to the amount of diversity that was compatible with the theory of a normal nation state".[20] Within the BC NDP, and embedded in the British socialist tradition, integrationists considered the industrial state's fundamental cleavage as class based.[21] Other differences, such as racial, cultural, historical and so forth, were understood as a product of the past, inconsequential to

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[19] The difference between "assimilationist" and "integrationist" is perhaps a matter of activism rather than goal. Assimilationist believed that all 'others' should be actively refined in the ways of the dominant White society. Whereas, integrationists simply assumed all others would by force of history and 'progress' gravitate towards the ways of the dominant society; the social, legal, and economic ground for those outside the dominant society should be leveled to allow for a seamless absorption.

[20] Alan Cairns. Citizen Plus: Aboriginal Peoples and the Canadian State. Vancouver: UBC Press, 2000, (62).

[21] Skelly interview, June 6, 2002. The CCF/NDP model of class analysis was not completely within the British model. From very early on, it faced an agrarian/industrial divide which it had to incorporate into its analysis.

one's overriding class interest within the state. Following the liberal notion of individual equality, NDP integrationists believed in the universal and undifferentiated rights of 'man'.[22] In essence, integrationists within the CCF/NDP tradition believed universal rights and undifferentiated freedom protected individual identity, while class consciousness within the larger context of Canadian nationalism provided a sense of collective identity.

With specific reference to Aboriginal people, integrationists recommended that a program of social and economic interventions, along with requisite changes to the law, would make Native people 'just like everybody else'. As a the hallmark of Canadian socialist policy, the Saskatchewan CCF government of Tommy Douglas (1944 - 1964) sought the end of all policies that provided separate services for Native people. In their place, provincial services would be extended to all Native people. The aim was to transform Indians into normal, taxpaying, service-receiving citizens of the

> province, indistinguishable from other provincial citizens, except presumably for fading memories of the bad old days when they were treated differently.[23]

At a time when most critics thought Native people incapable of melding into the mainstream society, integrationists saw themselves as 'optimists' who were willing to look beyond race.[24] They believed in and promoted Native people's inherent equality. Where Native skeptics looked for differences that would keep Native people apart, socialists sought similarities which would bring Native people into the dominant society. They did not question their terms of reference. Nor did they question their role in deciding what was best for Native people. Viewing themselves

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[22] Gerry Scott's interview of MacDonald, November 29, 1990.
[23] Scott, Gerry. Beyond Equality: British Columbia New Democrats and Native Peoples 1961 – 1979. Vancouver: Simon Fraser University, 1991 (56).
[24] Scott, 62.

as a distinct from the skeptics, they believed they held the best interests of Native peoples in mind. They believed, in short, that Native people had the capacity to integrate. As socialist leaders, integrationists were accustomed to delivering vanguard policy. They were not afraid of getting out ahead of the general public. They understood their role as to clear the path for Natives to successfully enter the modern world.

To the extent that Aboriginal land questions were considered, which was very little, reserves were seen as an historical act of charity or political pragmatism on behalf of the Crown towards Native people.[25] If Native people did hold some loose forms of land rights before the advent of colonisation, integrationists argued that "aboriginal peoples have abandoned whatever inherent rights they had by accepting, in fact if not in principle, the reserve system and various federal and provincial laws, regulations, and programs".[26] Despite this charity, integrationists argued, the Crown has been remiss on two points. First, the Crown had not been sufficiently benevolent. Second, the persistence of laws and regulations that kept Aboriginals separate from non-Natives had exacerbated the inadequate circumstances in which Native people lived. Thus, for integrationists, while other minorities had a chance to grow and prosper in a modern, non-discriminatory Canada, Native people had been held back on reserves where they were treated as second class citizens. The answer, from the integrationist perspective of the BC

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[25]Sanders, Douglas. "The Nishga Case" in BC Studies No. 19, Autumn 1973 (4). Sanders points out that this view was successfully defended in 19th century in the *St. Catharines Milling* case. Later on the same page, Sanders goes on to describe it as "the most significant Canadian case on Indian land rights".
[26] Cassidy, Frank. *Aboriginal Land Claims in British Columbia.* Ed. Ken Coates. in Aboriginal Land Claims in Canada: A Regional Perspective. Toronto: Copp Clark Pitman Ltd, 1992 (15).

NDP, was to create social and economic opportunities for Natives and ensure that Indians were granted equality under the law.

Resolutions: A Cautionary Tale

In an ideal research situation, policy development would be clear, well documented, and moving towards a well defined end. Such is not the case when looking at the BC NDP's clumsy and sometimes stifled movement towards a recognition of Aboriginal rights. There was no clear formula that delivered policy from start to finish. Various levels of the Party from the membership base to the Party leadership seemed to create policy by osmosis: general themes were absorbed, reformed, and recast from one political moment to the next. As 'Indian matters' were of relatively low importance, there was no overall vision which one could point to as a guiding light. Instead, what remains is an often contradictory and sometimes overlapping series of resolutions, policy statements, and electoral promises which form a policy knot. By exploring the implications of some of the major strands of this 'knot', I hope to explain how aboriginal policy developed during this period. First, however, it is important to add a few cautionary remarks on the relationship between resolutions and Party policy development.

Resolutions are poor policy indicators. They are oft ill-defined, inconsistent and distinctly un-coordinated. They are presented to annual provincial conventions from representatives of constituency associations or affiliated organisations (such as unions) by well-meaning people who may or may not understand current Party policy. Moreover, resolutions at a busy convention, such as a leadership convention,

may not have the chance to be voted upon by the assembled Party members because of time constraints, emergency resolutions, and / or other events which limit discussion. When resolutions don't see the light of the convention floor, they are sometimes referred to the provincial executive (it consists of constituency representatives and Party executives) for their consideration. Often a particularly contentious resolution will be tabled either before coming to convention floor or while on the floor. This action allows the provincial council and Party executive a chance to mitigate the offending elements of a given resolution.

Even those resolutions which do make it to the convention floor have an uncertain future. Debate and voting may occur at the end of a long day when people are tired, or when other more topical issues dominate people's energies. Likewise, a resolution's significance may be overshadowed by Party functions such as a heated contest for the Party executive. Given the potential distractions, issues which ring of social justice can slide through the resolution process with little fanfare or notice. The particular resolution's feasibility or cost, implication to current policy, electoral platform, or even the legislative limits of provincial governments are sometimes ignored. Instead, members will push through resolutions because they want to come away feeling good about what they helped 'achieve' at convention. What's more, although the Party does keep a record of resolutions from year to year, only the most diligent archivist would be able to dig up a particular resolution and hold the Party accountable to it. And even here, there seems to be an unwritten statute of limitations, or half-life, of a resolution. The fact that a resolution 'is in the books' may have little or no connection to the

Party's electoral platform or policy once in government. Thus, even if a resolution passes, if it does so without discussion or debate it may go unnoticed by most members and lose the credibility of Party decision makers who may perceive it as another 'feel-good' resolution without meaning or purpose. In this way, it is almost better that a resolution face stiff criticism within the Party, in order that it get noticed by policy makers, than to pass quietly into the background of the Party's policy nebula.

Nonetheless, resolutions help set and explain the mood of the Party, and particularly the Party membership. They provide an outlet for Party activists' hopes, fears, frustrations, and ambitions. While some resolutions are highly contentious and others are manufactured by senior Party members to 'float' policy ambition, most resolutions reflect an honest attempt by members to guide Party policy. If falling short of actually shaping the policy or electoral platform, resolutions inform the Party leadership on those issues which will energise the membership and those ideas which will divide it.[27]

Resolutions, and the resolution process, serve many other important functions. They bring new issues to light. They challenge members to defend their particular viewpoint. When debate occurs, they serve as one of the few areas where policy is contemplated. More broadly, the sheer volume of resolutions in a particular area acts as a type of positioning mechanism for the Party. That is, the more resolutions focused on a given policy area, the greater value members place on that issue. Issues which receive constant attention from convention to convention

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[27] Various interviews echoed the notion that although not always policy making, resolution inform overall policy direction.

form the foundation of beliefs which become the Party's bedrock. As some issues rise to prominence and others fade, so too does the attention of the Party shift.

Native Policy Pre-1969: The Integrationist Majority and Tom Berger

In the period prior to 1969 the seeds of future Aboriginal policy debates were being sown. Prior to 1969, the primary Party Aboriginal policy objective was to entrench formal equality for Indians in a Bill of Rights and to eliminate the reserve system. As the preamble to the section on "Native People" in the 1961 - 1967 BC NDP Policy booklet states: "The New Democratic Party's basic philosophy recognizes the dignity of every human being without regard to race, colour, religion or sex".[28] Theses values were to be enshrined in a Bill of Rights where all people were to be treated equally under the law. Concurrent with this 'colour blind' policy was resolution number one, which posits as its "ultimate objective the repeal of the Indian Act and the elimination of all government activities which place Indian people in a separate group". Although this enthusiasm for the removal of the Indian Act was tempered by an acknowledgement that Aboriginals should have "the greatest possible degree of control and influence over their destiny" and that the repeal of the act "takes place at a speed commensurate with the needs and desires of Indian people"[29], it was clear that Indians were being encouraged to move into the 'mainstream' of Canadian society. The Party believed that Aboriginal people were ill-served by the exclusivity and paternalism of the Indian Act. The Act was responsible for the poverty and hopelessness Natives faced. Thus, to bring Indians out from their social and

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[28] Lynn Coxworth and Fran Maley. 1961 – 1967 BC NDP Policy. Vancouver: BC NDP, 1969 (29).
[29] Ibid, Resolution #2.

economic plight required they be shuttled into programs targeted for others who were also poor, inadequately skilled, and shackled with significant social problems. The foundation of this belief was two fold: legal rights would allow them to be treated as equals and not children; and, given the right training and economic opportunities, they would prosper as others had.

First among those to bring the "Indian Land Question" to the fore of the BC NDP was Party leader Tom Berger. Berger was widely considered the pre-eminent lawyer on Aboriginal law in BC in the 1960s.[30] He graduated from the University of British Columbia law school in 1956. Berger served the riding of Vancouver-Burrard as its MLA for one term between 1966 until 1969.[31] Despite his short time in the Legislature, he spoke out forcefully on the need to recognise Aboriginal rights. On the forefront of the Aboriginal rights perspective, he argued that government must address aboriginal title:

> Today we must make a start to redress the wrongs done to the Indian people. Where to begin? I suggest that we should begin with the BC Indian land question. The government of Canada and the government of BC ought to acknowledge the Indian title and negotiate a settlement with the Indian people.[32]

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[30] Berger was council to the Saalequin (Nainamo) First Nation in the successful *R. v. White & Bob* case which re-asserted treaty rights signed under the Douglas treaties and the chief council for the Nisga'a in the *Calder v. R.* case. See Dara Culhane. The Pleasure of the Crown: Anthropology, Law and First Nations. Vancouver: Talon, 1998 (pp.. 72 – 83).

[31] Carol Swayze. Hard Choices: A Life of Tom Berger. Vancouver: Douglas & McIntyre, 1987 (101). Berger had also briefly served as the federal New Democrat Member of Parliament for Vancouver - Burrard between 1962 - 1963. Swayze, 93. Prior to becoming the Party leader in 1969, Berger had unsuccessfully challenged the leadership of Bob Strachan in 1967. Berger's failed leadership bid heightened pre-existing tensions inside the Party. The bitterness of the 1969 leadership race, which pitted Berger supporters against those loyal to Dave Barrett (who had stuck with Strachan in 1967), became known as the "Berger/Barrett split".

[32] Berger in a speech to the Nisga'a Tribal Council entitled "Indian Land - Key to Justice", *The Democrat*, November 1966, 8. In an unusual move, the editor of the Party paper- *The Democrat* - published a much

Years ahead of his time, Berger saw negotiated land settlement as the key issue in relations with First Nations. What's more, he recognized "Indian title" as the founding right in those relations. Berger, early on, made the link between Aboriginal title and provincial jurisdiction. He called on the province to not "take over" federal Native responsibilities as some were calling for within the Party, but for the province to recognise its role in future negotiations.

Equally important to the debate surrounding Indian policy at the time was Berger's assertion that reserves were a necessary element of Aboriginal life. As early as 1966 he spoke against the repeal of Indian reserves. Unlike his integrationist colleagues, he argued Native reserves should be eligible for grants in aid similar to municipalities. Moreover, with greater autonomy, Berger argued, reserves would serve as the foundation of thriving aboriginal communities. Thus, the challenge was not to undo the reserve system established by the Indian Act, but to re-establish reserves as semi-autonomous, economically self-sufficient, vibrant societies. Indians, he argued, were not better off leaving the reserves, forgetting their past, and melding into the Western model. Indians were distinct, and those differences which made them so, should not be stifled. Furthermore, where the Party's Indian policy assumed Native people would naturally be absorbed into the mainstream society with the repealing of the Indian Act, Berger recognised that Aboriginal people envisioned their communities as *permanently* distinct. Where integrationist within the Party saw the end of the Indian Act, as the end of those specific problems which distinguished Native people from the wider problems of

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larger section of Berger's speech than was standard "because of the vital and growing importance of the subject".

people within the same socio-economic class, Berger recognised that the Native people had demands and problems which set them apart. Theses demands would not end with the repeal of the Indian Act.

Berger made a distinction that was largely beyond those within the integrationist approach: the end of the Indian Act, would not mean the end of Indians or their desire to be different. Native identity, culture and territory were not products of the Indian Act. Aboriginal progress in a modern world did not inevitably lead to their demise. On the ground, this meant that Native reserves were not historically expendable. Berger argued against their dissolution. Reserves lacked economic opportunity - which required remedy - but reserves were essential for Aboriginal social, historical, and cultural well-being. More to the point, Aboriginal people were not going to give them up. In fact, they now started to see them as at the beginning of a journey that would help them reclaim some of their traditional territory. While integrationists viewed reserves as symbolic of everything that was disadvantageous to Native people, Berger believed they held the foundations for an Aboriginal revival.

The Federal White Paper: Integrationism Affirmed

On June 25 1969, the Federal Minister of Indian Affairs and Northern Development, Jean Chrétien, introduced to the House of Commons a government position paper proposing to gradually eliminate the Indian Act and the Department of Indian and Northern Affairs, phase-out the federal government's fiduciary responsibility to Native people, and divide reserve lands into the private ownership

of individual registered Indians. The paper argued that "special rights" undermined Aboriginal people's ability to prosper in a modern world:

> "Indian relations with other Canadians began with special treatment by government and society, and special treatment has been the rule since European first settled in Canada. Special treatment has made of the Indians a community disadvantaged and apart".[33]

The answer to this problem was to be found in the freedom and opportunity of legal, social, and economic equality.

At first, the paper met with widespread support from almost every corner of the House of Commons. The dominant sentiment was that the federal government was finally taking a bold step to end the much despised Indian Act. The recommendations of the White Paper were lauded as an attempt to chart a course where Aboriginal people would be full citizens of Canada. All political parties were caught off guard by the intense, nation-wide hostility Aboriginals expressed towards the White Paper.[34] Aboriginals, it turned out, did not like the Indian Act, but they also did not share the assumption that the natural evolution of their people was to join the other minorities in a Canadian version of the American 'melting pot'. They did not see themselves as 'just another minority'; they had specific rights that were rooted in their history and the land. They would not be assimilated.[35] In fact, for all the damage caused under the Indian Act, it at least recognised the distinct relationship between First Nations and the Crown. The federal government's attempt to undermine that relationship became the focal point for a resurgent

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[33]Jean Chrétien. "The White Paper". Ottawa: Government of Canada, Queen's Printer, 1969, 3.
[34] Sanders, 3-5.
[35] Paul Tennant. Aboriginal Peoples *and* Politics: The Indian Land Question in British Columbia, 1849 – 1989. UBC Press, Vancouver, 1991, 153.

Indian movement across Canada and particularly in BC where only a handful of small treaties had ever been made.

In the weeks just before the announcement of the White Paper, Frank Howard, the federal NDP's critic on Indian affairs, offered a policy proposal on Native affairs to the Canadian public.[36] The paper contended that the provinces, such as BC and Quebec, and the federal government must "make a simple declaration recognising that the hereditary title to the land, and all that encompasses, was never extinguished".[37] From this, the statement continues, it is therefore necessary for government to enter into "open, free and honest discussion to try to resolve this matter".[38] Acknowledging that discussions between untrained Aboriginal people and well-staffed, well-financed government administrations would create a huge imbalance in the negotiations, the statement went on to call for an Indian Claims Commission to "permit the Native people themselves to research and develop support for their own claims and thus be in a position more readily and easily to present these to government for correction".[39] Financed by Ottawa, run for and by Native people, the commission would form the administrative engine which would help Aboriginal people bring their claims before government on a more equal footing.[40] The Party's debates and resolutions represented the two distinct views on Native policy. The White Paper, at first, seemingly vindicated the views of many

[36] Federal New Democratic Party. *Statement Proposed by New Democratic Party on Indian Affairs* (Press Release), Thursday June 12, 1969.
[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Although a federal politician, Howard was significant actor on the provincial scene on Native issues. At this time, most people within the Party considered Native affairs a federal responsibility. Various resolutions and policy statements suggest a desire within the Party to make Aboriginal issues a provincial responsibility. Thus, his leadership on the federal scene had direct impact on the provincial level.

integrationists within the Party: finally, the federal government had begun to encourage equality under the law and sought to provide modern economic and social opportunities for Natives. For Berger and Howard, however, the unambiguous rejection of the White Paper by Native people highlighted the gulf between Aboriginal aspirations and non-Aboriginal ignorance. Government efforts to repeal the Indian Act would not end all problems which were distinctly Aboriginal. Furthermore, Aboriginals did not assume that assimilation and integration were an automatic product of their renewal. They did not assume their communal well-being was best left in the hands of either the federal or provincial government. Instead, they demanded the right to chart their own future. Berger and Howard were among the first non-Aboriginals to seize upon this view and advocate it within the BC NDP.

Aboriginal Campaign Material from the 1969 & 1972 Elections

Despite the fact Tom Berger lead the BC NDP into the August 30, 1969 election, Native issues had very little influence during the campaign.[41] Berger had toured the north of the province with Frank Howard in July, but Aboriginal issues were mentioned only briefly, and primarily when speaking to predominantly Native audiences.[42] In the central campaign material there is one short mention of Native

[41] Berger had been leader of the BC NDP only five months after beating out Dave Barrett in the April 1969 leadership race by 36 votes. The same week he was in the BC Court of Appeal as lead counsel for the Nisga'a in the Calder case.
[42] Frank Howard interview, April 2, 2002..

issues. Its vague sentiment hints both at integrationist aspirations and some need to protect distinct historical rights:

> The NDP believes that Native Indian people should be enabled to take their rightful place in the life of our province. An NDP government will enter into immediate consultation with Native Indians to end a century of paternalism and neglect. An NDP government will safeguard the reserves and the traditional rights of the Indian people, and will give them the opportunity to build prosperity for themselves and for their children.[43]

Perhaps out of a sensitivity to the negative reaction Native people had to the White Paper, the Party promised to leave reserves and "traditional rights" unmolested by an NDP government. Whereas, the "rightful place" of Native people could be interpreted either as part of the integrationist (Natives would be brought into the modern era) or Aboriginal rights perspective (Native rights would begin to be recognized). The purpose of "immediate consultation" was likewise left undefined; other than it represents a willingness to "do something" that is not merely unilateral. Perhaps, it is to highlight the difference between the NDP's approach and other governments' lack of consultation on Native concerns (the provincial Socred and federal Liberal governments) and a Berger government's promise to take consultation seriously. Regardless of the potential interpretations, Aboriginal issues drew little attention in the 1969 election. Berger, despite his personal commitment to Native rights, was unable to make them a significant issue within the electionThe 1972 election saw Native concerns once again relegated to a minor role. Under the title of "Equal Opportunity for Indians", the next to last page of the central leaflet - A New Era, A New Way: New Democratic Party Policies for British Columbia 1972 - repeated many of the same proposals of the election prior. As the

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[43] BC NDP. Campaign literature displayed in *The Democrat*, August 1969, 7.

title suggests, it was premised on the notion that Aboriginal welfare required a leveling of legal and material conditions which denied them "equal opportunity". It reflected the primary concerns of integrationists. The main difference the 1969 and 1972 positions was that the latter suggested that the federal government was the sole authority for Indian land rights.

The 1972 central leaflet was similar to the 1969 one in many respects. Like the 1969 brochure, the 1972 leaflet chastised the federal government for its "doubletalk and paternalism". And despite the rebuke Native people had since given the federal government's White Paper, the leaflet nonetheless promised to work to repeal the Indian Act. This time, however, it added that this repeal must occur "at a speed appropriate to the needs and desires of the Indian people". Outside of the historical influence of the integrationist vision within the Party, part of the reason the Indian Act's repeal was still called for was that Atlin NDP MLA and leader of the Nisga'a Tribal Council, Frank Calder supported this position.[44] Moreover, the 1972 leaflet echoed the 1969 leaflet, and the liberal notions of equality it underlined, where it called for the entrenchment of a Bill of Rights. This act would enable Native people to benefit from exactly the same rights as any other Canadian. The brochure again makes clear that the creation of this Bill can occur only at the federal level.

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[44] Unlike most other Native leaders, Calder had been a long time advocate for the repeal of the Indian Act. Yet, his motivation was not integrationist. He saw its repeal as a necessary step to shift governing power away from the DIAND and to local Native councils. For Calder, the White Paper's repeal went hand-in hand with the establishment of reserves with municipal type powers and a commitment to enter into land claim negotiations. Tony Eberts. "*Minister's Target: An Indian Magna Charta*" in The Native Voice. November / December 1972, (2).

On the 'Indian Land Question' the brochure calls for the creation of Indian Court of Claims, which unlike a Claims Committee, was there to serve not as an advocacy agency, but as an adjudicator of "disputes over lands or trusts". This repeated the 1969 platform, but was not in the same spirit as the Howard or Berger proposals. The 1972 land committee proposal did not establish an agency which would represent Aboriginal interests or assist in the creation of an Aboriginal land position. Instead, the 'court' would assume an impartial adjudicating role with authority to rule on various Native claims put before it. No special consideration was given to the relative administrative or research powers of those coming before it. This occurred, in part, out of an emerging appreciation of the growing authority of Aboriginal political organisations on the land questions. Nonetheless, with a more liberal spirit, this claims court would grant Native people a fair hearing; no better, no different than anyone else. The final line of the brochure provides another point of departure from the 1969 leaflet. It alluded to the possibility of still unresolved land claims:

> In addition [to the Court of Claims], an NDP government will, as desired by the Native people, press the federal government to re-negotiate its agreements with the Indians and institute new agreements where they are desired.

The mystery lies in the phrase "new agreements". This can mean, simply, that the federal government must amend its traditional agreements and make new ones. It can also be interpreted, however, to mean that the Party recognised claims outside of the current arrangements which would require *re*-negotiation and those claims which would require negotiations for the *first time*. If the latter was the case, then the Party had opened up the possibility that it would support new, modern "agreements" which emanated from BC. But, this did not mean an NDP

government would join any new settlement talks. The document was diligent in its efforts to cast all responsibility for any potential negotiations on the federal government. Equally, it was not entirely clear that new "agreements" included land as part of the package. This could be inferred, given that it follows directly from the promises of a Indian Court of Claims, but it was not explicit. The commitment to press the federal government on outstanding "agreements" was crafted in such a way that the province was limited to strictly an advocacy role on behalf of Indians in their negotiations with the federal government. The leaflet hinted at the possibility of legitimate outstanding claims, but those gestures were vague. If Natives had rights to enter or re-enter negotiations, that responsibility, the campaign material contended, rested with the federal government.

Conventions 1972 and 1973: A changing tone.

In the jubilant convention which followed the 1972 election victory, a series of eight resolutions were submitted which addressed 'Indian Affairs'. Integrationist confidence was apparent in most of the resolutions. For example, one resolution called for the enforcement of mandatory kindergartens on reserves.[45] Another, recommended the implementation of the BC Elementary School Curriculum into Aboriginal schools. As a whole, the resolutions encouraged the new government to assume a much greater role in Native people's lives. The familiabring the non-status Indian people, and all native Indians, into the

> mainstream of society on an equal basis, and with pride and dignity, while at the same time allowing native Indians to retain their rich culture and identity.[46]

[45] Resolution L-5-72, BC NDP 1972 Convention Papers.
[46] Resolution L-7-72, BC NDP 1972 Convention Papers.

None of the resolutions mentioned the Indian Claims Court, the "Indian land Question", or any notion of aboriginal "special rights" which suggested outstanding land claims. At the following year's convention, however, there was a noticeable change in the priorities sought for Native people. The preamble of one resolution put that change succinctly. It described Indian land claims as the "most pressing issue facing British Columbia Indians of the Province today".[47] What is intriguing about that resolution is not only the priority it gave the land question over more traditional integrationist concerns, but also where the resolution saw the answer to the Indian Land Question to be found. The resolution pointed to the McKenna-McBride Commission as the crux of the land claim problem. The resolution asserted:

> THEREFORE BE IT RESOLVED THAT the Provincial Government be urged to initiate a tri-Party meeting consisting of representative of the Federal Government, Provincial Government and the Indian claims in respect of the lands cut from Indian Reserves by the McBride-Mackinnon [sic] Commission.

Two things stand out from the above resolution. First, it identified a need to correct a historical wrong - the McKenna-McBride's swindling of Natives of thousands of acres of valuable reserve land taken without their consent and in the face of their protests.[48] Second, the place of blame it suggested. The historical wrong was viewed as a result of the mis-allotment by the Crown to the Natives. It was not a result of the Crown over stepping its authority on land which it did not have unfettered title. In this way, the rise of the Indian land question in this period remained grounded in the notion that Aboriginal rights and land questions from assertions of Aboriginal title were at the bequest of the state, and not in themselves authoritative or self-sufficient.

[47] Resolution H-2-73, BC NDP 1973 Convention Papers.

[48] Paul Tennant. "*Cut-Offs, Claims Prohibition, and the Allied Tribes, 1916-27*" in Aboriginal Peoples *and* Politics. Vancouver: UBC Press, 1990 (pp.. 96 – 113).

The fact that the land question received greater circulation than before speaks to the growing awareness of, and concern for Aboriginal rights within the Party in this period. What did not change, however, was the assertion that Aboriginal rights were in any way are different, or should be recognised as different, from non-Aboriginal people. In practical terms, the above resolution contended that the Crown (the federal government in this case) legitimately has the sole authority to decide how big reserves should be. The accompanying resolutions asked the federal government to consider its fiduciary responsibility in ways more charitable than the past.

Conclusion

The sense that the Crown had been greedy in its dealings with Native people was the predominant theme in BC NDP resolutions, policy, and electoral documents of this period. The process by which these wrongs were to be corrected underscores the extent to which aboriginal rights were taken seriously within the BC NDP. Resolutions regarding Land Claims Courts do not fall into the realm of the Aboriginal rights perspective because, although they brought attention to land issues and helped expand the terms of debate around Aboriginal rights, they still assumed that by simply adjusting the boundaries of a given reserve, the problem would be corrected. As will be discussed later, there were practical reasons for making the readjustment of reserves, and not treaty negotiations, the focal point of provincial action.

Thus far, I have sketched out the main arguments and proposals of those small groups of people within the Party who gave Native issues consideration. Two predominant themes have emerged which have been described as the integrationist

approach and the Aboriginal rights perspective. The integrationist approach sought fairness for Native people through equality. Governments (federal and provincial) were encouraged to act on those things which made Aboriginals unequal: the Indian Act, special laws which both inhibited their freedom and failed to protect their universal human rights, and basic living conditions, primarily on reserves, which made Natives the poorest of the poor. In this same period, a few people within the Party held nascent notions of Aboriginal rights which were not based on liberal equality. Instead, Aboriginal rights did not owe their merit to benevolence of the Crown. They existed because Natives had use and occupation of vast territories of BC for thousands of years and had never relinquished their rights up to the present. Likewise, Native's problems could not be understood as solely in class terms nor could their many problems be solved through a liberal judiciary, interventionist economics, and undifferentiated social policy. The everyday maladies of reserve life had their roots in the land. To merely expand the size of the reserve was an insufficient response. Because of the efforts of Thomas Berger, Frank Howard, Frank Calder, and a handful of Party activists the relationship between Aboriginal rights, land title, and the province's role in negotiations began to emerge in the BC NDP.

As was discussed earlier, there is a divide between Party policy and government action. Barrett among others had "healthy mistrust" of the Party executive.[49] This gulf resulted from the bitter leadership race of 1969.[50] To Barrett, Berger's supporters ran the Party. They were the Party organisers, the

[49] Williams interview, January 24, 2002.
[50] The Berger/Barrett split.

powerful union representatives, and the intellectual elite with dubious Eastern roots.[51] Although Barrett had successfully embedded his supporters in the Party executive after 1970[52], he did not trust the Party's administrative wing and largely dismissed the Party's resolution based policy structure. This was especially true when Barrett was premier. Moreover, the Cabinet, all of whom had sat in the opposition benches for a least one term and had long Party histories, felt that they were already steeped in Party history. In government, they felt their task was to take the broad swaths of Party ideology and craft it into legislation which met the province's present needs - to use power well.[53] This point was made clear by Premier Barrett just after the 1972 NDP convention: "They [the Party] set goals, we [the Cabinet] set priorities".[54]

In the three years in which the NDP formed government, the assertions and policies of both points of view could be seen. The next chapter examines these views in the context of the Barrett Cabinet, its Aboriginal policy initiatives, the political climate it operated within, and its relationship with the Federal Government.

Chapter Two: The Barrett Government

> Frank Calder, who had first been elected to the provincial legislature in 1949, represented the northern riding of Atlin, and I asked him to be minister without portfolio and to begin the first serious negotiations at the provincial level aimed at bringing native people and the Federal Government to the table over land claims.

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[51] Levi interview, May 14, 2002.

[52] Barrett, Dave and William Miller. Barrett: A Passionate Political Life. Douglas & McIntyre: Vancouver, 1995 (48).

[53] Williams interview, January 24, 2002.

[54] Lorne Kavic and Garry Nixon. The 1200 Days. Coquitlam: Kaen Publishers, 1978 (63).

Former Premier Dave Barrett[55]

We would have been laughed out of existence.
Former Lands and Forest Minister Bob

Williams[56]

Introduction

The Dave Barrett Government (1972 - 1975) was an activist, interventionist government which launched several major innovative, controversial and long-lasting projects during its term of three and a half years. However, that energy and enthusiasm did not extend into the realm of Native policy. Although it introduced projects which went much farther than those of the previous Socred administration, the Barrett Government never accepted a notion of Aboriginal title. It remained true to an integrationist view of Native policy. Within the Barrett Cabinet, two powerful ministers, Bob Williams and Norm Levi, dominated the direction of Native policy. Williams was decidedly integrationist in his outlook. He believed that decentralised economic development projects, such as those which took place in the Burns Lake area, met the requirements of Indian land claims.[57] Levi was the strongest advocate for Native people within the Barrett Government, though he too was integrationist. Upon assuming the Native affairs portfolio, he spearheaded the creation of the Land Cut-

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[55] Dave Barrett and William Miller. Barrett: A Passionate Political Life. Douglas & McIntyre: Vancouver, 1995 (63)
[56] Williams interview, April 12, 2002. Williams' response to the question why the Barrett Government failed to enter land claim negotiations.
[57] Williams interview, April 12, 2002.

Off Committee (LCOC) and sought to redress fifty-year old Aboriginal land grievances stemming from the McKenna-McBride Commission. Although he was the most sensitive minister in Cabinet to mounting Indian demands for land claims and tri-partite treaty negotiations, Levi did not ultimately accept the notion of Aboriginal title. He rejected the idea that Aboriginal title represented a burden upon Provincial Crown title. Unquestionably, Levi's ambitions for Aboriginal people were the least assimilationist in intent. Yet, because he remained loyal to the argument that Aboriginal land was dependent upon the benevolence of the Crown, he remained rooted in the basic principles of the integrationist perspective. Instead of pursuing treaty negotiations, Levi pressed forward with the Land Commission. He believed it was something the Province could do alone, without serious consultation or disruption from the Federal Government. Because success in the LCOC process was easier – ideologically and politically - than full, tri-partite land claim settlements, the Barrett Government, and Levi in particular, began to implement it.

During the 1200 days the Barrett Government was in power, a number of significant peripheral events gave light to an alternative vision for Native policy based on Aboriginal rights. In 1973, the Supreme Court of Canada acknowledged the existence of Aboriginal title, but was split on whether that title existed in the present day. In BC during Barrett's premiership, two Native organisations, the Union of BC Indian Chiefs (Union) and BC Association of Non-Status Indians (BCANSI), rose in size and stature. They pressed the Province to initiate several key policies with their most focused efforts directed at convincing the government to

accept the principle of Aboriginal title and enter treaty negotiations. At the same time, the BC NDP began to shift away from its traditional integrationist view of Native policy. The 1974 and 1975 conventions saw the Party - not to be confused with the Barrett Government - begin to embrace the principles of Aboriginal title and press for the Province to enter treaty negotiations.

Despite these pressures, the Barrett Government was not 'on the move' towards participating in meaningful, tri-partite, land claim settlements. In the lead up to the 1975 election, Barrett promised to enter negotiations with Native bands and the federal government as soon as Prime Minister Trudeau named the time and place for the meeting. This promise, and others like it, was hollow. On the question of land claims and treaty negotiations, the Province and the federal government had been engaged in a three year game of 'constitutional football'. Their mutual mistrust and general antipathy towards land claims allowed them to repeatedly delay negotiations. Moreover, Barrett's promises to negotiate were too little, too late. If Levi had looked for a means to enlarge the scope of the Land Cut-Off Committee in order to set the foundation for future negotiations (which is doubtful given his outright rejection of Aboriginal title), he could not have kept that project 'under the radar screen' of a staunchly anti-land claims Cabinet, as he had the Land Commission.[58] Despite the desperate late announcements of Barrett on the campaign trail, his government continued to reject emerging notions of Aboriginal title and treaty negotiations. It continued along - albeit with a greater respect for Aboriginal autonomy and Native administration - the integrationist policy path.

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[58] Levi interview, May 14, 2002. Levi informed me that much of the initial work in organising the Cut-Off Land Commission had to been done "underneath the radar screen of Cabinet" for fear it would be scuttled before it could gain momentum.

This chapter will be divided into four sections which expand on the previous assertions. The first section, the *Barrett Cabinet*, explains the structure, personnel, and overall aims of the Cabinet. The section which follows, *Major Aboriginal Policy Initiatives*, touches on the main legislative initiatives formulated towards Native people and compares in greater detail Williams' and Levi's most important projects. The third section examines three actors outside the Barrett Government who were central to the struggle to define Aboriginal rights. Understanding these actors helps provide a sense of the context in which the Barrett Government operated. This section is titled *Significant Periphery*. The fourth section unravels some of the political calculations made by the Barrett Administration in their relations with the Federal Government. It also seeks to refute the argument that the Barrett Government was on the edge of entering treaty negotiations. Taken together, I will show that the Barrett Government's Aboriginal policy was integrationist and that it would not allow for the implementation of treaty negotiations.

The Barrett Cabinet

On August 30th, 1972, the seventeen year premiership of W.A.C. Bennett was over. The affable Dave Barrett became the first NDP premier of British Columbia. The Cabinet he selected included those people he hoped would best implement the sweeping changes he felt were necessary for the province. This Cabinet would, individually and collectively, chart the direction of government. The selection of individual Cabinet members would not only set the tone of government, but also – especially in the sphere of Native policy – determine the ideological and

political parameters for government action. The Barrett Cabinet, in this respect, was decidedly integrationist.

In choosing the composition of his cabinet, Barrett[59] decided to reward those people who had served under him while in opposition. To one of his closest confidents, Bob Williams, went the far reaching Lands, Forests and Water Resources Ministry. Aside from the Premier, Williams was widely regarded as the most influential person in government.[60] Norm Levi, a fellow social worker who met Barrett while they worked together at the John Howard Society, was given the powerful position of Human Resources Minister. Alex MacDonald, who shared the MLA responsibilities for the two-member riding of Vancouver East with Barrett, became Attorney General. Eileen Daily, a former teacher and chair of the Burnaby School Board, was appointed Minister of Education and Deputy Premier. Other prominent cabinet ministers included Dennis Cocke in Health, Dave Stupich in Agriculture, and Bill King in Labour, but their involvement in Native affairs was much less substantial.[61] Frank Calder, who had been the first Aboriginal elected in BC when Native people were granted the right to a provincial vote in 1949, was made Minister without portfolio with a responsibility for informing the government on Native affairs. Calder, however, was asked to resign his position within a year because of a perceived indiscretion, and his responsibilities were passed on to Levi. 62

[59] In a surprising move, Barrett continued the W.A.C. Bennett tradition by assuming the Finance Portfolio even though Barrett had made a point of criticizing Bennett for holding "double portfolios". Lorne Kavic and Garry Nixon. The 1200 Days. Coquitlam: Kaen Publishers, 1978 (37).

[60] Williams chaired the Environmental Land Use Coordination Secretariat (ELUC) whose board consisted of eight cabinet ministers. Williams described ELUC as, in essence, the "economic planning arm of government with an environmental bias". Williams interview, April 12, 2002. Jeremy Wilson provides a more thorough analysis of ELUC and Williams' vision for it. See Jeremy Wilson. Talk and Log: Wilderness Politics in British Columbia 1965 - 96. Vancouver: UBC Press, 1998 (pp. 115 – 122).

[61] Kavic and Nixon, 40.

Barrett, as a person whose social work background encouraged less hierarchical forms of administration and as someone whose political success came from distancing himself from his Socred predecessor, gave many of his ministers more freedom than Bennett. With an ambitious agenda, Barrett believed that ministerial freedom would not only encourage greater creativity amongst the Cabinet, but also allow for larger scale policy development.[63] He was not focused on administrative structures. Unlike the W.A.C. Bennett Cabinets, there was no definite centre of power. Instead, ministerial leverage hung on Barrett's personal assessment of the individual minister concerned.[64] Ministers whom Barrett considered competent received a larger cut of the Treasury and were granted greater Ministerial freedom. Whereas those he thought less competent got less money and were more closely monitored.[65] On the whole, however, Barrett stressed individual freedom and collective creativity in the development of policy. Barrett believed the electorate wanted change, and he would deliver change. Barrett's policy ambitions were inhibited by the lack of professional administration which surrounded the government. The Socreds had been in power for seventeen years and the bureaucracy that administered the province was not well equipped to deal with a new, more activist approach to government. While other Province's administrations had grown to meet the greater role governments were assuming, BC had barely changed at all: "There was no pressing need for an elaborate or sophisticated bureaucracy in a government that did not accept the

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[62] It is important to note that Calder's impact, though significant in many other respects, was very limited during his short time in Cabinet. He had only two staff. He was handcuffed by having no parallel provincial ministry he could contact for assistance or direction. And, there were significant members of the Cabinet, though personally sympathetic, were very much assimilationist in their attitude towards Natives.
[63] Various interviews with former ministers echo this assessment.
[64] Paul Tennant, "The NDP Government of British Columbia: Unaided Politicians in an Unaided Cabinet," in Canadian Public Policy, III: 4, Autumn, 1977, 492.
[65] Williams interview, April 12, 2002.

premises of the interventionist state".[66] The major initiatives of the Barrett administration, such as the provision of $200 monthly allowances for seniors ("Mincome"), the establishment of the Agricultural Land Reserve, and creation of public auto insurance, demanded an updated, professional public service.[67] Thus, out of a new set of government principles came the need to develop and expand the bureaucracy's managerial skills.

Barrett the social worker and Barrett the populist politician influenced Barrett the Premier. Like most of the Cabinet, he held little interest in Native issues. His brief contact with Native issues came primarily from three sources: his experience as a social worker dealing with Native people on an individual basis; his casual observations of Calder's work on behalf of the Nisga'a, and his experience under Berger's short-lived reign as Opposition Leader. While premier, he never considered Aboriginals grievances in a legal context, instead he saw Aboriginals as victims of inept social policy.[68] Barrett, like others in the Party, believed that the NDP was the natural political home of Indians. Given the many significant social problems on reserves, he argued that Aboriginal policy should be concentrated on the better delivery of housing, education, social services, and economic benefits on a case-by-case basis:

> There were all kinds of separate programs that we exploded with, not looking at the historical context, not looking at the national constitutional thing, but actually getting some things done right away.[69]

Where there were direct problems to be solved on a reserve, this would take place as part of the brokering of interest within the government's overall interventionist

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[66] Young, Walter D. "Politics in British Columbia in the 1970s : the three year decade." Victoria: University of Victoria, 1981(9).
[67] Ibid, 2.
[68] Scott's interview with Dave Barrett, November 30, 1990.
[69] Scott's interview with Dave Barrett, November 30, 1990.

approach. For the Premier, and to a large extent the government, land claims were a separate and distinct issue. Although he was "aware of" land claims, Barrett maintained that because the government was insufficiently "knowledgeable of" the issue, they could not act upon it.[70] Whether it was a lack of expertise or lack of political will, the reasons for the Barrett Administration failing to enter treaty negotiations will be explored in the following sections.

Major Aboriginal Policy Initiatives

Aboriginal issues were not a priority of the Barrett government. Nonetheless, there were some significant policy initiatives. Most of these initiatives proceeded along an integrationist path; they sought ways to 'better care for' Aboriginal people while bringing them under similar, if not the same, conditions as other British Columbians. To help Native people achieve a higher standard of living, important initiatives in the fields of law, education, and social services were created. The two most significant policy initiates, however, were those undertaken by Williams with his Burns Lake project and Levi with his the Land Cut-Off Committee. This section examines the two major projects and compares each minister's ideological foundations. It will be argued that Levi, unlike Williams, began to consider Native demands for land claims talks, but ultimately the LCOC model upheld the integrationist perspective of Aboriginal rights. Before proceeding with this comparison, however, it is important to refer to some of the other projects the Barrett government initiated and consider where they fit into the government's overall vision of Native affairs.

[70] Scott's interview with Dave Barrett, November 30, 1990.

The Ministry of Education, the Ministry of Human Resources, and the Attorney General's Office all reformed Native policy, while the NDP was in government. These changes not only reflected an energy to make Native life 'better', but also a willingness to give Aboriginal people at least a small role in how that would happen. Education Minister Eileen Daily, in coordination with Frank Calder, set up a fully functioning school board in the Nass Valley. Though not officially designated as a "Native school board", the school district served an almost exclusively Aboriginal population, which would form its administrators, its staff, and govern its direction.[71] In addition to the school board, Daily introduced policy which encouraged the training of more Aboriginal teachers, and expanded Aboriginal influence in curriculum development. Social Services legislation was also amended to pay greater attention to Aboriginal concerns. One particularly sensitive area was Child Protection Services. Throughout the previous decades, the federal government had encouraged the practice whereby Native children under state care would be adopted into non-Aboriginal families. Hearing the outcry from numerous Native communities and organisations, the Barrett government pressured the Federal Government to initiate new legislation that encouraged the adoption of Native children back into Aboriginal communities. In the same vein, the government trained and hired greater numbers of Native social workers and Native court workers, thus encouraging a greater sense of 'Native people looking after their own'. In the legal field, provisions were made to ensure the formal legal equality of BC Indians, and Native people living on reserves became eligible for home owner

[71] Daily interview, January 14, 2002.

grants.[72] Notwithstanding these amendments, government Aboriginal policy was focused on economic development and the land cut-off issue.

The Land and Forests Minister was an integrationist. He believed that Aboriginals and non-Aboriginals had to move up a "learning curve" together wherein the amalgamation of social and communal values, along with economic development, would promote greater racial harmony and meet the needs of both communities. Williams' work as an urban planner, his experience as Ministry of Forest critic while in opposition, and his role as Chair of ELUC, all led him to believe that the best way forward in rural BC was through integrated resource management.[73] His views on the nature and causes of property, however, set him apart from Cabinet colleagues. He was a [Henry] Georgist. He believed that the planet is a common resource and that the rent of it should be shared by all. He argued that land speculation has a devastating effect on the economic potential on capital: "Land can't move. If you tax it, it moves people to use it, or get off it, or turn it over to someone who is more productive".[74] He argued that land claims would stunt Native's successful economic and social integration into the regional communities in which they lived. Instead, Williams believed in meeting the demands of various Native communities by plugging them into the economic generators of the region. In 1973, Williams met with Burns Lake Aboriginal leader, George Brown. Taking an immediate liking to him, Williams arranged to include Indians of the Burns Lake area in the bidding process on an impending tree forest license. The

[72] BC NDP. "Native rights secured", *Democrat* (Supplement), January 1976, 4.
[73] Much of the information here stems from my interview with Williams, April 12, 2002 and Wilson's chapter six "The Ragamuffins and the Crown Jewels: Bob Williams Confronts the Forest Policy Orthodoxy" in Talk and Log (pp.. 112 – 148).
[74] Williams interview, April 12, 2002.

deal Williams helped broker would give them a five percent "cut" of the licensee.[75] Other arrangements were made to ensure that over the twelve year tenure the Natives would see a strong return on their initial capital investment. The Natives would also obtain a 2.5 million dollar low-interest loan which was to be paid back over 20 years. In addition, the Burns Lake group received training by local loggers and forest managers. In coordination with Labour Minister Bill King, Williams deemed the area a "preferential hiring area" so that local residents (Burns Lake was 75 per cent Aboriginal) would also be the first in line for job openings for the entire license.[76] This arrangement underlined Williams belief that given the right leadership, economic opportunities, and training, the essence of Native demands for land claims could be met without the government being "dragged into the sterile question of land claims".[77]

Although there were other economic projects which involved Aboriginal communities, such as the cooperative fish cannery at Port Simpson, Williams saw the Burns Lake Plan as the model for any other future arrangements between Aboriginal organisations and the government. This model not only decentralised resource management, but also served as a "half way house...where local people and natives moved up a learning curve together".[78] In his view, land claims and the legal pursuit of those claims, could lead to a rupture in society:

> In contrast to bringing everyone up a learning curve together through community based resource management, the legal pursuit divides people on

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[75] Williams would only accept the successful Babine Forest Products Ltd. bid if they agreed to share five percent of the license with the Burns Lake Native Development Corporation of which Brown was appointed the CEO.
[76] Williams interview, April 12, 2002.
[77] Williams interview, April 12, 2002.
[78] Williams interview, April 12, 2002.

> historical lines without providing the means of reconciling differences and building together.[79]

Had the NDP government won a second term, Williams contends, regional community development would have helped bridge the gap between Aboriginals and non-Aboriginals.

Despite his Georgist roots, Williams' vision was partly state-interventionist and partly liberal. He wanted to provide Aboriginal people with the opportunity for ownership, and equity in those projects that would provide them with 'a fair share in modern society'. In the integrationist spirit, Williams wanted to level the playing field, and provide Native people with an opportunity to prosper.

In June of 1973, Frank Calder was removed from Cabinet and Human Resources Minister Norm Levi was informed by Premier Barrett that he was now responsible for the Native affairs portfolio.[80] Levi was surprised. Like Barrett, his previous experience with Aboriginal issues was minimal: he had worked with them individually as a social worker; he had known Tom Berger; and he was vaguely aware of Calder's efforts on behalf of the Nisga'a. At the time, the only minister besides Calder who had significant contact with Aboriginal people was Williams. When Levi took, over he received a set of files which showed that Calder had been trying to make contact with similar government officials across Canada to inquire into what they were doing. From the correspondence, it was revealed that other governments were doing very little.[81] As Levi gained knowledge through his contact with Aboriginal leaders, policy advisors and written materials, his commitment

[79] Williams interview, April 12, 2002.
[80] Levi interview, May 14, 2002.
[81] Levi interview, May 14, 2002.

grew to get the government to "move ahead" on Native issues. Within a few months, Levi believed he had found a project which would have an enormous, positive impact on the lives of Native people.

As the minister responsible for Native affairs, the Land Cut-off Committee became Levi's primary policy objective. After a few months on the job, Levi gave Barrett an ultimatum: if Barrett wanted him to continue with this portfolio, the Premier would have to give him permission to pursue a major undertaking. Barrett agreed, but cautioned Levi that any major project would have to go through him: "As long as we know what you are doing, it's okay." Levi response was, "Who's 'we'?", but he knew the answer. From that point on, Levi had to keep the full extent of the committee's aims mostly out of Williams', MacDonald's and Barrett's view.[82] As a result, Levi was now in the delicate position of meeting the demands of the Aboriginal leaders through the LCOC, while trying to avoid upsetting the Cabinet and the Premier by going too far. Early on Levi recognized that the LCOC could provide a model of cooperation between the government and Aboriginal groups which might possibly form the foundation of future treaty negotiations. At the start of the Cut-Off process, June 1975, the committee was composed of the province and various Native bands. Levi assumed the Federal Government would eventually be drawn into the process because it would not wish to be, or perceived to be, outside of Land Cut-Off discussions. In the future, Levi believed that the Commission's exploration would form a type territorial data-bank. This research, Levi hoped, would define the land under negotiation in future treaty talks. Moreover, the mandate and structure of

[82] Levi Interview, May 14, 2002.

the LCOC would expand to include representatives from Native bands, the provincial, and federal governments who would help oversee the land claim process.

As time passed, rising Native frustration over the Barrett government's lack of progress on the land claim issue led to a growing number of Native protests and blockades.[83] Levi attempted to quiet these demands, in part, by pointing to the potential land deals administered through the LCOC. He wanted to demonstrate to Aboriginal people that where the province could act - free of 'federal meddling' - they would act in a substantial way. As a gesture of goodwill, Levi instructed the LCOC to cede some 100 acres to various Indians bands.[84] He believed that for the LCOC to be effective as a political and administrative tool, it needed widespread Aboriginal support. Although Levi supported Williams' efforts to 'level the economic playing field' for Native people, he also accepted Aboriginal demands to deal with some form of the 'land question'. When Levi met with Aboriginal leaders they often spoke of their close connection to the land and the importance of seeing that land returned to them, but no one in Barrett's government, not even Levi, would proceed on those terms.[85] The LCOC never ventured outside the integrationist perspective: it would expand reserves, not recreate traditional territories.

Despite Levi's supposed long term intentions for the LCOC, it was founded on the politically and ideologically less demanding notion that when a previous 'bad' government made reserves too small, the present 'good' government is

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[83] Protests included the confrontation between Levi and the mix of BCANSI and Union employees on the lawn of the legislature in June of 1974 and actions like Sturart-Trembleur Band blockading the railway in Dease Lake from 1974 through 1975.
[84] Levi interview, May 14, 2002. Although, Levi questioned Aboriginal people's general loyalty to the Party, he recognised that they could have a significant impact in a handful of key ridings.
[85] Levi interview, May 14, 2002.

morally obliged to fix them. The LCOC ceded no new land rights. It would only consider expanding reserve boundaries. Perhaps Levi assumed that in the time it takes to make changes through the LCOC, the government, the public, and possibly the courts, would have begun to think differently about why Indians were 'given' reservations in the first place. Where Williams' perspective never addresses Aboriginal land rights (and instead focuses on economic capacity building), Levi's formula expands the discussion to include some form of historical redress. One of the reasons Levi moves on the LCOC is that he could: it didn't rely on the Federal Government, the Province could act unilaterally. The LCOC gave Levi a chance to demonstrate movement on the land question as the Union, BCANSI, and various Native leaders and bands had pressed, without radically altering the 'benevolence' model of Aboriginal rights that Cabinet would accept.

It is clear from the policy changes in education and social services that there was some consideration of the idea that Aboriginal people should be given a bigger say about what gets done, and who does it. Williams' plan also assisted the Native people in Burns Lake in better controlling their own affairs. There was a growing Cabinet awareness that Aboriginal people wanted more control over provincial policy which affected their lives. The Barrett government made a few small steps in this direction by giving Aboriginal people more influence over their education, social services, and economic development. Yet, there was no overall plan to make various individual projects (such as the Nisga'a School Board) a province-wide model. Moreover, where there may have been Cabinet approval to move ahead based on a particular model (such as the Burns Lake approach), this was done in

the face of Aboriginal claims for much larger discussions about land title and treaty negotiations (as we will see in the next sections). What's more, Williams did not see the Burns Lake approach as applicable to anywhere else, outside of, perhaps, the Western Caribou.[86] Levi's earnest efforts to "get something done" on the 'land question' is two sided: it is practical, immediate, and can be used to demonstrate the Barrett government's 'good intentions'; it is also illusionary because it grants lands but does not change the government's fundamental opposition to Aboriginal land rights.

The Significant Periphery

Thus far, I have written my examination as if the pressure for the provincial government to enter treaty negotiations had been minimal. If anything, this approach was maintained because the pressures to negotiate were omnipresent, and putting land claims aside helped sort out the other major events and projects which were the priority of the Barrett government. This section examines the rising tide of events – the significant periphery - which helped define the nascent elements of the Aboriginal rights movement, and pushed land claims talks farther up the Native policy agenda. While the Barrett government's public position on negotiations appeared to waver as the pressure mounted, it remained rooted in its integrationist beliefs and opposed Aboriginal land claims.

The Calder Case

[86] Williams interview, April 12, 2002. Williams sent ELUC official Ric Careless up to that region to be "bold as hell" in working with Native people on social and economic projects.

Despite the fact that Frank Calder was the first Aboriginal MLA and eventually Cabinet Minister in BC, and despite the fact that renowned Native rights spokesperson Tom Berger was leader of the Party in 1969, their most significant contributions to forwarding Aboriginal rights did not come in the political arena. Calder was ineffective in promoting Native rights in Opposition Caucuses and later in the Cabinet.[87] Berger's run as leader lasted six months, divided the Party, and ended with an unexpected trouncing at the hands of W.A.C. Bennett in the 1969 provincial election. Together, through the precedent changing Calder Case, however, they transformed the entire legal landscape of Aboriginal rights.

In April 1969 Calder, on behalf of the Nisga'a people of the Nass Valley, filed a claim against the province of British Columbia asserting traditional ownership over territories, which, they argued, had never been legally surrendered to government. Berger, who later in that same week won the leadership of the BC NDP, was their counsel. In October of that year, the BC Supreme Court ruled against the plaintiffs. The court accepted the argument that Aboriginal claims to land had lost all relevance with the imposition of colonial land acts prior to confederation.[88] Reviewed by the BC Court of Appeal in May 1970, the Nisga'a title claim was once again unanimously rejected. Calder and Berger decided to persist despite various Native organisations' apprehension. Some regarded the case as premature, and risking almost certain failure at the highest court in the land, thus

[87] Frank Howard interview, April 2, 2002.
[88] Douglas Sanders. "The Nishga Case" in BC Studies No. 19, Autumn 1973, 3 -20.

setting back the Aboriginal rights movement significantly. Nonetheless, Calder and Berger submitted their case before the Supreme Court of Canada in 1971.[89]

In January 1973, the Supreme Court delivered a surprising split decision. Three judges sided against the Nisga'a, three sided with the Nisga'a, and one judge (Justice Pigeon) opposed the filing of the claim on a technicality.[90] Strictly speaking, the majority opinion of the court ruled against the Nisga'a claim. The three judges of the "majority" ruled, like the lower courts, that those rights which had existed prior to European contact were extinguished implicitly by the imposition of colonial land legislation prior to BC entering confederation.[91] The dissident opinion, led by Judge Emmett Hall, contended that because general land legislation had failed to expressly deprive Native people of their land rights, they maintained a legal relation to the land.[92] All judges differed from the provincial courts, however, by accepting that Aboriginal title had existed prior to colonisation. Equally important, this title was not dependent on the Crown (via the Royal Proclamation), but on original Native use and occupation of their traditional land. Although the court split on whether original title could be extinguished implicitly or had to be extinguished

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[89] Sanders, 14. Tennant argues, however, that there was no serious friction between the Nisga'a approach and the 'one big claim' strategy being formulated at the November 1969 Kamloops conference which served as the founding convention for the Union of British Columbia Indian Chiefs: "Contrary to what came to be believed many years later, the Kamloops conference did not reveal any friction between advocates of the two strategies, nor was there even any debate on the issue". Tennant, 154. In spite of Tennant's remarks, I believe Sanders' assessment is credible given the ongoing terse relations between the Nisga'a Tribal Council and the major Native organisations, and the legitimate notion that Calder was indeed taking a big risk which could have hampered other Aboriginal organisations' land claim pursuits.

[90] Pigeon argued that because the claimants failed to secure a provincial fiat, they were ineligible to press their case at the Supreme Court level. As the Province was the defendant in this case, the judge's insistence that the Province's failure to grant permission (a fiat) for its own prosecution seems not only counter-intuitive but a tricky way of passively rejecting the Nisga'a case. As a member of the legal community remarked to Levi at the time, 'Pigeon, true to his name, was a chicken'. Levi interview, May 12, 2002.

[91] Sanders, 16 -17.

[92] Ibid, 17.

explicitly, it had unanimously agreed that Aboriginal title was a legitimate legal concept independent of non-Aboriginal authorities.

Aboriginal leaders saw the Calder ruling as a major victory for Aboriginal rights. The Nisga'a immediately went to Ottawa to press the Federal Government into negotiations while the decision was still fresh in public's mind.[93] Prime Minister Trudeau, who held high regard for Justice Hall, acknowledged the substantial changes the case had brought to light.[94] In August of 1973, he instructed Justice Minister Chrétien to begin the process of opening a treaty discussion with the Nisga'a, based on the principle of compensation for the loss of Native "traditional interest in land".[95] Because of the Calder decision, the pressure for the Federal Government to enter into negotiations had finally led to action. Yet, the Federal Government's decision to compensate Native peoples for 'lost lands' begged the question of who was responsible for that compensation. A fact not lost on the increasingly powerful Aboriginal organisations of BC.

BC Aboriginal Organisations: The Union and BCANSI

The period between 1969 and 1975 saw two dominant Aboriginal organisations, the Union of BC Indian Chiefs and the BC Association of Non-Status Indians, rise to unprecedented levels of power and influence. Almost at the moment of the Union's apex in authority, however, it faltered and nearly collapsed.

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[93] Don Rosenbloom interview, January 28, 2002.

[94] Trudeau's oft quoted remark to Calder was "I guess you have more rights than I thought." Levi interview, May 16, 2002.

[95] Sanders, 19. Sanders notes that Trudeau never used the terms "Aboriginal title" or "Aboriginal rights", but spoke instead of "legal rights" when discussing Native claims. Sanders, 18.

Nonetheless, both organisations would leave an imprint felt within the Barrett Government and inside the BC NDP.

The Union was formed as a response to the assimilationist ambitions of the White Paper.[96] In the fall of 1969, Native people from around the BC gathered in Kamloops to decide on collective response to the White Paper. It was agreed that a single body - the Union - would serve the interests of all Status-Indians. The goal of the group was to create a "coordinating body" which would pursue a province-wide land claim on behalf of all Status-Indians.[97] At the same time, largely because of the work of H.A. (Butch) Smitheram, an association of Non-Status Indians was created.[98] Unaffected by the White Paper, it sought to advance non-status education, training, and financial opportunities. Like the Union, it relied solely on federal and provincial funding. By 1973, both organisations saw their funding grow to over $2,000,000 annually, from what had been only tens of thousands at the beginning of the decade. Within a short time, however, the organisations began to fracture over goals and leadership. By 1976, BCANSI was stung by internal divisions [illegible] while the Union helped elevate expectations for treaty settlement among Union members. In the spring of 1972 Union representatives met with the Federal Government to discuss treaty negotiations. Although the discussions were informal, and little real progress was made, the Native newspapers that covered the talks helped create optimism amongst Indians back in BC that the Federal Government would soon be at the negotiating table. Even though this enthusiasm was

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[96] This segment borrows heavily from Tennant's chapter twelve "*The Formation of the New Organizations 1969 – 1971*" and chapter thirteen *"Big Money and Big Organizations 1972 -1975"* in Aboriginal Peoples *and* Politics: The Indian Land Question in British Columbia, 1849 – 1989.

[97] Ibid, 154 – 155.

[98] Ibid, 158.

unfounded, as Tennant points out, "Union leaders did not go out of their way to dampen it".[99] Likewise, the election of the New Democratic government in BC, a Party many Native people assumed would automatically recognise Aboriginal title, added further hope that a settlement was forthcoming. The Supreme Court's astonishing legal acknowledgement that Aboriginal title had existed seemed to signal to many Aboriginal people that negotiations were imminent.[100]

These expectations came to a head in June 1974, when a protest group, consisting primarily of Union and BCANSI staff members, met with Levi on the steps of the provincial legislature.[101] Levi, who was widely regarded as the most sympathetic member of the government[102], told the protesters that there was little he could do without the Federal Government taking the lead role. There is, it should be noted, no consensus on the actual discussion that took place. Paul Tennant describes the event as follows: "The enthusiasm turned to booing and shouting when Levi stated that title was a federal matter and that the Province would take no action".[103] However, Levi, in my interview with him, claimed that Tennant's version lacked veracity: "He wasn't even there".[104] Instead, Levi recalled informing the crowd that the Province was indeed more than willing to begin serious land claim discussions, but they needed the Federal Government to come to the table before that could start. In any event, the high hopes held for the provincial government's 'imminent recognition of Aboriginal title' did not come to pass.

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[99] Ibid, 166.
[100] Ibid, 166.
[101] Ibid, 177.
[102] Gerry Scott interview of George Watts, December 13, 1990.
[103] Tennant, 174.
[104] Levi interview, May 16, 2002.

Indeed, other tensions were beginning to cause rifts within both organisations. Staff members began to criticise the leadership for personal misconduct. Within the Union, the policy direction was also being criticised. There grew a sentiment that the organisation had strayed far beyond its 'original mandate' of treaty negotiations, creating what Bill Wilson at the founding 1969 convention had criticized as a "brown bureaucracy".[105] Wilson became an outspoken critic of the Union's "leadership elite" and a leader in its over-throw at the 1975 Union convention. At the April 1975 convention in Chilliwack, the Union membership vented its accumulated frustration over the leadership's failure to meet their expectations, and opted to embrace Wilson's vision of "Pan-Indianism" and Native self-reliance. As Tennant remarks, the 1975 Union assembly assumed "a life of its own".[106] Wilson spoke about the need for the Union to cut itself free of government funding and rely instead on membership donations. A misinterpreted telegraph from George Manuel of the National Indian Brotherhood was taken to suggest the organisation supported the complete rejection of all government funding. The convention, surging with pride and a defiant spirit, passed a motion which stated the Union, on behalf of all status Indians of BC, would no longer accept government funding of any kind.[107]

A few months later, BCANSI convened a special assembly for its members. Encouraged by a Union motion which sought to merge Status and non-Status organisations, the BCANSI convention accepted the same series of resolutions that would eliminate federal and provincial funding. When the governments followed the wishes of the two organisations and began to cut their funding, the reaction of

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[105] Tennant, 170. The Nisga'a left the Union in 1973 because they believed it had gone beyond its mandate.
[106] Ibid, 178.
[107] Ibid, 179.

most Native people was clear: they demanded that the endowments be reinstated.[108] The leadership of BCANSI, and particularly the Union, was viewed as being out of touch with the everyday needs of Aboriginal people. With no money coming into the organisations, and deep antipathy in their membership base, both the Union and BCANSI were close collapse.

BC NDP Conventions of 1974 and 1975

While Native aspirations for treaty settlements grew stronger, similar aspirations were pursued inside the Party. The rise of the "land question" inside the BC NDP began in 1973 (as the last chapter suggests) but took on greater significance between 1974 and 1975. Conventions, resolutions, speeches, and articles in the *Democrat* propelled the land claim question to the front of the Native policy agenda within the Party.

In the waning minutes of the August 1974 Party convention in Kamloops, a resolution was passed with little discussion which read: "Be it resolved that the government does not proceed with development in conflict with Indian land under claims until such claims are settled".[109] The resolution shocked some within the Party by putting land claims before economic development. To others, it suggested an ignorance or naivety about the seriousness of Indian land claims. Tom Barnett, a long-time Party advocate on Native issues, surprised many by speaking out against the resolution. He challenged those who had supported the resolution to consider its

[108] Tennant notes the irony of Wilson's 'grassroots' uprising within the Union, when his proposal to cancel all government funding was so overwhelmingly rejected by those same 'grassroots'. Tennant, 177.
[109] Tom Barnett. "Time to settle land claims". *Democrat*, February March 1975, 13.

the literal consequences. He asked Party members to think of "the magnitude of the issue it poses".[110] He also stressed the need for action, but action which was more political and strategic than an 'over-the-top' resolution. He wanted, in other words, supporters of Aboriginal rights within the Party to take seriously what they were suggesting: to not just see it as another "good cause", but to consider it in practical, political terms. In essence, he was asking supporters to take the concept of Native rights out of the romantic world of Party resolutions, and bring it down to the level of policy and politics.

Within the Party, this meant putting pressure on the government to act unilaterally if need be. The government's position, parroted by the 1974 Special Convention issue of the *Democrat*, was that Native claims "cannot be negotiated without the involvement of the Federal Government which has jurisdiction over Indians affairs". For Barnett, this was clearly insufficient. Yet, he pressed land claim supporters to recognise that the struggle for negotiations had a public, political face.[111] He cautioned them not to get too far beyond what was politically feasible, and focus on the tangible steps through which treaties could proceed. Although a supporter of negotiations, he accepted that the government must take "a course of action through which conscience will prevail, with a minimum of backlash".[112] Despite his efforts to ground, in his view, the 'pie-in-the-sky' aspects of the Party's Aboriginal rights movement, the enthusiasm for Aboriginal rights and treaty negotiations would not be abated.

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[110] Ibid, 13.
[111] BC NDP. "Rights for Indians", *Democrat* (Special Convention Issue), August 1974, (14).
[112] Barnett, 13.

The May 1975 convention marked the greatest division between Party resolutions and the government's direction on Native affairs. With the assistance of three executive members of the Union of BC Indian Chiefs, the convention's panel on Indian affairs drafted a statement of principle which pushed for a tri-partite meeting to settle land claims. A new element was added, however. The convention would also give its "unconditional support to the full rights of self-determination of Native Indians".[113] As the government's Native policy was founded on the assumption that Native people aspired to integrate into the mainstream of non-Aboriginal life, this resolution opened a chasm between the perceived aspirations of Native people within the Party and the Barrett Government. This rift took on greater importance when Chief George Watts spoke to the convention delegates.

The Party executive faced a membership uprising the following day at convention. Officially, non-members are not allowed to speak at plenary sessions of the Party. The panel, which had hosted the three Unions members the day before, submitted a motion which asked them to speak at the plenary session. The Party's executive refused the motion, but the convention floor demanded a representative for the Union be allowed to speak. It quickly became clear that the convention would not proceed unless the executive backed down. It did. Similar to the Union's 1975 convention, the Party's 'grassroots' were now in control of the Native policy agenda. In his convention speech, George Watts outlined the distance between the government's 'achievements' on Native policy and the expectations of Aboriginal people. Where the government and Party executive had been advertising the Burns Lake project and the Port Simpson Cannery as major economic advancements for

[113] BC NDP, "Indian leader addresses convention" *Democrat*, June 1975 (1).

Aboriginal people, Watts described them as nothing more than government "handouts".[114] Most of his criticism, however, was not targeted at particular projects, but at the foundations of government-Aboriginal relations:

> Don't come to help us with our alcoholics, or with our broken families, or offer us used clothing - we don't want any more of that crap. All we want you people to do is sit down and start negotiating with us.[115]

According to the Democrat, most members welcomed this message with a standing ovation; some remained silent and seated.

The social welfare approach, which had been the essence of the Party's Native policy just a few years earlier, was now in retreat. Watts had, in the view of many members, articulated a new vision of Aboriginal rights from which there was no turning back. As a consequence, for an NDP government to be seen as legitimate by its membership, it henceforth had to make treaty negotiations the central issue of Native affairs.

The development of a stronger legal position for Aboriginal rights in the law, the increased power and prestige of provincial Aboriginal organisations, and the dominance of the land claim question within the Party put pressure on the Barrett Administration to move ahead with treaty negotiations. But the government would not: it could not undo the underlying integrationist assumptions on the 'land question'.

Politics

From 1973 to 1975 the Provincial Government played an escalating game of constitutional cat-and-mouse with the Federal Government. In light of the

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[114] BC NDP, "Indian leader addresses convention" *Democrat*, June 1975, (1)
[115] Ibid, 2.

Aboriginal rejection of the White Paper and in the aftermath of the Calder decision, the Federal Government began changing its policy direction on land claims. As Tennant notes, the Federal Government's Indian Claims Commission became the Office of Native Claims with the DIAND given a renewed mandate "to allow the Nisga'a and other non-treaty groups to negotiate directly with the federal government".[116]

In BC, the federal government was willing to enter negotiations but demanded the Province accept some of the responsibility for settlement. The reasoning was: if the Province - as the constitutional 'landlord' - had gained from the loss of Native territory, then they should be one of the parties responsible for compensation. From the Federal Government's vantage point, BC had been the big winner in the original Native land displacement (the Province assumed the riches of the land, but, post-confederation, never addressed Native concerns), and was continuing on this 'selfish' path by failing to acknowledge its part Aboriginal land compensation.[117] The provinces, particularly Quebec and BC, responded that because all matters relating to Indians are defined in the British North America Act as a federal responsibility, then only the Federal Government can be held responsible for historical injustices.[118] If Native people were to be compensated for past wrongs, they argued, clearly this was the Federal Government's burden; this was the foundation of the Federal Government's fiduciary responsibility. Furthermore, the Federal Government not only shirked its full responsibility to

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[116] Tennant, 172.
[117] At this stage in land claim discussions the dominant theme presented by both levels of government was that Natives would be compensated for the extinguishment of their land title.
[118] This section is derived from a series of correspondences exchanged between the Federal and Provincial governments between 1973 and 1975 generously loaned to me by Bob Skelly.

Native people, but was producing another opportunity to delay - and possibly deny - justice to Native people.

The new Barrett Government was unprepared for the Federal Government's change in policy direction. When the Federal Government made it clear (as did the Union) that the Provincial Government was assumed to be a partner in the land claims, BC recoiled from its role as Native claims advocate.[119] At the beginning of the Barrett Government, this defensive position served more as a delay which permitted the Government to learn more about land claims, than as evidence of a hardened position.[120] The Barrett Government was simply not ready to enter any type of negotiations; it was not equipped and needed to buy some time.

The Calder decision, despite its close proximity to the Cabinet, was not followed closely. More than simply being too busy to notice, Cabinet members still viewed Native issues as a predominantly federal matter.[121] For Williams, the Calder judgment seemed counter intuitive: "There wasn't a climate of acceptance of native having some type of pre-emptive right". [122] The fact that BC held the land which was at issue in the Nisga'a land claim seemed of little consequence. For those powerful members of Cabinet who still were very much in the integrationist paradigm, the full impact of the legal changes brought on by the Calder case would not be understood until subsequent rulings in the 1980's.[123]

Between 1973 and 1974 yet another tactic was added to this constitutional game: Barrett and Trudeau began to jockey for position within a potential

[119] Scott interview, April 5, 2002.
[120] Levi interview, May 14, 2002.
[121] Petter interview, May 28, 2002.
[122] Williams interview, April 12, 2002.
[123] Williams interview, April 12, 2002.

negotiation scenario. The Province's position vacillated between 'Native claims are a federal matter' to 'the Province will enter negotiations when the Federal Government assumes its rightful place'.[124] The first position simply delayed and denied the need for provincial involvement. The second position suggested that there was a correct (and obvious) formula for land claims, and the Federal Government was not following them. As time passed the Province would argue both that they could not enter into negotiations where they played an undefined role within an undefined game,[125] and that they could not enter negotiations because the Federal Government wanted to set "predetermined" limits to the Native compensation and the payment formula for that compensation.[126] This inconsistency in the Province's position was partly a matter of divergent and uncoordinated voices within a loose Cabinet structure. Barrett's seeking political advantage in embarrassing the Federal Government was also partly to blame. But, it was not a result of a radical shift in the thinking of the cabinet on the nature of land claims.

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[124] Williams noted that "Barrett loved that line. It was such an easy out." Williams interview, April 12, 2002.

[125] Scott, Gerry. Beyond Equality: British Columbia New Democrats and Native Peoples 1961 – 1979. Vancouver: Simon Fraser University, 1991 (53). In all my interviews with the various cabinet ministers there lingered a deep-seeded mistrust of the true intentions of the federal Liberal government. Levi recalled meeting Chrétien late in 1974 and being told: 'In 1973, I was in the trenches and you were up with the Indians pissing on me. Now I am with the Indians and you are in the trenches, and we are going to piss on you.'

[126] Norm Levi draft response to the Federal Indian Affairs and Northern Development Minister Judd Buchanan of May 14, 1975. In the following arguments I rely on this draft response (which Mr. Levi generously retrieved for me) because I believe it represents an unfiltered expression of the Province's position on land claims, and a relatively untainted expression of Mr. Levi's opinions at the time as he was its original author.

Scott, in my view, overestimates the political sway of the populist sentiments of Barrett, and underestimates the pull of the integrationist ideology on Levi.[127] He argues that the Premier, ever the populist, was 'moving' on treaty negotiations because he saw the Party 'moving' on the issue and believed the public was starting to move on the issue, too. While there is no doubt that the Premier did make a few gestures towards land claim talks, (he challenged the Federal Government to "just name the time and place"), neither he nor Levi was ready to enter talks that would draw any meaning from Aboriginal title. Levi was simply unwilling to accept provincial responsibility for treaty negotiations that recognised Aboriginal title. There is little doubt that he was most sincere in his efforts to 'move ahead' on land issues which stemmed from the LCOC process. But, even if the administrative structure and political momentum gained from a successful completion of the LCOC dovetailed into broader tri-partite negotiations, the substance of those negotiations would have excluded any provincial commitment to recognise Aboriginal title.

Even though Levi was the most forceful proponent of Native issues within Cabinet, he was not committed to land claim negotiations which accepted Aboriginal title. In the draft response to Buchanan's letter of May 14, 1975 Levi makes it clear that the Barrett Government will not accept a definition of Aboriginal title which is a burden upon Provincial title. He comments that, while

[127] This information comes from my interview with him and my reading of his thesis: Beyond Equality: British Columbia New Democrats and Native Peoples 1961 – 1979. Frank Howard, who worked closely with Levi from 1974 on, also argued that BC was 'moving towards negotiation'. Yet, in my conversations with Levi, who holds a very high regard for Howard, he stated that on treaty negotiations Howard had to be "reigned in" because "he was too far out ahead".

I should also point out that although I disagree with Scott on his view of the leanings of Levi and Barrett, I am nonetheless greatly indebted to his work. Originally, I had intended to do my entire thesis on the Barrett government and had completed my research to this end. When I uncovered Scott's work, I felt it was necessary to alter my thesis because of the extent to which our research overlapped and was in accord.

the Federal Government supposes the Province will have an interest, and thus a responsibility in "removing the cloud on the title of land in the Province", the Province does not share the initial assumption of Aboriginal title.

> The concept of Aboriginal title has not yet been held by the courts of the land as being existent and unextinguished in British Columbia, and, indeed to the contrary, it has been held not to exist. For that reason, the Province does not accede to the proposition that there is indeed, as you put it, a "cloud on the title lands in the Province".[128]

In other words, because Aboriginal title does not exist, there is no "cloud" upon the Province, no benefit derived in its removal, and thus no provincial obligation to enter negotiations based on title. Interestingly, he goes on to cite, not the recent Calder Decision, but the 1910 Privy Council case (*Dominion of Canada v. the Province of Ontario*) which, he argues, reaffirms the national character of Native interests. Levi argues that if the Federal Government wishes to recognise Aboriginal title, for the purposes of extinguishment that is its choice. It is not, however, within the legal position, or legislative duty of the Province to accept Aboriginal title. In essence, Levi states, if Canada accepts the notion of Aboriginal title, it assumes sole responsibility for any consequences.

Levi reiterates that as far as the Province is concerned, "Crown lands in British Columbia are held by all the people in this Province, including those of Indian ancestry".[129] Levi further contends that if the Federal Government were to produce terms of extinguishment which meant compensating Aboriginal "interest in any of lands affected by Indian claims" then the Province would accept nothing less

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[128] Levi, Draft Correspondence to Prime Minister Trudeau, May 14, 1975.
[129] Ibid.

than the Federal Government purchasing those lands from the Province.[130] Put differently, if the Federal Government negotiates extinguishment compensation that exceeds the boundaries of Indian reserves (i.e. outside of the LCOC process), then it is up to the Federal Government to pay the bill.

Given the Province's – at least Levi's – position on the legal limits of Aboriginal title, it is important to note that in summer of 1975, the Province announced that they would enter tri-partite negotiations on the condition that all three bodies were equal partners. The Barrett Government was apprehensive that the Federal Government would suggest that it would play only a mediating role between Native and Provincial interests. In this scenario, the Province would meet separately with the Federal Government and negotiate an agreement, while Native interests met independently. Levi argued that the Federal Government was merely trying to divide and conquer by playing one party's interest off against another's.[131] In this context, the Barrett Government saw an opportunity to score political points at the expense of the Federal Government by shifting the onus of 'good faith' back on the Trudeau Government, while the Province denied any liability for Aboriginal title.

In the autumn of 1975, the Barrett Government upped the stakes of the Native land claim question. By June, Levi's key objective, the Cut-Off Lands Committee, was up and running with a two-year time limit to complete its task. With a jump in popularity, because Barrett had seemingly 'taken on the unions'

[130] Ibid.
[131] Levi interview, May 14, 2002.

over wage and price controls, Barrett considered an election call for late fall. Although not a major factor in the overall election campaign, Barrett did mention the government's Aboriginal programs in those northern ridings where Aboriginal issues were more salient.[132] He put pressure on the Federal Government to enter negotiations by making public the May 14 Buchanan letter which suggested that the Province and Federal Government pre-determine the limits of any land to be relinquished, before they began negotiations with Native people. At a November meeting of the Native Brotherhood, the new Federal Minister of Indian Affairs agreed to meet with the Province and the Nisga'a in the Nass Valley January 12, 1976 - one month and one day after the provincial election.[133]

In the three years that the Socreds had been in opposition, they had gone from a seemingly politically spent force to a renewed coalition of 'free-enterprise' interests that was gaining momentum and unifying the right-wing vote. Under the leadership of Bill Bennett, the Socreds easily won the 1975 election by a 10 point margin. When the January 12th meeting took place in the Nass Valley, the new Minister, Allan Williams, did not follow through on the previous government's promise to negotiate. Instead, he went to the meeting, gave a long speech in which he discussed the merits of open dialogue and negotiations, but never actually promised negotiations.[134]

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[132] Howard interview, April 2, 2002.
[133] Levi interview, May 14, 2002.
[134] Howard interview, April 2, 2002. This point is hotly contested. Don Rosenbloom insists that he did in fact make the commitment to negotiate even though he could never have had time to get the approval of the

Buchanan, for his part, stated that the full extent of the Nisga'a claim (particularly the land title aspects) was far beyond his means as a federal minister, and that this was an area for the provincial government to address.[135] While the Federal Government did begin formal treaty talks with the Nisga'a in 1976, without the Province at the table, the scope of those talks was extremely limited and the pace was pathetically slow. It would take a little over 20 years for those same negotiations to come to a conclusion. The Cut-Off Lands Committee, which eventually involved the Province and the Federal Government as Levi had foreseen, did not get scuttled. It was completed in 1977, within the original two-year time frame. Yet, the all important tri-partite structure and process was immediately rescinded when the Socreds assumed power. In its place, a single commissioner was appointed for the two year task. With the electoral promises of the NDP to enter negotiations now worthless and the major projects of the Barrett Government being publicly discredited by Bennett, any hope of the Province entering tri-partite land claim negotiations was lost.[136]

Analysis and Conclusion

This chapter has tracked the development of Aboriginal policy within the BC NDP during Barrett's premiership. In respect to Native policy, the Barrett Cabinet was dominated by two competing approaches within an integrationist paradigm. The first vision, held to varying degrees by ministers such as Williams, Stupich, and

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new Cabinet. Whereas, Howard is equally adamant that Williams made several gestures towards negotiations but in the end was very careful not to promise negotiations. I side with Howard, not because Rosenbloom's memory is any less accurate, but in any case the Socred government from 1977 on adamantly refused any provincial responsibility in treaty negotiations.

[135] Howard interview, April 2, 2002.

[136] Walter Young suggests that Bennett's 'scorched earth' policy was, in fact, more political theatre than substantive policy change.

MacDonald, was founded on a belief in undifferentiated equality. They held that Native people deserved legislation which made them equals with other British Columbians. There was a profound belief that separate treatment, like the 'separate' treatment Afro-Americans had rallied against in the Southern United States, did not mean equal. Although legal equality was integral to this belief system, there remained an additional socialist view that insisted that true equality must also be material and social. The best way to achieve these additional objectives was through the integration of Native people into the mainstream of society. It is too simplistic to contend, however, that this was a thinly veiled attempt to assimilate all Native people. Instead, I think it is important to note that people like Williams and MacDonald viewed Native culture as something that could be maintained as part of integration. As was noted previously, most Barrett Government projects made gestures towards greater Aboriginal influence and control. Nonetheless, the historical relations of Aboriginal people to the land, the collective sense of identity, and a sense of nationhood, were either seen as a remnant of a by-gone past or something which there was no room for in the modern global village. As Bob Skelly remarked, "the politics of identity had not begun".[137] Implicit in this integrationist view was a belief that Native peoples' 'special privileges' - such as reserves - were an act of imperial benevolence. In this tradition, Native people's desperate social and economic conditions called for compassion. Good socialists would see that the state take care of the weakest and most wretched in society. Policy was required to end the misery, and allow Native people to prosper in a modern world.

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[137] Skelly interview, February 8, 2002.

Although other ministers delivered important Native affairs legislation, the projects advanced by Williams and Levi were the most far reaching.[138] Williams' project was founded on the good-will between Native and non-Native people. He saw an opportunity to implement decentralised resource management to benefit a community in need of economic opportunity. Having met with the local Native leaders, Williams believed he had found people with real ability and strong community bonds. In situations like this, Williams argued, the government's role was to give them all the support they could offer. The Burns Lake project was unique because of the particular agreements and leadership, and because it could serve as model for other Native communities. Economic development was primary for Williams. It would help Native societies fortify their social fabric while helping them weave their collective futures into the towns where they lived. Generations of racism and mistrust would only be exacerbated by endless litigation over the "sterile question" of land title.[139] The Burns Lake project sought instead to 'plug' Aboriginal people into the economic and social development possibilities of a rich province. The tone of the project was not so much 'we should do this because we owe it Native people', but more 'we should do this project because it will help a deprive[illegible]ous. He contended that there never were any serious efforts for the government to enter land claims negotiations simply because "We [the government] would have been laughed out of

[138] Don Rosenbloom suggests that the Nisga'a School District has had a profoundly positive impact in the Nass Valley. It led to the creation of a Nisga'a high school which has become a central point of the various communities, and fundamental in re-establishing a sense of pride and self-worth for the Nisga'a
[139] Williams interview, April 12, 2002.

existence".[140] The Calder case, the protests of the Union and BCANSI, and the demands of the membership, for Williams, expanded unrealistic expectations. This sometimes led to "an arrogance on the part of some natives" in spite of the fact the Barrett Government was already the "most sympathetic government to Native people in the history of the Province up to that point, and it was a pretty ugly history".[141] For Williams, treaty negotiations were not legally, ideologically, or politically feasible for the duration of the Barrett Government or any time soon thereafter.

It is difficult to test the claim that the LCOC led to wider treaty talks because the BC NDP did not have a second term. It is clear Levi had picked up on the importance of the 'land question' in a way that was not favored by Williams, but it is decidedly less clear that he was serious about treaty negotiations. If his draft correspondence to Minister Buchanan's May letter is indeed a true indicator of Levi's feelings, and not just the official Provincial vision, then his view of future negotiations was very limited. In such a tri-partite negotiation, the Province would almost play an observer role. It would guard against the Federal Government imposing any unnecessary costs or burdens on the Province. Meanwhile, the Federal Government would be held responsible to compensate Native people for extinguished Aboriginal title (which the Province refused to accept). The Federal Government, in Levi's model, would likewise be obliged to purchase any land or other resources it required from the Province in order to form a treaty. In other words, the treaty process would still be a "federal matter". In effect, the Province

[140] Williams interview, April 12, 2002.
[141] Williams interview, April 12, 2002.

would be happy to enter negotiations premised on absolute federal fiduciary responsibility. Under these terms, the Federal Government loses cash and resources in return for extinguished title. Aboriginal people win compensation for the loss of traditional land. And the Province neither gains nor loses, but is remunerated by the Federal Government for any territorial inconveniences. Levi's logic is thus: because the Province does not recognise Aboriginal title, there is no "cloud" upon Provincial land; because Provincial title is unmolested, there is no provincial benefit in removing that "cloud"; and finally, because there is no benefit from treaty talks, there is no obligation for the Province to take a lead role in those talks.

It is clear from this reasoning that there were flaws in the contention that LCOC project was a bridge towards wider treaty negotiations. Had the Province under Barrett entered tri-partite negotiations in a second term, in my view, those negotiations would have been meaningless. Without an obligation to enter discussions as a legally-binding, cost-baring party, the Province had little motivation to 'give-up' land for the good of negotiations. Moreover, because of the deep mistrust between the Federal and Provincial governments, and the public antipathy for land claims at the time, it is conceivable that the Province would have tried to position themselves as advocates *for* Aboriginal people *against* the Federal Government. That is, they might have once again attempted to take the position that the sole responsibility and authority to correct past injustices to Native people lay with the Federal Government. The important dynamic in the pre-negotiation games between the Province and the Federal Government is that no group would accept being the odd one out. That is, neither Trudeau nor Barrett approved proposals that would make

it, for example, the Province (as advocate) and the Native bands versus the Federal Government (assuming total fiduciary responsibility), or the Federal Government (as limited representative) and the Native people versus the Province (as landlord). When Buchanan proposed meeting with Barrett before negotiating with Aboriginal groups – in a sense, the two governments versus the Aboriginal people – Barrett went public in an effort to disgrace him. The Barrett Government, with Levi in the lead, was unwilling to be seen as 'caving-in' in to federal 'buck-passing' or outright opposing the increasingly more vocal land claim demands of Aboriginal people. As a response the Barrett Government offered, at the very end of their mandate, to enter into treaty-negotiations predicated on Provincial terms which would make those talks all but meaningless.

Where the Barrett Government did negotiate land agreements, through the LCOC, it remained rooted in with their overall legal position. On its surface, the Cut-Off Lands Committee led by Levi sought to meet the demands of several Native communities who felt it was time for them to 'get some of their land back'. And in this important way it was still within the benevolence model of Aboriginal rights. That is, because the McKenna-McBride Committee failed to act in the best interest of Native people when they appropriated the land, the Crown, therefore, must 'give' them more land than it did previously. The Crown, in other words, was a bad 'giver' of land, and that must be corrected. It is perhaps because of this reasoning that the Socreds completed the work of the LCOC when they formed government. The reasoning did not assert Aboriginal title, or a duty on the part of the Province to enter negotiations, just a failure of the Crown to be benevolent.

The success of the LCOC was based not only on the notion of provincial 'goodwill', but on it comparative ease it held over the Province joining treaty negotiations. While Aboriginal organisations had been calling on the Province to enter full-scale treaty negotiations for some time, the LCOC helped serve as a significant gesture on the "land question". It did redistribute land; and this must have seemed like a positive beginning to some Aboriginal people. Yet, it did so, not as act between equals, but in a tradition of paternal 'charity' of the Crown. The LCOC maintained provincial control over how much was 'given' and what was fair compensation. It was cast, and was used by the Party internally and in the election, to portray the Barrett Government as a caring, sensitive government listening to Native peoples' concerns and doing something substantial to help them. Within the Cabinet, within the Party, and within the 1975 election, it was never confused with an offer to enter negotiations. Nowhere in any of the material I reviewed was it stated, suggested or otherwise implied that the LCOC dovetailed into full-scale negotiations. On the contrary, for many in the Cabinet and the public who still held a dim view of Native land rights, it would have been portrayed as a pressure valve on Native land claims: a place where Aboriginal people could blow off some steam, receive some land, and most important, stay within the confines of the traditional Crown-Aboriginal relationship. Because the LCOC was founded on a relationship of benevolence between two unequal partners, it was never a foundation for meaningful negotiations. If Barrett truly was 'moving' on entering the Province in treaty negotiations, a number of tenuous assumptions have to be made. First, the cat-and-mouse games between Ottawa and Victoria were not just a chance for each side to lay the blame

at the other's feet, but an earnest attempt to found treaty talks. Second, the grassroots upheaval at the 1975 Convention sent a clear message to the Cabinet and the Premier, and they were ready to act upon that message. Third, the escalating series of promises which Barrett laid out on the 1975 campaign trail were not merely to win over a few key seats but to ready the Province for treaty discussions. Fourth, the government believed it would serve a second term and could make good on its promises.

The Barrett Government was never ready or serious about entering consequential treaty negotiations. Their relations with the Federal Government were characterised by mutual reluctance to enter negotiations. The Province jostled with the Federal Government on various details of a potential meeting, but in the end their steadfast refusal to accept any "cloud upon Provincial land" meant that any future negotiations would have been meaningless. There was no motivation for the Province to seriously engage in negotiations if it denied any (a) existence of past Aboriginal loss and (b) Provincial culpability for that loss. The Premier's and Cabinet's distance from the Party after three and half busy years in power would have meant that they had little time or patience for 'unrealistic expectations' of a membership that didn't have to answer to the media and electorate on a potentially explosive issue. Aboriginal issues were not a priority in the election, and largely only a concern to those who were Aboriginal or who already supported the Party. The convention's agenda, in other words, might have long-term consequences, but in the short term it could easily be avoided. Moreover, Barrett was populist politician. His strength came from listening to the general populace and

representing those concerns. On the whole, treaty negotiations were not important to the wider electorate. Where it may have surfaced as a more prominent issue, it could be dealt with on a case-by-case basis, as was the strategy during the following election. Finally, the promises made during the 1975 election began to loose credibility as it became increasingly clear that the NDP was headed to the opposition benches. Some within the Cabinet believed that the Barrett Government was a one term phenomenon, and that a second term was never achievable. Others came to understand their fate during 1974/1975, as Liberal members of the Legislative Assembly crossed the floor to join the Socreds. With these forces in place, Barrett was, in a sense, free to say what he wanted as there was little chance he would have to implement what he promised.

The BC NDP lost power in December of 1975 and would not reclaim it for another sixteen years. The following chapters explore that period and the development of BC NDP Aboriginal policy within it.

Chapter Three: Barrett in Opposition

Introduction

The eight years Dave Barrett lead the NDP in Opposition after the 1975 election loss marked the ebb in the prominence of Aboriginal issues within the BC NDP. By 1979 Native issues were relegated to meetings with the Nisga'a and little else. Within the Party, attention was focused on economic issues, jobs, and other traditional socialist concerns. While the momentum that had built up in the latter part of the Barrett Government faded, Native concerns and issues began to re-emerge elsewhere. These changes occurred outside the Party in two inter-related areas: on the federal stage with the 1982 patriation of the Constitution and the introduction of the Charter of Rights and Freedoms; and, the re-assertion of traditional First Nation identities and organisational structures within the matrix of growing demands for Native self-government and a recognition of Aboriginal title.

This chapter will be organised to both illustrate the prominence (or lack thereof) of Native issues during the elections and Party within the eight year period, and examine the events which occurred at the federal level and within various BC Natives organisations which would help set the stage for a resurgence of Native issues within the Party once Barrett stepped down. As a matter of structure, I will firstly examine Barrett's influence on the landscape on BC politics with an emphasis on the 1979 election. I will then focus on the corresponding decline of Native issues within the Party. Once these topics have been discussed, I will explore the events and changes occurring within the Aboriginal organisations at this time. Likewise, I will provide a brief explanation of the initial stages of the constitutional patriation process in light of the struggles to define and interpret Aboriginal rights within the

Charter. I will then return to the provincial level and discuss the impact of the 1983 election on the BC NDP and the role Aboriginal issues played in that election.

Barrett in Opposition

Despite three consecutive election losses Dave Barrett remained leader of the BC NDP until 1984. While the losses met with growing frustration within the Party, they also represented an unprecedented change in the political landscape. The Social Credit Party and the NDP forged mass populist coalitions to the exclusion of all other parties. In that time, the leader, the Party, and indeed the Province's attention was not focused on Aboriginal issues. Economic issues dominated this period. First, the focus was on double-digit inflation and unprecedented unemployment. Later, in 1982, it turned to the re-emergence of neo-liberal economics delivered through the Social Credit government's 'Restraint' package.

By the percentage of popular vote attained, the 1979 election was the most successful election campaign ever run by the BC NDP. For the first time Barrett had attained a popular vote that broke forty-five percent. Few within the Party could believe the NDP's political universe would expand so far; they had easily won the 1972 election with just less than forty percent of the popular vote.[142] The ever affable Barrett was packaged to appear more moderate and sophisticated than previous elections. The wiser, sweater wearing Barrett tried to appeal to the

[142] The term "political universe" defines the greatest number of voters who could conceivably support the policies and electoral platform of a given political Party. In BC, the provincial NDP's popularity limits are often said to end at 40 % of the electorate. That is, 40% of the electorate is the maximum number of voters the NDP can hope to vote for them. Thus, the NDP gears their electoral strategies so that they can mobilise their entire electoral universe, while not alienating various interests within that diverse group. Those people with interests lie outside of the universe are seen not only as politically unattainable, but also any effort to attain their support would undermine the values and interests of those people within the universe.

traditional middle-class swing voter.[143] He promised to eliminate the excesses of the Socreds, while avoiding the alleged extremes of his old administration.

This election was further remarkable as it utterly marginalised other 'outside' campaigns. Perhaps, partly as a result of the coinciding federal election, the NDP and the Socreds accumulated all but six percent of the popular vote. The Liberals were reduced from seven to less than a half a percent of the popular vote (no doubt a result of Barrett's efforts to move to the centre of the political spectrum), while the Progressive Conservatives gained slightly from just under four to five percent of the popular vote. The Socreds, however, marketing an image of efficiency and business-like professionalism, were able to squeak out a victory. They beat the NDP by two points (48.23 % to 45.99%) in one of the closest elections in BC history.[144] Even though Aboriginal issues played a very small role in the election, Barrett made one important move in the Nass Valley which helped him re-secure the seat for the NDP. In April, Barrett toured the North and made arrangements to meet with Nisga'a leaders.[145] Gerry Scott, who at the time was the campaign manager for the successful federal NDP candidate Jim Fulton in the riding of Skeena and who assisted on four provincial campaigns, suggests that Barrett promised to 'move ahead' on treaty negotiations if elected.[146] Barrett, however,

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[143] John Pollard interview, June 3, 2002. Swing voter is a term used to describe a portion of the electorate who have no partisan allegiances and will change their vote from one election to the next. Strategically, both the Socreds and the NDP needed the support of this segment of the population in order to win power.
[144] All election numbers come from the official Elections BC website www.elections.bc.ca
[145] Calder had joined the Socreds in 1975 and successfully retained his seat that election. He ran again as a Socred in 1979 and was defeated by the slimmest of margins - he lost by one vote.
[146] Scott interview, April 5, 2002. The BC provincial election preceded the federal election by 12 days. In this election, it was common, especially within the cash-strapped NDP, to work both the campaigns with the same people. Scott noted that part of the campaign strategy was to ensure that voters made no distinction between the provincial and federal campaigns. Within the boundaries of the federal riding of

does not remember the details of his meeting.[147] He recalls, however, that the most significant aspect of the long meeting occurred when a Nisga'a elder abruptly stated: 'Dave apologises for firing Calder, and we should accept that. Dave, who is your candidate you want us to support'. The point, from the Nisga'a, in Barrett's view, was clear: they had forgiven him for his fallout with Calder, and were now prepared to back whomever the NDP put forward, even though this meant voting against the now Socred Calder.[148] Because there is no text from that meeting, it is impossible to know what was precisely promised. Nonetheless, Scott describes a "sea change" in the mood among the electorate of the Northwest, (particularly among aboriginal voters) premised, among other things, on a promise to follow through with treaty negotiations.[149] Barrett, however, described it more as renewal of a long relationship between the NDP and the Nisga'a. Despite the fact that the NDP's Alan Passarrell beat out Calder by one vote, the substance of the meeting between Barrett and the Nisga'a never had an opportunity to put into practice. Bill Bennett successfully maintained power by a very small margin.

The Party

In the period Barrett was leader of the Opposition, the Party membership expressed its support for treaty negotiations and Aboriginal self-government, but the profile of Aboriginal issues dropped significantly. Although George Watts' 1975 convention speech had given a much greater profile to these issues, the Party was

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Skeena contained all of provincial ridings of Atlin, Skeena, and large sections of Prince Rupert and Omenica.

[147] Barrett interview, May 27, 2002.

[148] Calder had been replaced by James Gosnell as president of the Nisga'a Tribal Council in 1974.

[149] Scott interview, April 5, 2002.

still slow to pull away from its integrationist roots. The Watts' speech represented the apex of the 'Native land question' in the Party while Barrett was leader. The Party did not make any substantial policy changes on Aboriginal rights until 1985. Nonetheless, the membership developed a fuller appreciation of treaty negotiations and Aboriginal self-government.

At the June 1976 BC NDP convention in Penticton, only one motion addressed Native issues.[150] The resolution supported the creation of a 250,000 square mile Inuit section of the Northwest Territories called Nunavut. The motion recognised the territorial aspirations of the Inuit people. The territory, it was hoped, would eventually evolve into a province. Interestingly, the resolution adds that these territorial ambitions would not be based on a "cash payout" but "involve full political and economic integration of the Inuit into Canadian society".[151] The resolution straddled two modes of thinking still prominent in the Party: it recognised a legitimate claim to land by Native people, but it saw the end goal of that land as the integration of those same people into the mainstream of Canadian society. This particular example is also interesting because it is based not on provincial lands, but on lands in the Northwest Territories where the Federal Government has sole dominion over land within a territory. Unlike the lands in question in BC, there was no dispute over provincial obligation vis-à-vis land claims. There was no cloud of obligation or title against the territorial government. In this sense, the resolution did not intrude upon the previous Barrett/Levi position that treaties were a federal matter.

[150] BC NDP. "Land Claims". *Democrat*, June 1976, pg 12.
[151] Ibid, 12.

A few months later a column in the *Democrat* once again addressed land claims in a way that bridged the two paradigms, but this time acknowledged a provincial obligation in the process. The article maintained that "simple justice, as well as rational planning for the future, dictate that the province, representatives of the Indian peoples, and the Federal Government must seek a progressive and just settlement of land claims".[152] The phrase "a progressive and just settlement of land claims" became a catch-all phrase for the principles of land claims within the Party. What still remained less clear was what 'progressive and just' meant. In this article, it represented equality of citizenship based on economic and social equality. The article, however, also advocated for treaty rights based on "ancient hunting and fishing rights". But this call for the inclusion of traditional rights[153] remained within the context that Native people would rely - indeed should not be denied - "full and equal access, according to their needs and desires, to the various services and programs provided through federal and provincial governments".[154] The "needs and desires" of Native people was further acknowledged through a wish to extend Aboriginal self-government to cultural and educational fields. Yet, it is clear from the article that although aboriginal people deserve a greater say in the policy delivered for them, and to certain extent (cultural and educational) *from* them, the bulk of the services would remain in the hands of BC and the Federal Government. In this light, the age old integrationist dilemma remained how to best treat Native people 'just like everybody else'. Although the language began to change, as the

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[152] BC NDP. "Native Rights" *Democrat Supplement*. September 1976, 2.
[153] This may be interpreted as extending the rights acknowledged in the 1963 *White & Bob* case to all non-treated aboriginal people.
[154] BC NDP. "Native Rights" *Democrat Supplement*. September 1976, 2.

promotion of "just and progressive" tri-partite treaty negotiations became the standard phrase to describe proposed negotiations, the content behind the phrase was still left open to interpretation. The sway integrationism would not leave the Party in this period.

In the years before the ascent of Bob Skelly the land question and Native issues in general faded from view within the Party, the *Democrat*, and at Party Conventions. In June 1980 the Party once again affirmed its support to 'settle land claims', but the lone resolution submitted was more of a criticism of the Party's lack of action on Native issues, than a rallying cry to move ahead. The resolution called on the Party to "establish as a high priority the settlement of all Indian land claims".[155] Yet, given its low prominence in the Party's overall agenda, the 1979 election, and the few resolutions that trickled in over the previous few years, the impact of resolution was limited. It represented a lone voice of frustration amongst a party distracted by other concerns. Notwithstanding the lack of significant policy development within the Party, Barrett (along with Graham Lea and Bob Skelly) met with the Haida in 1982. In the lead up to this meeting, Lea and Skelly pressured Barrett to publicly accept the notion of Aboriginal title.[156] At the meeting, he reluctantly stated he would accept the notion of Aboriginal title. The announcement, however, was not picked up as a major news story in Vancouver, it generated little media attention elsewhere, and it was not even mentioned in the *Democrat* or well-known among Party circles. Barrett may have been the first NDP leader to recognise title, but he did so in a far

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[155] BC NDP. "Indian land claims a priority". *Democrat (Convention Issue).* June, 1980, 12.
[156] Skelly interview, June 6, 2002.

off corner of the province, under duress from his colleagues, and made no further mention of it during the rest of his tenure as leader.

Native issues and talk of treaty negotiations were at an ebb in the Party. The appetite for significant recognition of Aboriginal rights was building, but the action within the Party and the attention of the majority of its members was elsewhere.

Aboriginal Organisations

The low station Native issues held within the Party in the late 1970's and into the early 1980's may be explained, in part, by the changes in the organisation of Aboriginal groups within BC at this time. In this period, Aboriginal people begin to shift away from major political bodies and towards local organisations based on shared historic, linguistic, and geographic origins.[157] As Tennant remarks,

> Individuals came to re-emphasize their tribal group as the focus of their personal Indian identities and loyalties ...At the provincial level the tribal groups replaced the bands or local communities as the basis of political representation.[158]

This repositioning did not occur universally or without conflict, however. While, in 1976, BCANSI adopted tribal identity as its central unifying theme (it soon transformed into the United Native Nations (UNN) with a membership which did not distinguish between status and non-status members), the Union remained opposed and apart from this return to tribalism. Instead, the Union continued its attachment to the Indian Act band council structure.[159]

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[157] Tennant, 181. This section summarizes the explanation of Native identity and organisation found in chapter 14 "*Tribalism Re-Established, 1976 - 9*" and "*Forums and Funding, Protest and Unity*" in Tennant's Aboriginal Peoples *and* Politics: The Indian Land Question in British Columbia, 1849 – 1989. UBC Press, Vancouver, 1991.
[158] Ibid, 181.
[159] Ibid, 181 – 186.

Although the Union was in disarray at the end of 1975, it did not collapse. It continued to receive the sole allotment of federal funding for all status Indians in BC and managed to slowly resurrect itself, but never to the powerful position it had assumed in 1974 and 1975. In 1977, the Union elected the former National Indian Brotherhood leader George Manuel as its president. With Manuel as its leader, it opposed the burgeoning tribalism movement.

While the Union continued to press ahead along with the concept of 'one big land claim' for all BC Indians, its support was in decline. More and more individual First Nations began to develop their own land claim case as the Nisga'a had done.[160] Even as land claims were often the long term aim, as Tennant notes, the more immediate goal of social, economic, and cultural regeneration was viewed as a necessary step towards the end goal:

> Yet, even land claims preparation was regarded by most tribal leaders as intimately dependent upon the health and vitality of the local communities. ...most tribal group leaders deliberately chose to wait until their peoples attained renewed unity and their communities were more self-sufficient, and for this reason the leaders devoted much effort to social and economic development.[161]

Many First Nations leaders decided that the process of capacity building was more important, or at least parallel in importance, as pursuing land claims.

While individual First Nations sought their aims on a solitary basis, there were also efforts to arrange an organisation that would help guide the individual tribal groups. In 1979, the Aboriginal Council of BC (AbCo) was founded to provide a "province wide coordinating forum" for First Nations.[162] A year later, an

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[160] I will use to the term First Nations to describe the political, cultural, and territorial home of tribal groups.
[161] Ibid, 181.
[162] Ibid, 191.

analogous organisation, the Tribal Forum, was established and run by largely the same group of people, serving the same membership base. Where AbCo addressed "tribal political development and land claims preparation", the Tribal Forum dealt with administrative issues from bands and tribal councils.[163] Together, these two organisations represented, Tennant holds, the majority of status and non-status Aboriginals by 1980.

Part of the impetus for AbCo's creation was the Union's continued monopoly over federal funding. Despite the success tribal groups had attracting new members, tribal councils, and affiliated bands, they were having little influence convincing Ottawa that they, and not the Union, were entitled to the lions share of federal grants. This conflict over funding allocation and the larger struggle over membership resulted in an intense rivalry in the early part of the 1980s between the Union and the Tribal Forum. It was personified in the animosity between Manuel and Wilson (President of Tribal Forum).[164] The funding divide, along with the different membership structures, and the reliance on different political units and traditions (the band council of the Union versus the tribal councils of AbCo) presented a seemingly impenetrable wall of mistrust. This animosity did not last, however, as an event paralleling the importance of the 1969 White Paper provided a reason to overcome past hostilities and unite Native people along a common front.

The Charter and Aboriginal Rights

[163] Ibid, 199.
[164] Ibid, 192.

1971 marked the beginning of a long and difficult process to patriate a modern Canadian constitution and charter of rights. The Victoria Conference brought all ten provincial Premiers and Prime Minister Trudeau together to generate a Canadian constitution and a limited charter of rights. This round, like many that followed, ended in disappointment. With the victory of the Parti Quebecois and Rene Lévesque in Quebec 1976, the Trudeau government drafted a Constitutional proposal entitled "A Time for Action" and legislated Bill C-60.[165] This Bill led to another series of meetings of the Premiers and the Prime Minister with again inconclusive and largely unfulfilled aspirations.

With the federalist victory in the Quebec referendum and the restored Liberal government under Trudeau in 1980, the Liberals renewed their enthusiasm for patriation discussions. Another failed First Ministers conference provided Trudeau with what he considered reasonable justification to produce a charter unilaterally. Eight of the ten provinces challenged this move in the courts. The Supreme Court of Canada ruled that although the Federal Government was legally entitled to impose a Charter, convention called upon substantial consultation with the provinces. If Trudeau wanted a new constitution, he would be obliged to get the support of all the provinces. On November 5, 1981 Trudeau would garner the support of nine of the ten provinces. The night of the long knives, as it became known, left Quebec Premier Levesque seemingly betrayed and a legacy of bitterness towards Trudeau and the Constitution that exists today. As a result, Quebec refused to attend any of the following First Minister Conferences (FMCs) and put forward no public position on Aboriginal rights within the Charter.

[165] Hawkes, David. Aboriginal Peoples and Constitutional Reform: What Have We Learned? Kingston, Ontario: Institute of Intergovernmental Relations, 1989 (3).

The 1981 draft of the Constitution made no mention of Aboriginal rights. In fact, as Hawkes notes, the "rights of aboriginal peoples, which were contained in earlier draft amendments, had been deliberately excluded at the last minute".[166] Through extensive lobbying, however, Aboriginal rights were re-inserted by the time of patriation (April 1982). There was a significant catch, however, as Hawkes explains:

> the word "existing" was placed before the words "aboriginal and treaty rights" in Section 35 (those rights to be recognized and affirmed), a move that cast a shadow over the true meaning of the section.[167]

The Western provinces, and particularly BC under the Socred Government, were fearful of potential undefined rights (which might lead to new claims and new demands involving provincial lands). They tried to reduce this possibility by limiting Aboriginal rights to those already in place.

At the March 1983 First Ministers Conference the first amendments of sections 25 and 35 were added. The amendments included potential, still undefined land claims. Section 25, which had previously only spoken of the Charter's intent not to invalidate (Section 25 b) "any rights or freedoms that now exists by way of land claim agreement" was now amended to read "any rights or freedoms that now exist by way of land claims agreement *or may be so acquired*".[168] The Charter, in other words, could not be used as an excuse not to negotiate present day treaties. Likewise, Section 35 (3), which addressed land claim agreements, was similarly amended to read "For greater certainty in subsection (1) "treaty rights" includes

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[166] Ibid, 6.
[167] Ibid, 6.
[168] Charter of Rights and Freedoms. Section 25 (amended). Emphasis added.

rights that now exist by way of land claim agreements *or may be so acquired*".[169] Thus, the notion of treaty rights, as part of the bundle of Aboriginal rights, was expanded to include future land claim agreements. At the same conference, it was agreed that the provinces, Federal Government and national Native organisations would convene three more times before the end of 1987 to define and determine the place of Aboriginal rights within the Constitution.

Meanwhile, Aboriginal people began to express their growing reservations for the Charter. In BC, the patriation of the Constitution became the central unifying event for the previously hostile Tribal Forum and Union. There was a shared belief that the new Constitution would undermine, among other things, the legal concept of Aboriginal title and cut loose the Federal Government's traditional fiduciary responsibility to Native people.[170] Moreover, the draft Constitution "provided no clear protection for aboriginal rights and did not recognize unextinguished aboriginal title".[171] As a response, a new Aboriginal governing body formed in January 1983. The BC Aboriginal Peoples' Constitutional Conference (APCC) was created to deal primarily with Aboriginal title and rights. It took the position that before the first meeting of the First Ministers Conference (which addressed aboriginal issues) that Aboriginal title "must be immediately entrenched in the Constitution and protected with a consent clause".[172] This request was not carried out. Instead, the First Minister's Conference accepted the notion that future, still largely undefined Aboriginal rights existed and would require treaty

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[169] Emphasis added.
[170] Tennant, 202.
[171] Ibid, 203.
[172] Ibid, 203.

negotiations. The outcome of the March 1983 conference[173] was unique in one respect - it successfully amended the Constitution. It was, however, entirely like the conferences which followed by leaving all parties at the table dissatisfied with the results.

The 1983 Election

In 1983, the NDP was thought to have had an excellent chance of winning the provincial election. Going into the election, the NDP and Socreds were running even in the polls as both campaigns focused on jobs and the economy. The Socreds had previously announced a series of neo-liberal economic measures widely known as "Restraint". Alan Garr, writing on the publicity strategy around those measures, describes Restraint as a return to economic principles rekindled by U.S. President Reagan and British Prime Minister Thatcher, and a marketing strategy to give Bill Bennett a strong personality that set him apart from the eminently likeable Dave BarrettThe people of British Columbia would be set up to believe that what they

> needed was not some cuddly, humorous teddy bear with a heart, but a tough, inflexible son of a bitch that you wouldn't be caught dead with at a Canucks hockey game. Toughness was sold as a virtue. Nice meant weak. Humour was a handicap. Restraint was a sado-masochistic exercise: The tougher Bill Bennett got, the better you felt.[174]

While Bennett continued to campaign along this "tough guy" theme, Barrett altered the outcome of the election in one sound-bite.

On April 21, with a little less than two weeks left in the election, Barrett announced that should he win the election he would end the 'Restraint' program:

[173] The first of the series of Conferences ordered under section 37 of the Constitution.
[174] Garr, 50.

"The Rubber Room is dead. We would phase out the stabilization program as quickly as possible. It has a year to live".[175] Up to this point, Barrett had managed to evade the question or be sufficiently vague so it did not cause headlines. Barrett dismissed Restraint on a hunch. He thought it would give the NDP support of the swing voter and allow them to win the election. He was wrong. For the Party, the remark was devastating. Undecided voters became fearful of the NDP.[176] Barrett had seemingly confirmed the Socred's attacks: he was either unable or unwilling to make the necessary difficult choices of government. This inability, the Socreds advertised, would lead the province into financial chaos. Although, the election was still only lost by five percentage points, 44.94 per cent of the total vote to 49.76 per cent, the loss was utterly demoralising. The sense among Party members was that the election was won, and in one fell swoop Barrett had lost it. Exhausted and disheartened Barrett resigned as leader and retired from provincial politics in 1984.

Conclusion

For the BC NDP the period between 1976 and 1983 saw Aboriginal issues pushed to the back corners of the Party's agenda. With Barrett as leader the Party turned its attention to those more traditional issues about which he was more passionate. The 1979, and even the 1983, elections were remarkable because they saw the NDP universe expand from the 40 percent plateau to upwards of 46 percent. Barrett's populism, his ability to make the casual swing voter feel comfortable voting NDP, was a talent that allowed him to stay on as leader for as long as he did.

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[175] Garr, 83.
[176] Pollard interview, June 3, 2002.

The mass party he had helped forge now had the infrastructure and organisational capacity to compete directly with the Socreds. As leader, Barrett changed the political landscape of BC; it was now a two party system with each side capable of garnering the support of just under half of all voters. Barrett had been able to form a large popular coalition, somewhat like W.A.C. Bennett had done for the 'free-enterprise' vote twenty years earlier, from what had been a fragmented voting block before. Upon resigning as leader, Barrett left the Party not only strong enough to win over government in the next election, but also haunted by three straight election losses. The new leader would be left with the task of dealing with those ghosts.

The small presence Aboriginal issues played within the Party during Barrett's run in opposition was a result of a particular brand of populist politics that marked Barrett's style. It is also important to note that although Barrett had little personal interest in Native issues (this is not to say he was unsympathetic, but he was more interested and comfortable in other areas), he was also in the position of reacting to the Socred government. Outside of the continuation of the Land Cut-Off Commission, the Socreds had done very little to address Native concerns. If Barrett was not particularly interested in debates around Aboriginal rights and title, the Socred government showed utter disdain for any discussion or action on that front. As will be discussed in the next chapter, they demonstrated contempt for notions of Aboriginal rights and title. Throughout most of the 1980's they opposed entrenchment of Aboriginal rights in the Charter, and resisted calls for BC to enter treaty negotiation talks. Whereas, the patriation process began to highlight the Socred's antipathy of Aboriginal rights, the full extent of their position was not

well publicised or used against them electorally until after Barrett stepped down. It was a topic that neither the Socreds pursued (except to oppose), nor Barrett felt comfortable or interested to pursue.[177]

This same period is also marked by a re-organisation and re-identification of Aboriginal people across BC. Where the period between 1973 through 1975 was a time of relative stability among Native groups who directed their energies outward, the period following to the early-1980's was marked by an uneven process of cultural and political renewal. From the mid-1970's on, difficult and often fractious attempts were made to reorganise along long-standing linguistic, territorial, and cultural First Nations. The long term goal of self-government and a return of traditional territories was mitigated by an equal effort to build capacity (along various fronts) in Native communities. The belief that only a strong, renewed, and vibrant First Nation could adequately pursue treaty process meant that efforts to educate the public and lobby the politicians took a secondary role for many, but not all, First Nations.[178] The internal division caused by Aboriginal efforts to redefine themselves along 'tribal' lines was overcome, to a certain degree, by a larger solidarity to define Aboriginal rights within the Constitution. As new leaders emerged within the major Native groups in BC, they focused on articulating a national vision of Aboriginal rights. Between 1980 and 1982 only one First Nations (the Tahltan) submitted a

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[177] Barrett did not, in fact, support the patriation of the Constitution but for reasons not directly related to Aboriginal rights. Barrett interview, May 27, 2002.

[178] As the Nisga'a and the Nuu'chah'nulth were often considered leaders in this process, they were better able to pursue other their demands in Ottawa, in Victoria, in the media, and in the Courts. Throughout this whole time, for example, the Nisga'a remained in treaty talks with the Federal Government, despite the knowledge that little significant negotiation action on treaties could occur until the province joined the discussions. They remained at the table, in essence, to keep the weak flame of the treaty process alive. Rosenbloom interview, January 28, 2002.

land claim before the Federal Government.[179] The process of defining Aboriginal rights within the Constitution became the priority for many BC Aboriginal groups. The attention Charter talks brought gave Aboriginal organisations a means to make their claims known before all of Canada. As these efforts built momentum across the country, they played an important role bringing more attention to Aboriginal rights in BC. Renewed First Nations began to see the submission of their land claim before the Federal Government as a pivotal act of empowerment.[180] Growing impatience with the slow pace of treaty negotiation (wherein only claim from each province would be addressed at one time) lead many First Nations to more vocal and disruptive forms of protest. These protests also began to turn to BC's refusal to enter the treaty process. The capacity building efforts of many tribal councils would soon bring attention back to Native issues at the provincial level. The period of relative quiet and regeneration would soon end. Aboriginal rights, especially those centred on Aboriginal title and self-government would rise in the non-Aboriginal public consciousness and would soon play a more important role in the BC NDP.

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[179] Tennant, 205.

[180] Ibid, 205. Tennant suggests that First Nations ready and capable of submitting a claim "signified that claimant group was in political fighting trim".

Chapter Four: Skelly and the Rise of the Significant Periphery

British Columbians didn't like the idea that they had to settle with Aboriginal people. My view was that it is right, and it should be done, and ultimately it will have to be done. If we wait till the courts tell us how it has to be done, we're not going to like how it has to be done, and the Indians aren't either. Nobody is going to like it.
Former BC NDP Leader Bob Skelly[181]

The resolution to this conflict must include ratification of the Meares Island Tribal Park and grant local self-government to the Native Peoples. By these actions we treat the Natives not with the prejudice of the past but with a trust in their wisdom and trust in our future. This social justice will be ecological justice.The Friends of Clayoquot Sound[182]

There is a problem about tenure that has not been attended to in the past. We are being asked to ignore the problem as other have ignored it. I am not will to do that.
Justice Seaton, *Guerin Decision*[183]

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[181] Skelly interview, June 6, 2002.
[182] Friends of Clayoquot Sound and Western Canada Wilderness Committee. "Meares Island: Protecting a Natural Paradise." Vancouver: Friends of Clayoquot Sound and Western Canada Wilderness Committee, 1985 (62).
[183] Justice Seaton in Tennant, 224.

> Many of our first citizens are pursuing not only ownership of land, which they generally define as "aboriginal title," but also various "aboriginal rights" over lands, water, and resources – natural assets that most British Columbians believe should be controlled for the benefit of *all* British Columbians.
> Former Social Credit Minister, Garde Gordom[184]

Introduction

In 1984 the New Democrats elected an unlikely candidate as their leader. Bob Skelly was not a populist. He was not known for his sense of humour or charm. Skelly had been an MLA since 1973, but was very much on the outside of the Party establishment. Instead, he was an environmentalist. He was passionate and knowledgeable about Aboriginal rights. Through his position as leader, he was able to promote Aboriginal rights both inside the Party and externally to the public to an extent not seen before. Yet, the rise of Aboriginal issues inside the Party and in the larger arena of BC politics was not only a result of Skelly's leadership. Debate around Aboriginal rights blossomed in this period because of four interconnected events: one, Skelly made it one his leadership priorities; two, a coalition of Aboriginals and environmentalists commanded the attention of the public, the courts, and the politicians through successful protests and blockades; three, Aboriginal groups won a series of precedent setting legal challenges; and four, the Social Credit government could no longer ignore Aboriginal issues and went on the political offensive to reclaim Aboriginal issues to their political advantage. The aim of this chapter is to draw out the events, the reasoning, the strategies, and the people which spurred on this period of change both within the BC NDP and wider sphere of BC politics. Indeed, as this chapter points out, the

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[184] Garde Gordom in Tennant, 231.

changes in one area are closely connected with the others. To help make my way through this nexus of events I have divided the chapter into four sections. The first section examines the major components of Skelly's successful leadership bid. It then examines the measures Skelly introduced to promote Aboriginal rights within the Party and the opposition he faced, particularly from members inside his own Opposition Caucus, for doing so. I argue that although he took bold strides to announce the Party's position as one which recognised Aboriginal title and a provincial obligation to enter treaty negotiations, he was unable to create the policy apparatus needed to provide a comprehensive plan on this issue. I argue that Skelly was successful in his efforts to build and direct popular momentum for Aboriginal rights within the Party, but unable to steer this populism into a well understood and well defined position on Aboriginal rights.

The second section explores the coalition of Aboriginals and environmentalists who sought to protect traditional First Nations territory from logging. The diverse motives that drove the coalition and the tensions which threatened this relationship are examined. I hold that each partner not only gained clout because of the public profile of the protests, but in the process of working together where able to learn from one another. As environmentalists gained a fuller appreciation of Native rights, and the struggle Aboriginals pursued to achieve those rights, they would deepen the Party's solidarity with Native struggles. Indeed, as the first section explains, the foundation of Skelly's support inside the Party came from environmentalists, and as their relations with First Nations grew stronger, they became more determined to push the Party ahead on Aboriginal rights.

The third section, which investigates the major Aboriginal legal cases and rulings between 1984 and 1986, draws directly from the previous section. The Native frustrations which had boiled over into protests and blockades eventually lead to important, precedent setting court decisions. At the same time, First Nations began to assert a wider vision of Aboriginal title through the courts and in Band declarations. They did not seek legal rulings on local problems, but for the court to acknowledge, define, and defend their larger Aboriginal rights. And the courts stepped into debate. They expanded the notion of a federal fiduciary responsibility. This was done in order instigate tri-partitite negotiations which would address unceded Aboriginal territory. The courts, in other words, took the position that Aboriginal title could be ignored no longer and that the federal and provincial governments had an obligation to begin negotiations with First Nations.

The fourth section delves into Bill Bennett's Social Credit Government response to the many events which occurred around them. This section firstly attempts to show an historical link between the views and policy of the first Lieutenant Governor of British Columbia, Joseph Trutch, and the reasoning and public statements of the Bennett Government. The Trutch legacy, I argue, continues through the analysis and arguments of the Socreds of the mid-1980s. The Socred's view and public position on Aboriginal title is then likewise examined. I contend that in the face of increasing Native protests and legal scrutiny, the Socreds traditional dismissal of Aboriginal title goes through a five stage metamorphosis. The last stage of this development is based on a political calculation. This calculation suggests that even if Aboriginal title exists and that the provinces have

an obligation to enter treaty discussions, the majority of the non-Aboriginal public would be unwilling to make any serious concessions to a treaty process. From this view, Bill Bennett made the political and electoral decision to discredit Native rights, treaties and the political organisations (the BC NDP) which would defend them. In short, when the Socreds realised that Aboriginal rights were impossible to ignore, they tried to make it a wedge issue which would divide the public and defeat the NDP.

The conclusion returns to the development of Aboriginal rights within the BC NDP and the 1986 election. It points out the polarizing effect Bennett's position had within the BC NDP. It further notes the challenge Skelly faced waging a political battle on a front where he would need to educate the general public, rise above the cacophony of sensational media images, and overwhelm the fear mongering Socred sound bites. The conclusion summarises the 1986 provincial election. In a personality based contest, the charismatic Bill Vander Zalm swept to a landslide victory. Despite Aboriginals issues being largely ignored in the 1986 election, they played a significant role in BC politics between 1984 and 1986.

Skelly as Leader

Bob Skelly's leadership of the BC NDP was a crucial element in the promotion and development of Aboriginal rights within the Party. In 1984, he was the surprise victor of the leadership race which replaced Dave Barrett. As leader, Skelly took personal ownership over Native issues. He officially and publicly recognised Aboriginal title while chastising the Social Credit government for

refusing to enter treaty negotiations. While Skelly elevated Native issues publicly, he failed to organise the Party's conventions and policy forums to follow through with the changes he suggested. Disorganisation and failed efforts to create clear Party policy objectives for Native issues plagued this period. Nonetheless, it had not been since 1969 and the leadership of Thomas Berger, had the leader had led the Party on Native issues.

At the beginning of the BC NDP's leadership race, Skelly's chances seemed slim. He, nonetheless, declared his candidacy for leadership almost as soon as Barrett stepped down. He believed that in order for him to be taken seriously, he would have to gain political momentum from the outset of the contest.[185]

Although Skelly had been an MLA for Alberni since 1972, he was not a Party 'insider'. Because he had rarely attended for Party Conventions, nor had he actively courted Party activists, Skelly believed his success lay with attracting delegates from outside the two dominant factions within the Party.[186] As an MLA, and later Environment critic, he was a devoted opponent of the Socreds' environmental policy. In this work, he met with environmentalists at the numerous protests, and built up a network of supporters from those meetings. Like Skelly, these people also saw themselves as residing on the fringes of the Party; they were not active on the Party's Provincial executive, nor well known amongst Caucus members. When Skelly ran for leader, he knew he could count on this community to form the base of his campaign. Also vital to Skelly's successful leadership bid was the recruitment of Gerry Scott as his campaign organiser. Scott's credentials within and without the Party

[185] Skelly interview, June 6, 2002.
[186] Skelly interview, June 6, 2002.

were well known. He had served as a successful campaign manager for the federal and provincial NDP. He worked for the BC Federation of Labour. He was also an environmentalist with strong connections in that community.[187] As Skelly surmised, "from the point of view of an organiser, I don't think there was a better organiser in the Party".[188] Had Bill King entered the race earlier, Scott would have worked on his campaign.[189] Skelly's decision to put his name out quickly reaped its first reward – Scott joined Skelly's campaign. It would turn out to be one of the chief factors in Skelly's success. With Scott as the campaign manager the Skelly campaign gained valuable contacts, much needed credibility, and one of the best organisers in the Party.

In the lead up to the May 1984 leadership convention, the February edition of the *Democrat* provided a column for all leadership candidates to present themselves to the NDP readership. Skelly made a clear pitch to connect with his "natural constituency." He stated that his first "policy and leadership" goal was to:

> Reach out in a positive way to the women's movement, to youth, to environmentalists, to the unemployed, and the peace movement. We must incorporate their objectives into ours. To neglect this would be to abandon our natural constituencies in the struggle for freedom, equality, and responsible stewardship of our province.[190]

The appeal served as a kind of meta-advertisement. It outlined the profile of the type of Party member Skelly sought to represent, and the type of person outside the Party who he wanted to attract. By making this group his number one priority, he pointed to the value he placed in the loose coalition of people who remained (to

[187] Petter interview, June 12, 2002.
[188] Skelly interview, June 6, 2002.
[189] Skelly interview, June 6, 2002.
[190] Skelly, Bob. "Leadership Profile." *Democrat*, February 1984, 6.

varying degrees) on the fringes of the Party. Yet, by distinguishing "their objectives" from "our objectives" he drew an imaginary line between what the Party under-represented, and what it could represent. His aim was to convince the reader (most likely a Party member) that this "natural constituency" was not well represented in the Party, and with their support, he could bring this group back to their natural political home. The irony was that most of the people reading the article were already active supporters who were already "home". Because of this, the underlying message was not so much about bringing new supporters in, but more to announce to the "social justice" constituencies within the Party that Skelly would not only bring the Party more in tune with their values, but also by attracting more likeminded people, expand their influence within the Party. Skelly's strategic efforts in the lead up to the convention, in short, were to attract people on the fringes of the Party. Skelly assured them that their lesser know interests would be pre-eminent should he become leader.

The members on the ideological outer reaches of the Party, however, were growing in number. Their values were spreading among the wider membership base. As Scott states:

> the people who were largely on fringes of the Party in the late 1960's and 1970's were now coming of age. A new generation, with different priorities, was becoming the establishment.[191]

This generation was more sensitive to environmental issues, more aware of Aboriginal rights, and less likely to come out of the class tradition of previous

[191] Scott interview, April 5, 2002..

generations.[192] As long time worker and former NDP field manager John Pollard recalls, "there was a mode for change with the Party".[193] This generational appetite for a change allowed Skelly one advantage which he would ply to great effect: his past experience did not tie him to the old regime, while his long-time concern for environmental and aboriginal issues gave him the sympathy of a growing number of people within the membership base.

Despite Skelly's efforts, two major competing power blocks within the Party were widely expected to dominate the leadership race. The first group, known by some as the 'the Cocke Machine', consisted of the powerful affiliation of Party organisers and executive members who had governed the Party since the mid-1970's.[194] Their candidate was Victoria lawyer David Vickers. The second camp was led by long-time Barrett supporter and former Labour Minister, Bill King. Although King declared late in the race (some felt this was his undoing), he had the support of numerous Barrett loyalists who had been influential in directing Cabinet and then Opposition Caucus while Barrett was leader.[195] The leadership contest seemed to be a race between the traditional Barrett dominated Caucus and the Cocke dominated Party executive. Labour, it should be noted, did not play a central role. Its support (not necessarily a unitary body to begin with) was divided relatively evenly between the major leadership campaigns.[196]

[192] As David Mitchell notes, the 1986 election saw a large number of professionals and particularly educators work and run for the Skelly led NDP. David J. Mitchell. Succession: The Political Reshaping of British Columbia. Vancouver: Douglas & McIntyre, 1987 (152).
[193] Pollard interview, June 3, 2002.
[194] As I mentioned in previous chapters, the Cockes, Yvonne and Dennis, were at the centre of this group. It is not clear were the term "Cocke machine" came from. Skelly suggests that Margaret Birrell supporters came up with the phrase. A popular button among some people who opposed the traditional influence of the Cockes read: "Stop the Cocke Machine." Pollard interview, June 6, 2002.
[195] Barrett, it should be noted, argued that he never officially endorsed any candidate. Barrett interview, May 27, 2002. Despite Barrett's remarks, amongst the larger membership base the perception was that Barrett supported King and the Cockes supported Vickers.

The first ballot of the convention seemed to confirm most observers view that the leadership was a two person race. Vickers received 269 votes, King 240 votes, and Skelly came in a distant, but respectable, third with 171 votes. Skelly's campaign strategy, however, did not target delegates' first choice votes. Instead, Skelly targeted 'second choice' votes.[197] In preparation, Scott had collected a long list of second choice votes from the delegates of lesser known leadership bids. Scott reasoned that once a particular candidate was forced off the ballot, their delegates would want to have a candidate to support. The Skelly team focused the lion share of their pre-convention efforts on securing those delegates. They even went so far as to recruit delegates before their original candidate had been driven off the ballot. In this case, the delegates would vote for their initial candidate on the first ballot, but then regardless of the results from that vote, they would come en masse to Skelly in the second ballot.[198] After the second ballot, Vickers maintained his lead with 308 votes, followed by King with 263 votes and Skelly with 218 votes. Coming into the third ballot, the King forces assumed that Skelly would eventually come over to them on the last ballot. From this assumption, the King forces sustained friendly relations between the two camps. But, Skelly's strategy, to rely on second choice votes, began to reap rewards. After the third ballot Vickers held a slim lead with 339 votes, but Skelly jumped ahead of King. He garnered 312 votes to King's 292.

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[196] Pollard interview, June 6, 2002.
[197] At NDP leadership conventions, the candidate who receives the fewest votes after a round of voting is forced to resign his/ her candidacy. After each successive round of voting, one candidate will be pushed out of the race. Their supporters will thus be forced to either choose not to vote or vote for another candidate. These "second choice" delegates were specifically targeted by Skelly's campaign team.
[198] Skelly interview, June 6, 2002.

The fourth ballot was not the final ballot, but was the deciding ballot. Dave Stupich was eliminated from the race. His 114 supporters divided their support almost equally (assuming all three camps maintained their previous delegates) leaving King 16 votes shy of Skelly for second place. King was out of the race. After a short meeting, the King supporters decided to support Skelly.[199] Once the move was on, it was clear that Skelly would win. On the final ballot, Skelly won with 606 votes to Vickers' 452 votes. Ultimately, Skelly won the leadership because his campaign convinced the more traditional King supporters, that should they not win, they would find a home in the Skelly camp.[200] Scott's ties to the BC Federation of Labour helped assure King delegates that although Skelly wasn't in the same tradition as King, he better represented certain traditional socialist values (particularly on labour questions) than the more centrist Vickers. Skelly had surprised the convention. His successful second choice strategy provided Skelly with enough support to make it to the final ballot against Vickers. Once there, victory was assured.

Skelly represented a new identity and leadership style. His leadership victory brought in a new vision to politics. As Allan Garr remarks

> Skelly was the new generation on the left. He brought with him a high-tech approach to politics, The Pink Machine, which viewed confrontation as a weakness that only played to the Tough Guy's [Premier Bennett] strength.[201]

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[199] BC NDP. "Skelly: Convention names Alberni MLA leader." June, 1984, 6.
[200] Scott interview, April 5, 2002..
[201] Allan Garr. Tough Guy: Bill Bennett and the taking of British Columbia. Vancouver: Key Porter Books, 1985 (186).

The Party's two tectonic plates had buckled under the weight of a new generation of activists and leaders coming of age within the Party. As Pollard states:

> Skelly was different, uniquely different, because he was actively promoting environmental issues and actively promoting justice for Aboriginal people and that was new for the Party. Skelly was able to touch a chord with people even though he may not have been there first choice. It was easy to go to him because he had that substance, a handle on those issues that people felt the Party needed to embrace.[202]

Put differently, the membership desired a shift of values and saw Skelly as the voice of that change. Although it is easy to overwrite the consequences of a leadership convention, Skelly's victory was at least as much about the values delegates assumed he carried, as it was about choosing the best leader of the Party. He was not widely viewed as the "best leader" of the Party by many delegates, but he was a candidate the majority of delegates could accept. In the two years leading up the 1986 election, Skelly's values and leadership would come under greater scrutiny both inside the Party and without.

As leader, Skelly elevated the status of Native issues both inside the Party and outside amongst the electorate. While the Socred's 'Restraint' package sunk Premier Bennett's popularity, Skelly's popularity rose. With this climb in support, Skelly was in a more powerful position to inject his enthusiasm for Aboriginal issues into the mainstream of public debate. Yet, in doing so, he risked losing not only public support, but also the unity of his Caucus. Meanwhile, despite his efforts to get the Party to adopt policy which recognised Aboriginal rights to a greater extent than ever before, the Party's policy forums on Native rights failed to replicate the

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[202] Pollard interview, June 3, 2002.

changes which occurred at leadership level. In this respect, Aboriginal rights saw substantial growth in the profile the BC NDP gave them, but little policy development.

The most dramatic symbolic move Skelly made on the Aboriginal rights front was to take it up as part of his critic portfolio. As Leader of the Official Opposition he was responsible for the role of Premier's critic. To this job, he added critic role for Native Affairs. At this point, there was no stand alone ministry which represented Aboriginal issues. To adopt the critic portfolio for a ministry which did exist was a powerful symbolic gesture on the part of the Opposition. It brought prestige to the issue and contrasted with the Socreds traditional disdain for the topic. Skelly saw Aboriginal issues as a matter of decolonisation and the government, the Opposition, and all British Columbians had an obligation to continue through with this process.[203] For Skelly, treaty negotiations were an inevitable part of this decolonisation process, the Premier (and thus his parliamentary opposite) would naturally take the lead role:

> We've signed treaties with Aboriginal people. We treat them as if they were a sovereign people. You can only sign treaties with sovereign entities. Therefore, it's the head of the state that deals with Aboriginal people, and so it will be attached to the Premier's office.[204]

Although he didn't articulate this nation to nation concept as a public position, he nonetheless believed that the issue warranted the attention of the Premier's office.

Skelly's decision to take on the Aboriginal critic role did not sit well with prominent members of the Opposition Caucus. Both Bob Williams and Dennis Cocke were opposed to the move. They argued that Skelly was needlessly setting

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[203] Skelly interview, June 6, 2002.
[204] Skelly interview, June 6, 2002.

himself up as the central target of Socred criticism.[205] Aboriginal issues were, in their view, an irreversibly unpopular issue; they believed Skelly was taking an unnecessary risk. Instead, they suggested that the critic portfolio should go to someone with less profile in the Opposition chain of command. Consistent with Williams' criticisms when Harcourt became leader, he believed Skelly was 'too far out front of the public' on an issue which would kill the Party's popular support should the Socred's make it an issue. Although aware of the potential risks he took when he assumed the Aboriginal critic role, he believed that "nothing else on the Caucus ladder [was] as important as this".[206]

Skelly acknowledged the risk he took. Citing a survey Brian Mulroney had done around popular support for the James Bay Cree, Skelly noted that "when native people were seen as 'charitable cases' then British Columbians were willing to help them. But when Indians talked about their rights, Canadians as a whole get turned off completely".[207] While people like Williams feared a Socred lead backlash, Skelly was determined to include Aboriginal rights in the main of NDP politics. To this end, he spoke publicly of the need to recognise Aboriginal title and for BC to enter treaty talks. For Skelly, it was important both politically and historically that the Socred's anti-Aboriginal position be challenged.

In the lead up to the May 1985 convention, the *Democrat* published a special supplementary report which outlined the BC NDP's preliminary election platform entitled "A new Beginning for British Columbians". The report, although primarily focused on unemployment, resource industries, and perceived Socred

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[205] Skelly interview, June 6, 2002.
[206] Skelly interview, June 6, 2002.
[207] Skelly interview, June 6, 2002.

mismanagement, also broke new ground in the field of Aboriginal rights. Under the title "Native People" the article pledged that an "NDP government will recognize aboriginal title and seek early negotiations with Native people and the federal government".[208] For the first time, the Party had publicly pledged itself to treaty negotiations and Aboriginal title as part of its overall election agenda. As mentioned in the previous chapter, Barrett had accepted a similar position, but this time it was not obscured by distance or circumstances. The leadership had proposed the concepts as standard practice for relations with *all* First Nations and not merely in 'one offs' around the province. With this change, Skelly had expanded the Party's vocabulary around Aboriginal rights and opened the possibility for a new series of economic arguments to put aside the fears of many British Columbians.[209]

This change, it is important to note, was not a result of convention resolutions. It did not come from the grassroots of the Party, as leading proposals in the mid-1970s had done. The platform presented in the *Democrat* came from the leader. The section on "Native People" was written with a particular response in mind. It announced the new policy statement (which recognized Aboriginal title and provincial involvement in negotiations) but then immediately proceeds to economic reasons (particularly in the resource sectors) why treaties are economically significant.

> The longer settlement is delayed, the more intense and divisive the conflict will become. Meares Island will be the first in a long series of conflicts which will interrupt operation of our resource industries. The only way to deal with the issue is to negotiate.[210]

[208]BC NDP. "A New Beginning for British Columbians." *Democrat*, April, 1985. 9.
[209] Harcourt would make economic benefits the central theme to his arguments for treaty negotiations.
[210] BC NDP. "A New Beginning for British Columbians." *Democrat*, April, 1985. 9.

In the last lines of this section, the reader is also assured that "no one will lose homes or property". This was a clear response to accusations Premier Bennett had made during the previous provincial election. The overall message the positioning paper presented was clear: Aboriginal title and treaty negotiations were not only a matter of justice, but also an economic necessity which would not threaten private property. More that just unambiguously stating the BC NDP's position, the proposal begins to articulate an economic justification for treaties, which countered the Socreds' treaty opposition - treaties secure resource jobs, uncertainty threatens them. At the same time as Skelly took the lead to promote Aboriginal rights, the Party attempted to construct an over-arching policy paper on Native issues. Task forces were established to meet this objective, but they never reported back to the Party. As early as the May 1984 convention, a resolution called for the adoption in principle of "Indian self-government" and a committee to consult with Aboriginal and non-Aboriginal communities in order to "report on action necessary to implement Indian self-government in BC."[211] Although the committee's aims were far reaching, the task force did not report to Convention the following year.

At the 1985 Convention another resolution went out which again suggested an Aboriginal rights task-force be established "to conduct in-depth policy work".[212] The mandate and time-frame were the same as the previous year's resolution, and met with similar results. These committees' failures were further evident in 1986, when the yearly convention carried no reference to an Aboriginal policy body. Moreover, no records I could find suggest a task force that either traveled the

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[211] BC NDP. "Policies for People: Policies of the BC NDP Update: 1982 – 1984."
[212] BC NDP. "Native policy a priority". Democrat, June, 1985. 7. Resolution H-85-1.

province or submitted findings to any of the conventions between 1984 and 1986. It seems likely, given the lack of evidence to the contrary, that although well-intentioned and ambitious, these Aboriginal policy forums did not alter or reconstruct the Party's Aboriginal policy.

Instead, the task of enlarging the scope and direction of Aboriginal policy lay with the leader. While Skelly was ambitious in this respect, he could also count on the growing numbers of members who began to take an interest in Aboriginal issues. Native rights were slowly infusing themselves ion the core principles of the membership base. This was especially true amongst environmentalist within the Party. Within the Caucus, however, there were still holdovers from the Barrett Administration who were uncomfortable with a fuller recognition of Aboriginal rights. They saw the popularisation of the issue as a potential electoral disaster. On this issue, however, Skelly was determined to push the Caucus, educate the Party, and convince the NDP universe that that the province needed to be decolonised: "British Columbians didn't like the idea that they had to settle with Aboriginal people. But, I knew that it's right, and it should be done, and ultimately it will have to be done."[213] In the two years Skelly was leader, unemployment and job creation were the two dominant issues that Skelly, the Caucus, and the Party addressed. Nonetheless, Skelly was successful in using his authority as leader (and likely next premier) to bring Aboriginal issues to the centre of the Party's attention. As Scott, who was Party Secretary during Skelly's run as leader, suggests, Aboriginal rights took a

> quantum move forward, if not with policy in the formal sense, certainly in the profiling of the issue. The priority of the issue rose. The public

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[213] Skelly interview, June 6, 2002.

> development of the issue rose.... It became one of the top dozen issues for the leader of the Party.[214]

Yet, the growth of the issue inside the Party did not come solely from events that occurred within the Party. The next section examines those events which helped furnish the context for the momentum built up inside the BC NDP.

In the period Skelly assumed leadership of the Party, Native issues took on a greater role in the political imagination of British Columbians. In this time, renewed Native protests lead to court action and significant advancement of Aboriginal rights within the legal system. Environmentalists close to NDP were quick to ally themselves with Native efforts to prevent logging on places like Meares Island and the Southern Haida Gwaii. The preservation of old growth forests, albeit for perhaps divergent reasons, united environmentalists and Aboriginals in a "Green / Red" coalition. This coalition would successfully bring Native issues to fore of public consciousness. As Aboriginal rights became a more important and immediate political concern, the Socreds became more outspoken in their criticisms of Aboriginal rights. They sought political advantage on a poorly understood issue by promoting mistrust and fear of Aboriginal rights and provincial involvement in treaty negotiations. In doing so, they carried forward the legacy of Joseph Trutch.

The "Green / Red" Coalition

As was discussed previously, the years around formation of the Charter of Rights and Freedoms (1980 – 1983) saw a period of relative quiet as First Nations concentrated much of their efforts into lobbying the federal and provincial

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[214] Scott interview, April 5, 2002..

governments for an entrenchment of Aboriginal rights within the Charter. As these talks began to stretch out over the next five years, First Nations grew frustrated with the pace and direction of Charter talks. This frustration was not limited to the First Ministers Conferences on Aboriginal rights, however. Many First Nations grew increasingly hostile towards the federal government's position that it would engage in only one negotiation at a time from each province. Given that the Federal government had already been at the table with the Nisga'a since 1976 and had accomplished little, the federal government's stance was viewed with resentment. Moreover, BC's steadfast refusal to join the negotiations meant that even if the federal government had the will to negotiate in good faith, the substance of those treaties would be very limited as the province was the legal landlord and responsible for a great majority of the services and powers that First Nations sought. As Aboriginal bands waited for their turn, they became increasingly hostile to the federal government's one-claim-at-a-time policy and the provincial government's refusal to participate in the negotiation process.

Meanwhile, as the treaty process seemed to carry little hope for First Nations to reassert themselves over their traditional territories, resource companies continued to strip those same territories of their natural wealth. Unconcerned with Aboriginal dissent, the Socreds continued to grant resource rights and tree forests licenses as if Native claims were imaginary. First Nations were caught in a bind: while they waited in line to negotiate, the land they claimed lost its potential to provide jobs and prosperity; should they choose to halt logging and mining through protests and blockades, First Nations risked losing what public support they had.

Lost support for Natives would mean a greater likelihood for a more entrenched anti-treaty position from the Socreds. First Nations had to decide whether it was better to continue along the slow moving treaty process while quietly lobbying the provincial and federal governments for interim benefits, or to force the issue with a hostile provincial government and a non-committal federal government.[215]

Weighing their options, individual First Nations began a series of highly public protests. The first began in 1983 when the Kaska-Dena obstructed logging in their traditional territories. The following year, the Nuu'chah'nulth blocked logging access to Meares Island. The Haida followed suit in 1985 when they hindered logging on Lyell Island. The Kwagiulth attempted to stop logging on Deere Island in 1986.[216] Of these protests, the Meares Island and Lyell Island actions drew the most media attention. In both cases, environmentalists and local non-aboriginal people helped staff, fund, and organise the protests. This 'green angle' helped build greater public sympathy and interest for the Native cause. The protests drew large scale media coverage and helped elevate the stature of both aboriginal and environmental groups. But it would be a mistake to assume both groups had identical interests. From practical experience in working with First Nations on struggles to protect wilderness from logging or mining, environmentalists were forced to recognise and work within the aspirations of First Nations. Indeed, many environmentalists saw (perhaps overly romantically and certainly too simplistically)

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[215] The federal treaty position, or at least the perception of the federal position, was altered with the defeat of the Liberal government by Mulroney's Conservative Party in 1984. In particular, the appointment of former Bill Bennett Chief of Staff Norman Spector to the position of Secretary to the Cabinet Committee on Federal-Provincial Relations seemed to reflect a hardening of the federal Aboriginal position. Spector had been the chief architect of Bennett's Restraint package in the early 1980's, and was viewed as carrying with him the same legacy of misgivings towards Aboriginal rights and treaty negotiations as the Social Credit government he had served previously. Hawkes, 11.

[216] Tennant, 207.

a natural union between their aspirations for ecological preservation and certain Aboriginal traditions around land use and conservation. The Friends of Clayoquout Sound published a book entitled Meares Island: Protecting a Natural Paradise, which promoted - at least publicly - this sentiment. It stated "social justice [for Aboriginal people] will be ecological justice".[217] This glossy coffee-table book made every effort to assure its mainly non-Aboriginal audience that good faith should be extended to First Nations in their pursuit of land claims. This trust, however, carried banal assurances that Native people were endowed with a pre-disposition towards environmentalism. There was, in other words, a noble savage component which permeated this trust. The assumption was that when Indians were returned some of the forest, they would never cut it down. This is not to undermine the significant support non-Aboriginals gave to Native groups. Nor does it mean to diminish the substantial conservationist ethic that exists amongst some First Nations peoples. But, it does acknowledge that beneath the simplistic assertion that Aboriginal rights were synonymous with environmentalism lay a complex series of relations.

For Aboriginals to join with environmentalists was one way to stop logging before their treaty rights were established. Skelly noted that in some cases the alliances formed were largely of convenience.[218] Some First Nations may have wanted to log an area, but realised that the forests would need to be protected in the short term, so that the forests still stood when a treaty agreed was established:

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[217] Meares Island: Protecting a Natural Paradise. Published by Friends of Clayoquot Sound and Western Canada Wilderness Committee, Vancouver: 1985, pg 62.
[218] Skelly interview, June 6, 2002.

> I think the environmentalists on Meares Island invented the noble savage. I think the native people went along with it, because they recognised it was one way to secure their rights.[219]

The noble savage portrayal of Aboriginal peoples was not only reproduced by environmental organisations to assuage non-aboriginal fears, but was also consciously adopted by some First Nation leaders to promote their cause to non-Aboriginals. In some cases, such as in the blockades of Lyell Island, pro-logging forces tried to undermine the "green / red" coalition. For example, they suggested that environmentalists would ignore the prospects for Native jobs once a park on South Moresby was created. They, likewise, spread rumours that aboriginal people would log the park once a treaty was established and the media attention had faded.[220] While the accusations were unable to divide the coalition, they also failed to acknowledge the diversity of opinion within the coalition.

Neither coalition partner was monolithic in their views towards either Aboriginal rights or environmental interests. Thus, for example, while some Aboriginals saw their coalition with environmentalists as largely tactical, other Native people earnestly believed in the environmental views promoted by their coalition partners. Likewise, some environmentalists took seriously the demands for Aboriginal rights and recognised that those rights may include logging and other forms of resources extraction, while some environmentalists contemplated Aboriginal rights within a romantic, pre-industrial, pre-contact context. In either case, neither partner within the coalition represented a singular, unchanging view.

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[219] Skelly interview, June 6, 2002.
[220] May, 64.

Moreover, their efforts to protect the wilderness demanded dialogue and cooperation. Once a trust was established, this common bond would encourage greater appreciation and respect for the experiences and views of the other. In these circumstances, a sharing of stories, traditions and values would occur. Despite the complexity of views within each partner group, and the potential for conflicting interests, both sides would be in a position to learn from the other.

Despite their differences, the coalition of environmentalists and Native people successfully promoted a shared agenda in the media. As Tennant remarks, the "linking of the Indian land question with wilderness preservation and environmental protection, which had strong support among Whites, was a critical new political development".[221] This was especially true amongst NDP activists. As a new generation of more environmentally oriented activists, to use Scott's term, "came of age" within the Party, so too did the potential spread of information and values that were shared between the red/green coalition. In practical terms, more environmentalists in the Party increased the likelihood of close contact with Native people. Closer contact between environmentally conscious New Democrats and Aboriginal leaders led to a greater appreciation of Aboriginal rights. Where, previous sentiment within the Party saw Natives issues as a matter of sympathy ('something ought to be done for the poor Native people'), the influx of Native and environmental voices in the Party helped shape the issue into a source of solidarity ('we ought to go up to South Moresby and stand with the Indians in order to protect

[221] Tennant, 208.

the forests').[222] United by a common disdain for the ruling Social Credit government, it would easier to overlook substantive differences amongst environmental and Aboriginal interests, and paint a romantic picture of their collective struggle.

Legal Challenges and Aboriginal Rights

The coalition which united environmentalists and Aboriginal people produced not only greater media focus on specific First Nation claims, but also helped generate important legal decisions which would further fortify Aboriginal rights. In the mid-1980's, the declaration of a Tribal Park on Meares Island coincided with the 1984 *Guerin Decision* and the 1985 injunction to halt logging on Meares. These rulings were part of a larger struggle to re-assert title and self-governance rights as *First Nations* over traditional territories. In this respect, the readiness to pursue political and legal action for specific local results, coincided with a larger struggle to pursue meaningful treaty negotiations and aboriginal self-governance. By the mid-1980's many First Nations were ready to press ahead with their specific claims. As was described in previous chapters, Native people had been engaged in various forms of modern land claims preparations for over a decade. The federal government's insistence that First Nations submit a detailed claim's statement had had un unintentional consequence. The process united bands around a common cause. When submitted, a kind of right of passage had been achieved. With it, came heightened expectations for action on treaty negotiations and the

[222] NDP MP Svend Robinson seemingly led this coalition when he very publicly stood on the roadside at the Haida blockade in 1985.

administrative ability to press the federal and provincial government for results. As the federal treaty process dragged on with little perceivable progress, frustrations led to protests, and protests led to court action.

Relying on the legal system to pursue Aboriginal rights was not a new strategy for Aboriginals. Native people in BC had pursued "British justice" since the first infringements on Aboriginal territory.[223] In more recent times, a succession of legal challenges started with the *White & Bob* case of the 1965 and the *Calder* ruling of 1973, had given Native people some reason for faith in the legal system. While the federal treaty process dragged on, First Nations asserted Aboriginal title through the Courts. In 1983, the Gitksan and the Wet'suwet'en "decided to take the issue of ownership and jurisdiction to court in the case of *Delgamuukw v. The Queen*".[224] Unlike others claims, this case was extremely broad in scope. It was, in essence, a land claim brought before the court on behalf of an entire people, rather an injunction or ruling on an element of Aboriginal rights. It would not be concluded until 1997.[225] In the meantime, the struggle to entrench Aboriginal rights through the succession of First Ministers Conferences (FMCs) continued. Where the focus early on centred on the rights associated with land title, the period from 1984 to 1987 saw

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[223] The "British justice" or "the Queen's Justice" were terms used by Aboriginal people in BC in the 1800's to refer to supposed impartiality of British judicial system, particularly the Privy Council, in contrast to the vested interests of colonial law makers. It also symbolised the pre-eminence of the Royal Proclamation. Amongst the Mohawk of Upper and Lower Canada a similar notion of justice which recognised the special relationship between the Crown and First Nations was represented in the two row wampum belt and was historically recognised through the Niagara Treaties of 1781.

[224] Neil J. Sterrit et al. Tribal Boundaries in the Nass Watershed. Vancouver: UBC Press, 1998 (10).

[225] The McEachern judgement from the BC Supreme Court is significant, because it further illuminated the scope of rights Aboriginal people sought under treaty negotiations. The Sechelt, it should be noted, negotiated an exclusive arrangement with the federal government in 1984. Unlike most First Nations, they accepted monetary compensation for the extinguishment of ceded territories while also receiving unique governing powers. See Frank Cassidy. "*Aboriginal Land Claims in British Columbia*" in Aboriginal Land Claims in Canada: A Regional Perspective. Ed. Ken Coates. Toronto: Copp Clark Pitman Ltd: 1992 (25 - 26).

a shift in the discussion towards self-governance rights.[226] The discussion had changed, in other words, from a debate of 'who owns the land' to 'if Aboriginal people have a legal interest in the land, what powers are they entitled to because of that interest?' While this discussion occurred within the confines of the FMCs, the Nuu'chah'nulth asserted self-governance on Meares Island.

On April 21, 1984 the Clayoquot Band declared the entirety of Meares Island a "Tribal Park". The declaration, signed by Hereditary Chiefs George Frank and Alex Frank Sr. and Clayoquot Band Council, asserted title and governance over the island. The declaration called for the "total preservation of Meares Island based on **title** and survival of Native way of life".[227] It claimed that the Tribal Park would serve as "an **economic** base of our people to harvest natural unspoiled Native foods".[228] From this understanding that Aboriginal title included economic rights, the declaration then pointed to a need to preserve the island in its current unlogged state. This preservation included all salmon streams, herring spawning areas, traplines, and sacred burial sites. The declaration, in a not so subtle reversal of authority, recognized the needs of non-Aboriginal people for the island. The statement accepted the continuing use of the current watershed facility, mariculture leases, and recreational facilities. It did not, however, accept any other form of resource extraction. The last line of the declaration makes clear the band's ultimate

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[226] Hawkes, 11.
[227] Emphasis in original. Declaration in Meares Island: Protecting a Natural Paradise. Published by Friends of Clayoquot Sound and Western Canada Wilderness Committee, Vancouver: 1985, pg 15.
[228] Emphasis in original. Ibid, 15.

intentions: "Recognize our Land Claims and that there be no resources removed from Meares Island excluding watershed."[229]

The one page declaration served many functions. It firstly breathed life into the working notion of Aboriginal title. It presented a simple model for *how* Aboriginal land would be used on a day-to-day basis. The statement signalled to Clayoquot people that the island was their own, and would serve their needs first. It very carefully, however, repeated and reinforced the view that aboriginal interests coincide with environmental demands for preservation and protection of Meares. It repeated these words at every opportunity, even when the interests the declaration "protected" may have not been immediately recognisable as environmental. The declaration also worked to assure local non-aboriginals that Native title over Meares Island would not mean the end of their water supply, nor their oyster fields, nor their duck hunting. The statement assured them, in other words, that everything would be much the same as before. It lastly, served as a line in the sand for the federal and provincial governments. While it reassured its coalition of interests (Aboriginal, environmental, and local non-Aboriginal), it also demanded immediate land claims negotiations. It punctuated that demand with a simple statement – Meares Island would not be logged.

The same year as the declaration, the Musqueam Band of Vancouver successfully sued the federal government. In *Guerin v. the Queen*, the Musqueam argued that the federal government had failed to look after the best interests of its band members by leasing valuable reserve land to a golf course at a fraction of its actual value. The Crown responded that it could not be held *legally* responsibly for dealing it brokered on the band's behalf. The Supreme Court of Canada reversed

[229] Ibid, 15.

the BC Court of Appeals' ruling and suggested that when the federal government acts upon the behalf of a band, it assumes a legal burden to do so with the band's best interests. The Musqueam were awarded ten million dollars in damages. More important to the struggle for recognition of Aboriginal title, however, was Chief Justice Brian Dickson's reasoning that Aboriginal

> interests in their land is a pre-existing legal right not created by Royal Proclamation, by... the Indian Act, or by any other executive order or legislative provision. It does not matter, in my opinion, that the present case is concerned with the interest of an Indian band in a reserve rather than with unrecognised title in traditional tribal lands. The Indian interest in the land is the same in both cases.[230]

The court had unambiguously affirmed that aboriginal interest in traditional territories was a burden on the Crown's title to the same extent that the management of reserve lands was a responsibility upon the Crown. Where there was an Aboriginal claim to title, in other words, there was a Crown responsibility to address that title regardless of whether it is on or off a reserve. The legal ground for Aboriginal interest in the land had now been extended beyond the reserves. Legal momentum was seemingly building. Within a month of the *Guerin* decision the Nuu'chah'nulth renewed their efforts to stop MacMillan Bloedel (MB) from logging on Meares.[231] The Nuu'chah'nulth wanted their Aboriginal title over Meares recognized and would not allow the forests cut down while they waited for their claim to be heard. In January 1985, MB sought an injunction to prevent protesters from halting their logging operations. Justice Gibbs of the BC Supreme Court granted a temporary injunction. He also denied any claim to Aboriginal title that might present a legal

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[230] Chief Justice Brian Dickson cited from Tennant, 222.
[231] Ibid, 222.

burden on the tree forest license issued by the Province. In an unusual move, the BC Court of Appeals ruled on the injunction in March of 1985.[232]

In a three-two split decision the Appeals Court over-ruled the BC Supreme Court. The court, lead by Justice Seaton, ruled that logging on Meares Island should be halted until the Nuu'chah'nulth had been able to present their title claim. Justice Seaton ruled that the legal burden of Aboriginal title on the forest tenure of BC could no longer be neglected:

> There is a problem about tenure that has not been attended to in the past. We are being asked to ignore the problem as other have ignored it. I am not will to do that.[233]

The end result of the ruling was significant. The Court acknowledged the legal burden Aboriginal title placed on the Province's Crown title. Aboriginal title held legal merit. Furthermore, the Court recommended that the Province and the Nuu'chah'nulth begin negotiations to mediate this burden. The Nuu'chah'nulth had achieved a significant legal victory. They had not only stopped logging on land they believed was theirs, but also increased the pressure on the Province to enter negotiations. While the recent legal decisions rulings of the *Guerin* Decision and the Meares injunction had helped promote Aboriginal rights within a larger political arena, the Social Credit government remained steadfastly opposed to provincial involvement in treaty talks.

The Social Credit Resistance

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[232] Meares Island: Protecting a Natural Paradise , 57. The BC Court of Appeal rarely will hear appeals on injunctions.
[233] Justice Seaton in Tennant, 224.

The Social Credit Party had been governing British Columbia, except for the three year Barrett intervention, since 1952. Through a great many of those years they were able to ignore or belittle Native concerns. By the mid-1980's, however, the Socred's position on Aboriginal rights was being drawn out. First Minister Conferences, Aboriginal protests and blockades, legal judgements against the Province, and the NDP leader Bob Skelly's constant criticisms, all made it impossible for the Socreds to dismiss the issue any longer. The Socreds response was founded in the legacy of Joseph Trutch. It sought political advantage in polarizing Aboriginal issues while at the same time defending an untenable status quo. The leading Socred spokespeople on Native issues during the mid-1980's adopted a legacy of Indian policy established by Joseph William Trutch in the mid-1800's.Trutch was the Chief Commissioner of Lands and Works in 1864 and became the first Lieutenant Governor for the Province of British Columbia in 1871.[234] He was responsible for setting the terms of union and played a defining role in allotment of reserve lands set aside for Native people. On the question of Aboriginal title, Trutch not only denied its existence, he further rejected the argument that title had ever been granted by the Crown or its representatives. Trutch wrote that "the title of the Indians in fee of the public lands, or any portions thereof, has never been acknowledged by Government, but, on the contrary, is distinctly denied".[235] Trutch disputed, despite the strong evidence to the contrary, that James Douglas had ever acknowledged some form of Aboriginal title. He contended that the aim of the Douglas Treaties was not to extinguish Aboriginal title

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[234] Robin Fisher. Contact and Conflict. Vancouver: UBC Press, 1992 (160).
[235] Ibid, 171.

through negotiated treaties (thus fixing Crown title), but to "secure friendly relations" between the settlers and the Aboriginals.[236]

What's more, Trutch felt that in many cases, the previous government administrators – particularly Douglas – had been far too generous with land granted to Aboriginals. He argued that reserve land was disproportionate to the public interest; or, as he was fond of saying, "out of proportion to the actual or prospective requirements of Indians".[237] What is clear from Trutch's correspondence with fellow administrators is that the "public interest" translated into the interest of the white settlers. Deeply imbedded in the British colonial tradition of racial superiority, Trutch saw non-British settlers as lower down on a scale of humanity, and Aboriginals as "barely human".[238] As Fisher notes, the provincial government in the post-Douglas age – a period when Trutch's influence was at its peak - governed "as if the Indians did not exist".[239] For Trutch, the public interest excluded First Nations. Trutch was responsible for bringing BC into Confederation. In clause thirteen of the terms of union, matters dealing with Indians, he demanded that the federal government maintain the same "liberal" policy that the provincial government had followed.[240] Trutch's authority over matters relating to Native concerns extended not only to their place within the terms of union, but also to the official provincial interpretation of Douglas' relations with Aboriginals. This meant, that the federal government was bound by Confederation to follow

[236] Ibid, 171.
[237] Ibid, 199. Fisher notes that European immigrants were granted 160 acres of land upon arrival and were encouraged to purchase up to 480 acres of land. Under Trutch, Native families were relegated to just 10 acres per family. Fisher, 165.
[238] Ibid, 161.
[239] Ibid, 187.
[240] Ibid, 177.

provincial practices that had denied Aboriginal title rights in BC and consistently shrunk reserves. Moreover, Aboriginal people were entirely excluded from the Confederation talks on matters directly relating to their place within the new country. Such as it was, Native people were little more than an afterthought; something the Province could burden the federal government with. In the dealings with First Nations, Trutch conveniently reinterpreted documents and treaties so as to expand settler claims to land and dominion, while he denied or ignored the objections of First Nations.

In sum, Trutch's views were: Aboriginal peoples never held title, and were thus incapable of making binding treaties on it (thus, he failed to include the Douglas treaties); the rights of progress and settler interest superseded all other concerns; and, the terms of union handed all responsibility for Native policy to the federal government regardless of the conditions under which that responsibility was passed.Trutch's resistance to Aboriginal rights was inherited by the Social Credit Party. The Socreds had historically denied and attempted to discredit notions of Aboriginal title. In the mid-1970's the foremost Socred adviser on Aboriginal issues was Melvin Smith.[241] Smith was a determined assimilationist. He viewed Trutch as the authority on Aboriginal rights within confederation and argued that the Douglas Treaties were not formal treaties, but done "[n]o doubt to ensure friendly relations with the native, who far outnumbered the handful of white settlers".[242] He saw the efforts of the 1969 federal White Paper as the best method to address the needs of

[241] Smith had worked in the Attorney General's office during the Barrett Government and was promoted to Deputy Minister of Constitutional Affairs once Bennett assumed power.

[242] Smith, 76. Harris argues in Making Native Space that once Trutch's history of Aboriginal / non-Aboriginal relations become the dominant view, which Smith accepts, then the intellectual paradigm for colonisation was set.

Native people while finally relieving the federal government's fiduciary burden. When the federal government began to show an interest in negotiations, Smith decried this move as a misreading of the 1973 *Calder* ruling.[243] Throughout the 1980's Smith opposed the entrenchment of Aboriginal rights within the Charter, and was a significant Socred voice advocating that BC remain outside of the treaty process.

The leading journalist of the Vancouver Sun, columnist Vaughn Palmer, recorded that the Socred's held a series of 'fall-back' positions on Aboriginal title. According to Palmer, the Socred's primary view, in line with Trutch's opinion, was that Aboriginal title didn't existed. The second position stated again echoed Trutch's view. The Socreds held that if title had existed, it was extinguished prior to confederation. The third fall-back position, which neither the Socreds nor Trutch expressed, but nonetheless maintained, held that Aboriginal title was non-compensatable.[244] It was a matter, simply put, the Crown could not be held responsible for. Next, if any compensation was required for the extinguishment of Aboriginal title that was the sole responsibility of the federal government under the terms of union. And lastly, "though seldom articulated, that the public will never stand for the level of compensation expected by Native leaders, and therefore little risk attaches to the effort to the claim in court".[245] Variations of these five positions

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[243] Mel Smith. Our Home or Native Land. Crown Western: Victoria, 1995, (8).
[244] This logic seems flawed, however. It seems clear that compensation and unextinguished title are inseparable. It makes no sense to say the reverse. Thus, for example, it would ridiculous to argue that First Nation "X" has unextinguished land title which is a legal burden upon the Crown, but they are not entitled to some form compensation. If compensation is unneeded, why acknowledge the unextinguished title? The fourth position is founded on the same principle as the first two. That is, it only makes sense if Aboriginal title does not exist.
[245] Vaughn Palmer quoted in Tennant, 232.

were repeated by the Socreds in the courts, in question period, in the media, and in federal-provincial discussions.

The Socred's five fall-back positions were more articles of faith, than tenets of law and practices of governments. The Supreme Court of Canada dismissed the first two positions as early as the *Calder* judgement. In that case, the Supreme Court unanimously agreed that Aboriginal title had existed, and split evenly on whether title existed in the present day. Likewise, the James Bay agreement between the Cree, Quebec, and the federal government made it abundantly clear that modern treaties would not only involve compensation, but also that provinces would play an active role in those negotiations. Moreover, if aboriginal title existed as a burden upon the Crown which required negotiation, then the Province's governmental authority over lands, resources, health, social services and the like would be at stake in a treaty process.[246] As Raunet contends, this provincial position was not based on legal precedents, but was part of a strategy to protect the status quo.

> Without provincial involvement, the principle of self-government will be reduced to an empty shell. ... The reason for a province for a province like British Columbia to oppose self-government is the same as the one behind its boycott of the land-claim process: satisfied with the present system of apartheid, it wants nothing to do with the revival of first nations.[247]

Bennett Cabinet Minister's Brian Smith and Garde Gordom, nonetheless, re-iterated the Socred's position that no provincial responsibility existed, and that the

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[246] As the federal government began to argue, BC's contention that it held no duty in negotiations would be fortified if it had received no benefit from the use and occupation of unceded Aboriginal lands since confederation. But, this was clearly not the case. BC had grown rich because of the abundance of its natural resources while it ignored the claims of Aboriginal people. If Aboriginal title had to be addressed, then BC had to share in the compensation, because it had reaped rewards in the time it ignored Aboriginal title.

[247] Raunet, Daniel. Without Surrender Without Consent: A History of the Nishga Land Claims. Douglas & McIntyre: Vancouver, 1984 (230).

federal government bears the sole negotiating and compensating burden. This position became increasingly more tenuous, however, after the *Guerin* and Meares Island rulings. These judgements, as noted previously, insisted that the Province was responsible to help address the legal burden of Aboriginal title. The court recommended that the best way to attend to this burden was for the Province to enter treaty negotiations. Ultimately, the Socred resistance to Aboriginal rights and provincial treaty negotiations lay in a political calculation.

Like the settler governments of Trutch's time, the Socreds pressed for the interests of miners, lumbermen, and land developers in the face of Aboriginal protests. British Columbia had grown wealthy and the resource industries had been the fundamental generator of that wealth. The Socred's close economic ties to the resource companies, and close political ties to the constituencies that sprang from them, encouraged them to protect those interests. Over time the language had shifted from "settler rights" to "free market rights", but the meaning was the same. The business interests of the province outweigh Aboriginal interests in the land. Thus, for example, in the heat of the protests around logging on Lyell Island, where even the federal Mulroney government attempted to pressure Premier Bennett into a compromise, he made very clear what he saw as his number one priority: "that we... not interrupt the forest license".[248] It had long been a Socred strategy to define themselves as defenders of the free enterprise system, now under the guise of defending the sanctity of tree forest licenses, they attempted to undermine the legitimacy of the Native demands.

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[248] Bill Bennett quoted in Elizabeth May. Paradise won: the struggle for South Moresby. Toronto: McClelland & Stewart, 1990 (126).

The Socreds recognised the potential popularity they could achieve by polarising the province along Aboriginal issues. That is, Aboriginal rights could be a wedge issue that helped the Socreds maintain power. In a province where Aboriginal issues were poorly understood and vested non-Aboriginal interests ran deep, the Socreds recognised that fear and ignorance could lead to electoral victory. In the previous election of 1983, Bennett repeatedly suggested that ceding to Aboriginal demands would threaten private property rights in BC.[249] Like the "red menace" tactics of his father, Bill Bennett was prepared to use Native rights as a means to discredit the BC NDP. So long as Aboriginal title threatened private property, Bennett would continue to garner support for his opposition to Aboriginal title. As Tennant notes, Socreds Allan Williams, Brian Smith and Garde Gordom all attempted to raise a spectre of fear around Native demands. Smith repeatedly portrayed Natives as money hungry: "All they want is dollars. They don't want to throw anybody off the land, they just want billions and billions of dollars."[250] Gardom relied on another old standby: meddling white lawyers and academics had put unreasonable notions of Aboriginal title and self-government into the gullible, capricious heads of Aboriginals.[251] The outcome of the meddling, argued Gardom, was Aboriginal control over the BC economy and legal "pre-eminence" over non-

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[249] Raunet, 233.
[250] Brian Smith quoted in Tennant, 230.
[251] "White agitators" had been used by numerous settler administrators as an excuse to deny the veracity and seriousness of Aboriginal claims. In the 1800's, Raunet notes that clergy sometimes were discredited because they advocated on behalf of Native people. Later on, as researchers and anthropologists began to study First Nations people, they would sometimes be blamed for instilling 'impossible notions' in Indians. Later still, federal government agents and administrators would be blamed for Aboriginal parsimoniousness. Mel Smith blamed the Department of Indians Affairs for its failure to follow through with the White Paper. He argued that the White Paper's collapse left a policy vacuum. In this vacuum federal monies originally allotted to fulfill the White Paper's assimilationist objectives were handed over to "lawyers, consultants, advisers, academics". This, he argued, was birth of the "Indian Industry". Smith, 7.

Aboriginals.[252] The cumulative message was clear: Aboriginal people could not be trusted and their rights had been exaggerated.

In 1985, with a provincial election expected in the spring of 1986 (just prior to Expo 86), May notes that Bennett "was deliberately inflaming the stand-off at Lyell Island in order to exploit anti-Indian sentiment in the election campaign".[253] For the unpopular Premier, to remain within the legacy of Trutch seemed the answer. An inflamed debate over Aboriginal rights would: polarize the electorate; distract the public from less favourable issues; and, illustrate the Socred's determination to protect BC from those who would 'give away the province to the Indians'.

Conclusion: Skelly's Dilemma inside and out

BC NDP leader Bob Skelly had pushed the Party's agenda on Native rights to a great extent. But he was not alone in his efforts to promote Aboriginal issues. Native issues grew in the public consciousness for various reasons. They escalated because Aboriginal groups and environmentalists had successfully caught the public's attention through protests and blockades. These protests had lead to triumphant court action. The legal system began to assert its authority to press the provincial government on Native rights and the necessity of treaty negotiations. The Socred government, which had traditionally ignored Native issues, took a new tact. They cast dire warnings on the nature and scope of Aboriginal rights. Instead of dismissive ignorance, Socreds ministers raised a spectre of fear around Native issues. Impossible to ignore, but unwilling to negotiate, the government choose to make Native issues a Socred wedge issue.

[252] Tennant, 231.
[253] May, 127.

It is ironic that the Socreds were the party pressing the public on Native rights. In many respects, they were simply responding to the events (such as protests, court rulings, and Opposition statements) that occurred around them. They were likewise, certainly not proponents of Aboriginal rights and had resisted most attempts to mediate conflicts and negotiate settlements. They were present at the First Minister's Conference because they were legally forced to attend. The Socreds were not there because they sought meaningful solutions.[254] The Socreds choose to highlight Native issues because they believed it was to their electoral advantage to do so. The NDP were 'soft' on Native issues and this could be exploited in the polls. Should the NDP form government, the Socreds warned, they would 'give away the province'. The Socreds efforts to vilify Aboriginal demands as deceptive, greedy, and ultimately a threat to non-Aboriginal jobs, rights, and private property worked hand-in-hand with the notion that only a strong, free-enterprise minded government would refuse to give in to Native demands. For the unpopular Bennett, Native issues could be the wedge issue that could help lead him to re-election. The Socreds efforts to heighten tensions and draw divisions had, perhaps, an unintended consequence within the NDP. The more the Socred demonised Aboriginal rights, the more NDP members would be drawn to defend them. Party activists would instinctively be compelled to oppose what the Socreds advocated. That is, very simply, if the Socred did not like Aboriginal rights, then Aboriginal rights must be a good thing. There was indeed a great deal more complexity around the issue, but at an emotive level – where in depth knowledge of an issue was scarce – one could trust that whatever the Socreds believed, good New Democrats opposed.

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[254] Hawkes, 10.

It was the Opposition's job to oppose the government, and after so many years in opposition, this would almost be second nature. The Socreds hostile relations with most environmental groups led to a common sense of purpose between environmentalists and Native people. They would stand together, put aside their differences, and oppose a common foe. Thus, the influx of environmentalists into the Party during Skelly's leadership would further cement this animosity to the Socred position. As the Socreds resisted Aboriginal rights and treaty negotiations, the NDP membership would be drawn to embrace these rights and tri-partite negotiations.

As this oppositional dynamic began to take hold, Skelly was placed in a difficult situation. He had worked hard to promote Aboriginal rights within the Party, the Caucus, and amongst the electorate. He was well aware, however, that Native issues were not a winning electoral issue. Moreover, prominent members of the Caucus who chafed under his leadership style were convinced that Native issues could kill any electoral chances the Party had held. People like Williams and Cocke believed Skelly was too far ahead of the public on this issue. To them, Aboriginal issues were a trap. The Socreds could run a campaign of fear and Skelly would be incapable of answering back. In their view, this was an issue that should be avoided.For Skelly, multifaceted Aboriginal rights were difficult to promote in a media environment which was either too simplistic or overwhelmed by so many divergent opinions. While Socred Cabinet Minister's issued fearsome sound bites on the perils that lay with treaty negotiations, Skelly was in the unfortunate position of advocating a complex position on a process that had no definitive answers.

Moreover, he faced a media, particularly television, which was famous for its emotional images and over-simplification of difficult issues. As the general public was largely unfamiliar with the history of Aboriginal / non-Aboriginal, to educate them would take years not seconds. Moreover, where the issue was not conveyed in ways which were blissfully ignorant, the complexity of voices which generated opinions on Aboriginal rights could seem to block each other out. The scope of the issue and the variety of opinions it generated, in other words, made it easy to hear just a dull roar of opposing voices. In this cacophony, it would be easier to spread fear and defend the status quo.

The 1986 Election

It is a testament to the force of Bill Vander Zalm's personality and fickle nature of BC politics that Aboriginal issues played only a minor role in the 1986 election.[255] Bill Bennett surprised most observers and stepped down as premier prior to Expo 86. With his resignation, Vander Zalm began a mercurial rise that saw him first glide to victory at the Socred leadership convention in the summer, and then sweep to power in provincial election which followed in the fall.

Vander Zalm's ascension corresponded directly with Skelly's fall from grace. While Bennett had been premier the NDP and Skelly had enjoyed consistently high levels of popular support. Vander Zalm's personal popularity was so great, however, that even before he had won the Socred nomination, pollsters suggested he

[255] It should be mentioned, however, that Vander Zalm and his wife Lillain began the 1986 election campaign with a visit to Kingcome Inlet. Although the trip served as little more than a contrived photo opportunity for Vander Zalm, it did hint at the greater political influence Aboriginal issues were gaining.

would beat Skelly in a landslide. Mitchell describes the demoralizing effect Vander Zalm's impressive leadership victory had on Yvonne Cocke:

> In the CBC television booth, off the convention floor, media commentator Yvonne Cocke, a veteran NDP organizer, watched the impressive display of Socred solidarity in horror. As Vander Zalm concluded his remarks, Cocke confided off camera: "My god, he'll eat Skelly alive."[256]

This feeling was shared by a contingent of Caucus which attempted to oust Skelly as leader just two months before the election.

The contrast of the two leader's personality was the dominant issue of the 1986 election. While Vander Zalm enjoyed unprecedented popularity, Skelly's campaign began with a crushing mistake. In his first major press conference of the election, where he unveiled the NDP's platform, Skelly froze. He stopped the conference, asked the press assembled if he could "start over". This sound bite was repeated over and over by the media to the joy of the Socreds. Meanwhile, the Socreds had no apparent platform

> Our campaign was thrown together, literally thrown together to capitalize on Bill Vander Zalm...We had no policy. It was just Fresh Start - give this guy a chance. I believe the NDP didn't capitalize on it as they should have, partially because of the ineffectiveness of their leader.[257]

During the latter half of the campaign, the Socred's lack of policy initiatives and Vander Zalm's apparent lack of substance gradually attracted the media's attention. Within the last sixteen days, the NDP gained a point a day.[258] But, it was too late. The Socreds hung on to win the election by a comfortable seven percentage point margin.[259] Skelly's time as leader was at an end. Included in his Opposition Caucus was the newly elected member from Vancouver Center, Mike Harcourt. Harcourt had

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[256] Mitchell, 124.
[257] David Poole quoted in Mitchell, 153.
[258] Harcourt interview, April 4, 2002.
[259] This seven point margin translated into a twenty five seat advantage for the Socreds over the NDP.

expected to serve in a Skelly Cabinet. He had hoped to serve as the Minister of Municipal Affairs and guide BC into tri-partite treaty negotiations.[260] When Skelly stepped down, Harcourt would get that chance. In the meantime, Skelly had successfully built up momentum for Aboriginal rights within the Party, but had not been able to carry that momentum through to government. This would be Harcourt's task.

[260] Harcourt interview, April 4, 2002.

Chapter 5: Harcourt's Modernisation Project

Introduction

By the late 1980's Aboriginal issues were rising on the agenda of lawyers, academics, federal and provincial politicians, and the general public. From various corners grew the recognition that Aboriginal rights, particularly Aboriginal title and self-government, had to be addressed. This shift was evident in last of the series of First Ministers Conferences. The Conferences, although failing to take up Aboriginal self-government, made significant progress in clarifying the priorities and language of treaty negotiations. Moreover, the First Ministers Conferences helped establish the Royal Commission on Aboriginal Peoples, which would further expand the discussion of Aboriginal / non-Aboriginal relations. Legal experts and academics were also particularly active in this time. They suggested methods for better defining and rectifying Crown sovereignty and Aboriginal title. Many of these same people would later serve on the Royal Commission on Aboriginal Peoples, and were - on the whole - strong advocates for Aboriginal rights. Into this context, Mike Harcourt would come forward to lead the BC NDP. He would help fulfill a long journey to enshrine treaty negotiations and Aboriginal rights in the principles, policy, and politics of the Party. This chapter examines Harcourt's role in the years leading up to forming government (1986 – 1990). Upon assuming the leadership, Harcourt did more than impart his particular vision for Aboriginal rights, he sought to renew and remake the Party through a "modernisation" process. The end goal was to win power, the immediate aim was to remake the Party into a 'modern' political machine which

would expand its political universe, heal its divisions, and refine its political goals through a renewed policy process. This project had a direct impact on the position the Party took on Aboriginal issues. As part of, and through, the modernisation process, Aboriginal issues gained new stature, clarity, and direction within the Party. Harcourt ensured that not only would Aboriginal issues get more attention than ever before, but also because of the structural changes made inside the Party, Aboriginal rights (and treaty negotiations in particular) would be entrenched in the policy goals of the Party. In short, Harcourt aimed to make certain that the Party would never be able to turn back the clock on Aboriginal rights and treaty negotiations within the BC NDP.

This chapter is divided into three sections. Each section covers an aspect of the Harcourt modernisation project. In the first section, the circumstances and actors which brought about the vision for the modernisation agenda are explored. In particular, Harcourt's methods to quiet Party factions and heal old divisions are discussed. His passion for Aboriginal rights and his ability to push Aboriginal issues to the centre of the modernisation agenda will be explored.[261] The second section, which is also a major outcome of the modernisation project, deserves its own separate space. This section summarises the major elements of the policy renewal process Harcourt believed was so integral to the overall modernisation project. A summary of the major criticisms of the previous resolution-driven policy structure begins this section. The structure and purpose of Harcourt's four stage policy renewal process are then discussed. Bob Williams' critique of that 'renewed' process follows this discussion. Together, the first and second sections reflect the

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[261] Aboriginal policy and political development will be discussed a greater length in the third section.

wider goals Harcourt sought through the modernisation process: prepare the Party for government; change members' outlook on politics; entrench an open, inclusive, and coherent policy process; and affirm a new vision for the BC NDP.

The third section is an analysis of Aboriginal policy within the context of the modernisation process. Although the modernisation project and the establishment of a renewed Aboriginal policy strategy occur concurrently, the latter is a result of vision which was born in the former. With this in mind, the third section maps out the principles, positioning, and political strategies Harcourt and his staff embraced to push Aboriginal policy to the front of the Party. Thus, this section explores the five principles established by the policy committee responsible for Aboriginal rights. A discussion of how Harcourt sought to explain to members and to the public where a future NDP government would take treaty negotiations and why follows. Next, some of the political challenges Harcourt faced is explored. Lastly, the importance 'buy-in' played in helping to build a social consensus and the electoral discipline needed to win an election is discussed.

Harcourt implemented a modernisation project which sought political unity, rational policy development, a trust in process, and a belief in cooperation. He applied these ideals to the development of an Aboriginal policy agenda that built on the achievements of past leaders. Upon these foundations, Harcourt attempted to lead the BC NDP into government and the province into modern treaty negotiations.

Harcourt's Modernisation Project

'Moderate Mike's' acclamation of leadership was a result of the Party's deep desire to choose a leader they believed would become Premier.[262] Harcourt assumed leadership with the mission to "modernise" the Party. This modernisation project would take on different aspects. First, it reconstructed various facets of the BC NDP into what Harcourt called Team New Democrat (TND). This strategy included a new role for the leader, an altered mindset for the opposition, and a changed public face for the Party. Second, the modernisation process sought to expand the NDP's political universe while promoting harmony among various Party factions. In particular, Harcourt's modernisation program attempted to reconcile the divisions between the Party's union loggers, environmentalists and Aboriginal supporters. Harcourt sought to bring these diverse interests together, to work out their differences, and form a unified political front. The modernisation efforts, thirdly, extended to how the Party and leader addressed Aboriginal issues. Harcourt brought a profound desire to promote Aboriginal rights and bring the province into the negotiation process. He recognised that he needed not simply the support of the Party, but the support of the NDP universe to make this happen. He responded by changing the way the Party talked about treaty negotiations. The fourth element of Harcourt's modernisation project – which I will address in the next section - focused on re-vamping how the Party makes policy. Harcourt insisted on a renewed policy process that was open, inclusive, and thorough. He saw the

[262] "Moderate Mike" was a term used both by Harcourt, his supporters, and his detractors. It reflected his desire to portray himself as a reasonable, non-dogmatic, modern, New Democrat. Whenever, someone addressed him in this way, he would respond with "Thank you." Harcourt interview, April 9, 2002.

policy development as central both to building TND and to guiding the Party's electoral and governmental success. Throughout this entire modernisation process, Harcourt was ever conscious that it would happen *only* if he could deliver the Party from opposition to government.

After the 1986 election defeat, Bob Skelly resigned. The Party had not seized power as many had hoped, even expected. This loss brought about a new determination that the Party choose a leader who could win. At first, federal NDP Members of Parliament Jim Fulton and Nelson Riis were 'floated' as potential leadership candidates.[263] Yet, their chances faded quickly as the Mayor of Vancouver and recently elected Vancouver Centre MLA Mike Harcourt put his name forward. Harcourt had been a potential leadership candidate as far back as 1983. He had even been encouraged by some within Caucus to assume the leadership during the coup on Skelly just prior to the 1986 election.[264] Harcourt would not consider it. He waited until November of 1986 to declare his candidacy. Once he declared, no other candidate came forward. Nonetheless, Harcourt toured the province and campaigned as if he were in a leadership race. For him, it was important to meet as many members as possible. He was especially concerned with connecting with those who lived outside the Lower Mainland.[265] He ran a

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[263] Daniel Gawthrop. Highwire Act: Power, Pragmatism, and the Harcourt Legacy. Vancouver: New Start, 1996 (31).

[264] Harcourt interview, April 9, 2002. Harcourt was approached just prior to the coup attempt but refused to participate. Although not an MLA, and thus not at the Caucus table, Harcourt supported Skelly during this time.

[265] Harcourt interview, April 9, 2002.

leadership campaign not to win the nomination (which was assured), but to build his profile amongst a wider public. He campaigned to change the face of the Party.

The membership saw Harcourt as the answer to their chief problem: losing elections. The Party had lost four consecutive provincial elections. The last three elections (1979, 1982, and 1986) were all well within the Party's grasp, and yet it had found a way to lose all three. As Harcourt reflected, "the Socred maxim always seemed to be: "Whatever it takes to win!" The NDP slogan seemed to be: "Whatever it takes to lose.""[266] Many Party activists blamed Skelly for the election loss. But as Gawthrop notes, the blame was more accurately spread across the whole Party. In 1984 the membership failed to support a "sure winner" in the more-centrist Vickers, and appeased their conscience by supporting Skelly.[267] The 'mistake' would not be repeated in 1987. As long-time Party organiser Jan Pollard describes, the Party was - in every other facet - ready to win. All they needed was the right leader.

> We obviously had the troops on the ground. We had the machine. We had the core vote, but we didn't have the leader to push us over the top. People became resigned, everyone, that we've got to go with the guy who can win. And Harcourt had demonstrated he could win in Vancouver. ... By now people were fed up with not winning. To act on one's belief, you've got to go for power, so there was unanimous support to go get this guy.[268]

Harcourt understood that he was running uncontested not because everyone accepted his politics, but because everyone believed he would lead the Party to victory. He would leverage this popularity to push through his modernisation project. He was leader, in short, not because of what he stood for, but because of what he could do. In the spring convention of 1987, Harcourt was acclaimed leader.

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[266] Mike Harcourt. A Measure of Defiance Vancouver: Douglas and McIntyre, 1996 (63).
[267] Daniel Gawthrop. Highwire Act: Power, Pragmatism, and the Harcourt Legacy. Vancouver: New Star. 1996 (28).
[268] Pollard interview, June 3, 2002.

Harcourt faced criticisms before he became leader and almost immediately afterward. In the lead up to his acclamation, there were concerns inside the Party that he was not passionate about traditional NDP values. As Mayor of Vancouver, Harcourt had not affiliated himself with the left-wing COPE (Committee of Progressive Electors), but aligned himself with the more centrist TEAM slate (The Electors Action Movement). This group, some Party members complained, harboured Liberals and other middle of the road candidates.[269] Harcourt was seen as politically 'impure'. Yet, this same capacity to work with Liberals and bring forth compromise attracted centrist voters. This knack set him apart from traditional NDP leaders. The bitterness of the 1986 election loss, the repugnancy of Vander Zalm's government, and Harcourt's ability to 'push the NDP over the top', all helped silence Harcourt's critics. His perceived 'impurities' were also his political strengths. Within a month of assuming the leadership, however, Harcourt faced a different challenge. He was confronted in Caucus and "bad mouthed" in private by long-serving Caucus members.[270] This was not an attempt to overthrow Harcourt, but more an effort by the "old guard" to "see how much substance there was to him and whether he had a strategic head or not".[271] As Harcourt recalls in his political memoirs, he was aware that politics "is often a war fought on two fronts: one in front of you and one behind you".[272] Although conscious of attempts to sully his leadership, he was more concerned with redirecting the Party's course. One of Harcourt's first moves was to replace the Provincial Secretary. He supported Ron

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[269] Pollard interview, June 3, 2002.
[270] Harcourt, A Measure, 55.
[271] Chris Chilton interview, April 17, 2002.
[272] Harcourt, A Measure, 55.

Wickstrom to replace the retiring Gerry Scott. The table officers, who run the administrative wing of the Party, refused. They insisted on Hans Brown.[273] After a heated debated, Harcourt backed down.[274] Brown joined what would become a tight knit group of advisors who worked closely with Harcourt on modernising the Party. This group included Brown, Chris Chilton (Harcourt's Principal Secretary), Ron Johnson (his Communications Director), and Sharon Prescott, who would manage his tours around the province.[275] It is ironic that Harcourt's first attempt to assert himself on the Party would fail. Yet, as a result of this failure, a crucial member in Harcourt's inner circle was added who would help implement Harcourt's vision.

By January 1988, Harcourt and his staff had formulated a new mantra for the NDP. Harcourt called it Team New Democrat. His plan for TND included a more strategic and productive use of his own talents, a new perspective for Opposition, and an original image for the Party. His first goal was to ensure that he lead with his political strengths. This strategy was simply called the "Best use of the leader".[276] This meant Harcourt informally detached himself from the role of leader of the Opposition. Instead, with the assistance of Prescott, he toured BC.[277] On

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[273] Brown had been Provincial Secretary of Party when Barrett came to power in 1972.
[274] Harcourt later admitted that he had been mistaken with Wickstrom, and that Brown was a better fit for the position. Harcourt interview, April 9, 2002
[275] Chilton interview, April 17, 2002. In his memoirs, Harcourt's gives credit to this group as part of the "people who were absolutely essential to what might be termed "the moment of modernisation of the B.C. NDP."" Harcourt, A Measure, 64.
[276] Chilton interview, April 17, 2002.
[277] Harcourt affectionately described Prescott as his 'arrange everything, know everyone', "roadie". Harcourt interview, April 9, 2002.

these tours, he met not only with Party members, union leaders, and other Party affiliates, he made a point of addressing municipal councils, Aboriginal bands, and Chambers of Commerce, among others. He sought to broaden the traditional support base and begin a reconciliation with traditional foes. He avoided the Legislature not only because he was a better political salesperson than he was Question Period marksmen, but also because he saw it as an important step in changing the way the public understood the NDP.[278] Instead of building his reputation via scathing attacks on Vander Zalm, Harcourt reached out to traditional and non-traditional stakeholders groups and communities in a new way. His message was positive: he favoured balanced budgets and pointed to Tommy Douglas's approach as a model of balanced budget financing; he described business as a positive force for wealth creation; and, he sought to end the "War in the Woods" by bringing resource workers, environmentalists, and First Nations people together.[279] While Harcourt was on the road, he let Dan Miller, Glen Clark, Moe Sihota, and Dale Lovick lead the opposition attack on the Vander Zalm government. The strategy was to keep Vander Zalm on the defensive and in Victoria while Harcourt courted the rest of the province.[280] In all his meetings, speeches, and conversations, Harcourt repeated the same theme - 'this is a modern new party, under a modern new leader'.[281]

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[278] Chilton interview, April 17, 2002.
[279] Harcourt interview, April 9, 2002.
[280] Chilton interview, April 17, 2002.
[281] Chilton interview, April 17, 2002.

The second element of Harcourt's modernisation project followed from first. If the Party indeed was different and new, it would need to both expand it traditional base of support and address the internal divisions which had hampered its effectiveness in the previous election.[282] To expand the Party's political universe, Harcourt believed he had to address the twenty to thirty percent of BC he describes as "soft supporters, independent voters, anti-Socreds" voters.[283] Harcourt had to be careful, however, not to alienate the twenty percent of the BC political spectrum who were the Party's core. Although more conscious than ever before on the power of polling, and equally cognisant that his authority lay in his popularity, Harcourt called for substantive changes inside the Party: "They [other Caucus members] wanted smoke and mirrors and rhetoric and I was busy trying to chart a future course on myriad issues we would be facing when we became the provincial government."[284] Harcourt focused on the conflict between environmentalists and Aboriginals against loggers and unions. All of these groups made up important constituencies within the NDP and Harcourt recognised their support was vital to a future government. The media images from the protests on the Haida Gwaii, the Stein Valley and Carmanah Valley (among others) all resonated with the public. For the cross-pressured or independent voters Harcourt sought to woo, they could just as easily be drawn to side with the logger, the environmentalist or the Aboriginal leader. Harcourt grasped that if he could bring these groups together, he would not only help heal the NDP's internal divisions, but also highlight the cynical "born-

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[282] Pollard interview, June 3, 2002.
[283] Harcourt interview, April 9, 2002.
[284] Harcourt, A Measure, 56.

again environmentalism" which Vander Zalm was starting to preach.[285] If he could furnish a peace in the woods, he would appeal to a large cross section of the public who wanted an end to the conflict. Moreover, for the province's forest economy, its environmental well-being, and for First Nations rights to be respected a lasting relationship would have to be struck.

In the summer of 1989 Harcourt announced his "Environment and Jobs Accord". The Accord had three connected goals. First, it promised to double the existing park space in BC from six percent to twelve percent, (thus putting BC in line with the United Nations Brundtland Report).[286] Second, it promised "stability in our forest communities and for forest workers".[287] Third, the Accord reaffirmed Harcourt's commitment to enter the province into treaty negotiations and uphold Aboriginal rights. The long term goal for the Accord was an end to conflict over resource development, environmental stewardship and treaty resolution, but the interim goal was to provide a political space where all sides could sit down and begin discussions to resolve their differences. The immediate outcome of the Accord was that it gave Harcourt some room to maneuver. The major factions inside the Party now had a basic framework within which to work. The policy committee on sustainable development would serve as the forum which all parties could have their concerns addressed. The wider public could draw confidence from the generally warm statements the representatives from each group offered the media. Although the issue was far from resolved, Harcourt had seemingly won a temporary victory.

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[285] Stan Persky. Fantasy Government: Bill Vander Zalm and the Future of Social Credit. Vancouver, New Star Books, 1989 (239).
[286] Persky, 239.
[287] Mike Harcourt. "Time for a Historic Shift." *Democrat*, July/ August, 1989 (3).

The third tenet of Harcourt's modernisation program dealt directly with the Party's position on Aboriginal rights and treaty negotiations. Two things stand out in Harcourt's leadership on this issue. First, he was insistent that Aboriginal issues would become a top priority for the Party and central to the land-use question. Second, Harcourt believed that in order for Aboriginal issues to assume part of the common dialogue among the universe of potential supporters, he would have to promote Aboriginal rights with a new language as he traveled the province.

When Harcourt assumed the leadership of the Party, he carried with him a series of notions on what the Party would look like under his leadership. It would be more moderate, less dogmatic, and more inclusive. It would form a plan for government while in opposition, and then follow through with it when elected. Harcourt's centrist hue helped give the Party a new image.[288] Yet, on the Aboriginal rights front Harcourt could be seen to have strayed from the image of "Moderate Mike". Harcourt's strong stance on Aboriginal rights, particularly his insistence that the Party make treaty negotiations a priority, was widely associated with a certain militancy that did not fit his reputation. Even though most members had grown to embrace Aboriginal rights and treaty negotiations (although some were still much less enthusiastic), the wider public continued to hold strong misgivings towards it. Remarkably, where on other issues Harcourt would be willing to step back for the good of the Party or the process, he refused to retreat on Aboriginal issues. Because Harcourt felt so passionately about bringing justice to

[288] Harcourt interview, April 9, 2002.

Aboriginal people, he was willing to use the full force of his authority and popularity as leader to get the Party to move forward on them.[289] He felt, from the outset of his time as leader, that "if you [the Party] want me, then treaties are part of the package".[290] Harcourt would not only chair the Party's committee on Aboriginal Policy, but would make it his task to bring the NDP universe into his thinking.

As leader, Harcourt changed the language around which New Democrats spoke about Aboriginal rights. In his first as year of leader Harcourt struggled to communicate Aboriginal issues in a way which engaged people. He and his staff were aware of the potential vulnerabilities around the issue, (people were afraid they would lose their homes in treaty negotiations), but less knowledgeable on how to talk about treaties effectively.[291] In that time, Harcourt and his staff worked to 'get the right message'. It was not long before they found it.

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[289] Harcourt, of course, was not the first leader to be passionate about Aboriginal rights. As has been discussed previously, Tom Berger and Bob Skelly were dedicated advocates for Aboriginal rights. After stepping down as leader in 1969, Berger would soon be appointed a judge on the BC Court of Appeal. He would head up the Royal Commission which inquired into the potential development of a Mackenzie Valley pipeline across the northern regions of Canada. Berger's leadership was influential in the projects cancellation. He would later, in 1982, step down from his position on the bench to protest the dismissal of Aboriginal rights within the original drafts of the Charter of Rights and Freedoms. Berger's resignation is credited with helping spark the series of First Ministers Conferences that sought to address Aboriginal rights. Berger's direct influence on Harcourt was limited. When Berger resigned from public office and assumed a position as a court judge, he was required to cut all formal political ties. Harcourt, originally a lawyer, was influenced by Berger's legal work on behalf of Aboriginal people, and went to law school with Berger's law partner, Don Rosenbloom. Harcourt interview, April 9, 2002. Skelly's influence on Harcourt was also limited. They were not close associates prior to, or after, the 1986 election. Thus, for example, Skelly was unaware that Harcourt sought to take over treaty negotiations, should Skelly form government. Skelly, in fact, rejected the idea that a Minister of Municipal Affairs (the post Harcourt sought) would be delegated the task of treaty negotiations. Treaties negotiations, for Skelly, would be based on a series of nation-to-nation agreements, and it would be inappropriate for the Municipal Affairs minister to interfere. Skelly interview, June 6, 2002. Nonetheless, Harcourt acknowledged that Skelly had helped build support for treaty negotiations within the Party. Harcourt interview, April 9, 2002. Skelly, his staff, and key supporters (such as Gerry Scott) resigned or were re-assigned to less influential positions once Harcourt established his core staff.

[290] Harcourt interview, April 9, 2002.

[291] Chilton interview, April 17, 2002.

Instead of speaking about the complicated and still unclear process by which treaties would get ratified, Harcourt spoke about why they were important and what benefits sprung from them. From that point forward, when Harcourt spoke about Aboriginal rights, particularly treaty negotiations, he addressed primarily the economic benefits which would flow from them. He informed audiences of the huge sum of federal dollars that would pour into the various regions once an agreement was in place. He described the economic potential this money would generate for non-Aboriginal people. He argued that BC's economic potential was being stifled when it failed to enter negotiations. Land-claim uncertainty, like uncertainty in the forest sector, killed investment and scared off jobs, he would argue. He refused to speak of treaties in terms of costs. For Harcourt, this argument was a ploy of the right-wing which played to people's fears, and put aside the need to [illegible] the problem.[292] Harcourt's Aboriginal rights pitch started and ended with the economic results of treaties. When he spoke of the social problems that plague reserves, he pressed the image that "welfare reserves" could become "self-sufficient communities" in a post-treaty world. He rarely spoke of Aboriginal rights as a matter of social justice. To him the failure to negotiate treaties was such an obvious historic injustice, that to think otherwise, was to be racist.[293] He recognised that the social justice aspect of Aboriginal issues stirred Party member's passions, but he did not articulate this argument outside select Party circles. It was more important, and more politically expedient, to convince people that treaties were in their best interest, than to persuade them that they should accept them because it is the 'right thing to do'.

[292] Harcourt interview, April 9, 2002.
[293] Harcourt interview, April 9, 2002.

In this sense, Harcourt did not ask people to 'like Indians'; he insisted people take their demands seriously and consider the positive impact of treaties. He encouraged them to think of the results of doing nothing versus going forward with treaties. He attempted to confront people's fears, overcome their misconceptions, and articulate the potential benefits which would come with them. Harcourt was advised by his staff, however, to not go so far as to describe treaties as "an opportunity" for BC.[294] Harcourt informed his audience that a modern, moderate government could not ignore treaty negotiations and Aboriginal rights. He was prepared to address them and he wanted to provide comfort to his audience that treaties would provide "win/win" opportunities and would benefit all British Columbians.

Politics as Process

The final element of Harcourt's modernisation project deserves special attention because it was so integral to Harcourt's modernization agenda. Harcourt sought to change not only how Party policy was made, but also why it was made. He wanted a process which was inclusive, integrated and prepared the Party for government. Through practices which ensured "as wide as possible participation of the membership in policy development" Harcourt sought to address traditional rivalries, affirm a new vision, and unite a diverse membership under TND.[295] At the end of this comprehensive policy process, Harcourt wanted to able to say to both members and the general public: 'Team New Democrat made this platform. It's

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[294] Chilton interview, April 17, 2002.
[295] Stan Lanyon. "Membership democracy is goal of policy development reforms." *Democrat*. September 1988 (5).

modern. It's comprehensive. It's costed-out. It's a document which represents where we stand and who we are. And it lays out how we'll govern'.[296]

In this section I explore the major elements of the policy renewal process. To begin, I summarise the previous resolution centred policy process and explain the most pronounced criticisms of that system. I then outline how the four stage policy development process was structured. From that, the goals and values of the new system are addressed. I argue Harcourt believed not only that a coherent process lead to a coherent plan, but also that he saw good process as good politics. His faith in 'process as politics' was not shared by all members; thus, I also include a brief discussion of the criticisms Harcourt faced in implementing his policy modernisation plan. Finally, the main psychological benefits of the process are addressed. Harcourt believed that in order for the Party to govern, it had to change its understanding of politics and build a trust with the wider public over what the Party stood for, where it was going, and how it would get there.

The Party's previous method for policy development was deeply flawed. Policy sprang forward from a loose assortment of resolutions, sporadic policy forums, Official Opposition research, election planning committee documents, individual Caucus members contributions, and the will and vision of the leader. The arrangement, in short, was not only ad-hoc in nature, but also ill defined and poorly understood. It was likewise poorly archived. In my own attempts to track the development of Aboriginal policy between 1969 and 1990, I found sparse record

[296] Harcourt interview, April 9, 2002.

keeping, uncertainty on exact standing of policy resolutions, (which resulted in confusion on official Party positions), and often inaccessible policy documents. Thus, for example, while the Party office did keep a record of some of the major resolutions and election plans, most policy specific materials (such as they were) were locked away in a private storage facility which was inadequately catalogued, inaccessible, and ill-suited to the task of serving as a policy library. The Party simply did not have the funds to afford better record keeping while the loose policy formation structure did not lend itself to easy categorisation.[297]

Outside of archival difficulties and the often incoherent and cacophonous nature of the previous system, Harcourt and his staff faced a resolution-centred approach which could be myopic, divisive, and alienating.[298] Resolutions tended to condemn or praise a singular political actor or event. As Stan Lanyon describes, resolutions were used by some as a "self-righteous exercise about a political conclusion".[299] Likewise, the short duration of Party conventions, normally three day events, often meant that many resolutions would have to be by-passed or given very limited discussion or debate. Contentious resolutions which did not get to the floor of the convention would often lead to cries from the membership that the Party 'stifled debate'. Many senior people in the Party, however, saw resolutions as a potential tool of the most radical elements of the NDP. Resolutions would call on the NDP to implement a program or represent ideas which would alienate more

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[297] This criticism is not directed at the staff of the BC NDP provincial office, however. They extended every effort to assist me with my research and helped uncover numerous documents.
[298] Chapter one outlines some of the major features of the resolution based policy system and its shortcomings.
[299] Stan Lanyon interview, April 10, 2002. Lanyon was Harcourt's Vancouver Centre Riding Association President and was responsible for guiding the policy renewal process.

mainstream members and potentially embarrass the Party in the media. As a result, the Policy Review Committee would attempt to delay a particular resolution so that the convention would run out of time before it went before the floor. If this failed or proved too awkward, the Party executive or Provincial Council would sometimes 'stage-manage' the debate on the floor so that a series of powerful and persuasive members would speak against the motion. Bitter factions could result from this process as members would come to see themselves as victims of the Party 'establishment'.[300] Member became disenchanted with the Party when they felt it had 'stifled debate', 'stacked the floor' and discredited a particular resolution. Among some activists, it was them against the Party. Harcourt detested the "us versus them" mentality. To him, because the policy process was divisive, it had to be changed.

Moreover, to avoid this confrontation, some senior Party members distanced themselves from the whole process. Skelly, as it was noted earlier, did not involve himself in the Party's policy conventions. Williams, although he did attend numerous conventions, did not take seriously resolutions or the policy recommendations they produced. To him, they were the popular voice of membership, but they were not the rules by which one governed. At their worst, some Party activists viewed resolutions as selfish, reckless, politically insensitive crusades which only helped the Socreds.

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[300] The tradition of control over the inner workings of the Party resolution structure was partly a reaction against the loss of control Barrett suffered when he was Premier. Post 1975, the Berger / Barrett split resumed as it was Dennis and Yvonne Cocke, and not a Barrett lead group, which ran Provincial Council and the Policy Review Committee. The Cockes and the "Cocke Machine" retained control of this element of the Party (while Barrett and his associates dominated Caucus) until 1984. Scott attempted to establish similar control over this aspect of the Party mechanics, but was distracted to a certain degree by efforts to retain support within Caucus for the besieged Skelly. Despite this internal struggle, the popular sentiment remained that the Party came down 'from on high' to act as policy gatekeepers.

The resolutions process lacked credibility because many senior NDP members either dismissed or avoided altogether the resolution process. Meanwhile the process was often inconclusive and incoherent. It could divide the Party and pit members against the Party organisers and leaders. Resolutions, and the efforts to sidetrack resolutions, were sometimes embarrassing and disenfranchised those who felt their input was ignored. As a result, the resolution system of policy making carried little weight outside of representing a sounding board for popular sentiment.

Faced with this situation, Harcourt implemented a four stage policy development process as part of his modernisation project. The project began with the creation of thirteen separate policy committees chaired either by sitting NDP MLAs or prominent Party members. Committee chairs would serve as spokespeople for the panel. Policy committees also included permanent committee members comprised of experts in the committee area. These experts were there to provide technical, substantive policy advice on their given topic. The committees addressed areas such as sustainable development, women's rights, health, education, economic development, labour issues and so on.[301] All policy committees were assigned the task of developing a policy paper which would eventually be submitted to the 1990 convention for final approval. Once the policy committees had been established, a series of regional conferences were set up to allow local members a chance to give input on those papers. Unlike standard conventions, however, policy committees had to submit

[301]Ian Aikenhead. "Convention 1990: Strong Policy Ahead". *Democrat.* January / February, 1990 (7). The exact titles of the thirteen policy committees were: Towards a Sustainable Future; Open Government, Fairly Chosen; Women's Rights: Priorities for the 90's; Health: A Paper for the 90's; Education – Kindergarten to 12: A Solid Foundation; Post-Secondary: Educational Priorities for the 90's; Regional Economic Development in British Columbia; Affordable Housing: A Right for All; Labour: Fairness at Work; Transportation: Solutions for the 90's; The Eradication of Poverty; Inequality and Income Support; and Towards a Just and Honourable Settlement: Indian Land Claims in British Columbia, which was chaired by Harcourt.

their initial papers to the regional conferences well in advance of regional conference date. These papers would be distributed to members ahead of time in order to give them time to formulate their own opinions and additions. Regional conferences encouraged members to bring forward proposals, criticisms, and additions to the initial policy committee paper. As Pollard comments, these regional policy conferences were taken very seriously by members: "People came to those conferences loaded for bear. They wanted to be involved. They wanted to inject their ideas into the policy and platform of the Party".[302] Not every committee went to every regional conference, but all committees went to a majority of regional events. Harcourt, who was the most outspoken supporter of the new process, went to the vast majority of the regional conferences. His presence let members know that their views were being heard by the highest levels of the Party.[303]

Once the policy committees had received the input of the regional conferences, their findings were then presented to the Party's executive. In this stage, the leader, the Caucus, the Provincial Council, elected party executive, opposition research, and all other senior members addressed the papers. It was important to Harcourt that the ties between the various arms of the Party be enhanced. Ensuring "everybody had a kick at it" meant bridging traditional administrative divides inside the professional wing of the Party.[304] Harcourt wanted to merge the efforts of the professional arm of the Party with the work of the policy committees and the membership. While previously this arm of the Party, particularly Caucus, had served as an unofficial 'court of appeal' for policy

[302] Pollard interview, June 3, 2002.
[303] Lanyon interview, April 10, 2002.
[304] Lanyon interview, April 10, 2002.

direction and election planning, Harcourt believed the process would be made both more coherent and inclusive if they worked from the same plan as the rest of the Party.[305] The goal was administrative synchronicity. The practice was part of Harcourt's inclusive vision for Team New Democrat. The executive would work together, work with the rest of the Party, and accept the major outcomes of the policy renewal process. They would, however, have significant influence to refine those policy positions.

If the first stage of the policy process set the substance of the policy papers, and the second stage sought the inclusion and input of the 'grassroots', then the aim of the third stage strove to deliver coherent policy content. Taken together, the thirteen policy papers had an ambitious agenda: they would form the foundation for a future election platform and Harcourt's first term of government. The executive was called upon to ensure not only had the Party produced substantive policy, but had also ensured the documents helped them win power.[306] Lead by Harcourt, the executive refined the central policy goals while adjusting the language to provide comfort to the widest possible electoral universe. The content had to be polished to fit the messaging.

Integral to the policy modernisation process, but separate from the policy renewal plan, was the Party's publishing of *The Best for British Columbia: A review of New Democrat Policy 1961 – 1988.* This document, written by Harcourt's communications director Ron Johnson, attempted three separate, but related tasks.

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[305] Chilton interview, April 17, 2002.
[306] Chilton interview, April 17, 2002.

It sought to coordinate and unify a disparate assortment of policy statements which had been collected over the previous thirty years. It attempted to bring order from the chaos. Second, it rephrased past policies in a manner which provided a bridge to the future. It was not an archaeology of Party policy. The booklet employed the language, structure, and priorities that are distinct to the Harcourt era. It summarised a collection of goals and values which had served the Party over thirty years, but did so in way that fit snugly with the direction of the policy renewal. It was not coincidental that Harcourt's communication director Ron Johnson was assigned to write the text. It was as if Harcourt's language and priorities were retold through the Party's past.

The booklet's final task, however, was to allow Harcourt a chance to distance himself from the Party's more ideological and dogmatic past. The document's introduction walks a fine line.

> The policy outlined in this booklet does not represent an election platform, nor is it a blueprint of all things New Democrat government would expect to accomplish in the first term of office. ... It represents a summary of the most salient of those resolutions and is meant to serve as a statement of goals; the foundation upon which future election platforms and government programs will be based. ... An election platform will be issued during the course of the next election campaign, and at the time our candidates will seek a mandate for the policies and proposals set out in our platform. [307]

The first line states that the document should not be understood as an election document. That document will come in the future.[308] In this respect, the booklet works as a caveat to the reader – 'this is who we *were*'. Yet, the introduction also states that a future Harcourt government would have as its "foundation" the values

[307] BC NDP. *The Best for British Columbia: A review of New Democrat Policy 1961 – 1988.* Vancouver, 1990.
[308] The booklet was published just prior to the 1990 convention.

outlined in the booklet – 'this is where we are from'. In this way, the booklet is geared towards two distinct audiences. The first audience is those who could support the Party in the future, but may have been reluctant to in the past. The message to them is 'don't hold us to this, it's our past'. The second audience consists of the long time supporters. To this group, the booklet assures that them their values carry forward into the future.

Harcourt, in short, sought to be judged not by the Party's past, but by its future. Harcourt's vision was for an inclusive, substantive and cohesive policy process that would remake the BC NDP. The Party executive's task was to ensure that their new policy agenda stood in solidarity with their history, but also showed the extent to which the Party had been modernised.

The last step in the policy process was the presentation of each paper at the 1990 convention. Each paper would be put before the gathered member for their final approval. It was believed that by this stage in the process these papers would have the approval of the vast majority of the membership. Moreover, the convention would serve as a launch for Team New Democrat's new policy agenda to the public. As Party president, Ian Aikenhead, wrote:

> By the end of this [1990] convention, we should have a clear answer to our many media critics who coyly ask, "Where does the NDP stand on the issues?"[309]

[309] Aikenhead, "Convention 1990", 7.

To describe the policy renewal process as solely directed towards the creation of new Party policy, however, would be to underestimate the scope of change Harcourt hoped to achieve through it.

For Harcourt, the policy renewal process was more than an exercise which produced a new policy agenda for the NDP. It represented his profound belief that process defined politics. While Mayor of Vancouver, Harcourt governed by building compromise and consensus. Unlike provincial politics, city councilors did not often share a common political identity. There was little party discipline. Within this framework, however, Harcourt excelled. He developed his political profile based on his reputation ob being able to work with divergent groups. He would use this reputation to great effect to win the trust of a wider political universe. Harcourt attempted to correct what he saw as significant flaws in the political culture of the Party. Harcourt's modernisation project included an effort to change the way New Democrats thought about politics.

The policy renewal process helped to establish a new sense of purpose for the Party. The open and inclusive structure of the renewal process made members feel welcome to get involved. It was understood by Harcourt and his staff, that for every member that came out to the regional policy conferences, many more would stay home. The important point, however, was that all members appreciated the invitation; they were grateful to be invited to contribute in a meaningful way.[310] Even those that went to the meetings, but did not, in the end, hold sway over the decisions of the group assembled, were forced to admit that they had been included in the discussion. There was no plan to keep dissidents off the floor and out of the

[310] Chilton interview, April 17, 2002.

discussions. As a result, there was little perceivable 'backlash' against the Party once the decisions were made final at the convention. Harcourt was fond of saying 'You can't organise apathy', and the policy renewal process served as a reminder to members that their opinion was not only sought, but also important to the future of the Party.[311]

Equally important to Harcourt was to break the psyche of opposition.[312] With the years of opposition, members had grown expert in critiquing the Socred government, but had put less effort into policy solutions. The Party had often relied on the perceived malevolence of the Socreds to unify a disparate membership base. Little effort was placed on forming common political bonds or settling internal differences. In a sense, some members became too accustomed to opposition. As a result,

> The NDP was a party of outsiders. And often even within the Party people would continue to act like they were outsiders. And so you had this dysfunctional way of acting and not feeling connected to each other or to the Party, or to government, or society.[313]

Harcourt believed the Party needed to face up to the responsibility of acting like government, before it could become government. Internally, this meant changing the pattern of dispute resolution. In the past, membership schisms on policy questions would be solved when the Party executive sided with one group over another. Harcourt's aim was to take the executive out of the dispute resolution process and have the two opposing sides come to a compromise on their own.[314] Internal cohesion, not forced upon by the executive but forged through compromise

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[311] Chilton interview, April 17, 2002.
[312] Lanyon interview, April 10, 2002.
[313] Lanyon interview, April 10, 2002.
[314] Pollard interview, June 3, 2002. The 'Sustainable Development' policy committee was the most heated example where two traditional Party foes, environmentalists and loggers, were forced to come to a working peace. Harcourt also saw the policy renewal process as addressing divisions between urban versus rural members, and small business versus union interests. Harcourt interview, April 9, 2002.

out of a common desire to govern, was the goal. It was not that the Party would never have fights again, but that these rifts would be addressed through a process which led to compromise and cohesion. Moreover, the creative energies of the membership were redirected. Through the renewal process members were being asked not to focus their energies on attacking the Vander Zalm government, but to construct projects for the Harcourt government. This change in emphasis attracted new members who saw an opportunity to implement what they saw as positive change, while thinning the ranks of those who were happier in opposition. The policy renewal, lead by Harcourt's insistence on compromise, helped develop a new culture in the Party.

The last element of cultural renewal focused on bringing together a social consensus to ensure both the Party's electoral success and long-term sustainability in government. Harcourt believed in the principle of inclusion. The policy renewal was structured to bring all members together and build a consensus. Outside of his belief that this was the right thing to do, Harcourt and his staff saw a long term need for "buy-in" in the whole modernisation process.[315] It was vital for the Party's electoral chances and stability as government that all members and stakeholder groups believed in the process. Where the Skelly leadership era was plagued by dissent, and the election campaign was rife with factions pressing divergent agendas, a winning campaign relied on every group, every member, and all candidates repeating a dominant theme or "central message". The power of social cohesion meant that instead of staying 'on message' because members were instructed to by the central campaign office, they would adhere to the plan because they felt they

[315] Pollard interview, June 3, 2002.

had "some ownership of where the Party was going".[316] While Chilton brought a new type of positioning and saliency testing that continually refined theme, language, and arguments, (the message), Harcourt insisted that everyone had to feel like they were part of this plan. In the past, all high-level strategy was conducted by the central election planning committee. Under the new policy renewal process, election strategy was part of the discussion open to all members: "He chose a 'public strategy' over a 'secret plan'".[317] This resulted in not only widespread acceptance of the policy results because of the openness and consultative nature of the process, but also allowed for electoral discipline during the election. As Pollard further notes

> If you knew from all the qualitative and quantitative research that you'd done what it takes to win, you'd be foolish not to have everyone singing from the same page, because you can lose it where some candidate decides to do their own thing.[318]

Thus, besides the administrative and policy benefits of an open approach, there were also strategic advantages.

The long term advantages of 'buy-in' were equally pronounced. The view of Harcourt and his staff was summarised by Lanyon: "You have to develop a consensus socially, before you can have sustainable change".[319] The type of discipline required over the period leading up to an election was altogether different from the long-term consensus that was required when one formed government. Once in power, the government would be forced to live within the financial constraints of yearly budgets, face a hostile press, and make decisions which not

[316] Pollard interview, June 3, 2002.
[317] Pollard contends that the forums were not just about policy. The Party's electoral strategy was also discussed and debated. Masses of new policy were produced, but so too were strategic documents that explained how the election campaign was going to be waged. Pollard interview, June 3, 2002.
[318] Pollard interview, June 3, 2002.
[319] Lanyon interview, April 10, 2002.

every stakeholder group would find acceptable. In government, in other words, there was a greater strain on the coalition of interests that made up the BC NDP. All members had to be able to accept that not everything they wanted achieved in government would be possible. Compromise and cooperation were necessary.

Not everyone bought into the policy renewal process. Bob Williams was the most vocal critic of the process. Of his criticisms, three stand out. He was firstly skeptical of claims the process represented authentic "membership democracy". Williams describes the regional policy conferences as examples of "policy through attrition".[320] That is, those who were the most driven, the most devoted, would be the 'last ones standing' as these meetings would drag on until late in the evening. The concerns of 'everyday' members would be drowned out by those who could endure the seemingly endless meetings. It was, in Williams view, a process that availed itself to being "hijacked by special interests".[321] The touted policy process was a place to make activists feel useful, not a forum for membership democracy.

Moreover, Williams did not necessarily see the value in members making policy decisions. In a broad sense, Williams argued members should be encouraged to define their goals and have an opportunity to voice those concerns to the Party. Yet, Williams contends, it is the task of experts to reduce complex policy questions into language which non-specialised people can understand. To pass the responsibility of policy development to members, though laudable, is naive.

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[320] Williams interview, April 12, 2002.
[321] Williams interview, April 12, 2002.

> It's not process, damn it, it's depth. And it's knowledge. And it's not one person, one vote. It's an elite question when you get right down to it. And I shudder to say that, but the truth is, it is. You bloody-well need people with God-damn brains who understand the subject completely.[322]

On occasion, Williams admits, Party members will have "depth" in a particular area or project, but to "expect it to happen universally out of some Party process" is impossible.[323] In this regard, Williams echoes the sentiment of his protégé, Glen Clark, who famously remarked "Process is for cheese". They share a belief that the role of leadership is to guide the Party forward based on common principles. The authority to determine policy direction is based on the membership's previous approval of the leader through a leadership contest. To return to Williams' mantra, "use power well", in the field of policy formation this meant consulting with experts. The leadership job was to fit policy expertise with the values and goals of the membership while still remaining electorally strategic.

Lastly, Williams charged that process lead to a false sense of conclusion. While he recognised that the Party needed to mend the traditional schisms, and saw the process as a valiant effort in this regard, he argued that much of the consensus building was artificial. Harcourt, and the process he lead, in Williams view, did not seek out serious answers to divisive problems, it "fuzzified" them.[324] That is, Harcourt spoke in vague, non-specific language that gave the right answer to the right people, but never addressed specific problems. While in opposition, Williams held, Harcourt faced less scrutiny and was able to distract most of his critics with

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[322] Williams interview, April 12, 2002.
[323] Williams interview, April 12, 2002.
[324] Williams interview, April 12, 2002.

his apparent success.[325] An artificial aura of optimism was created which meant that, in Williams' view, the real 'hard choices' which came with power, were not being addressed. According to Williams, the policy renewal process masked: a weak coalition that would dissolve when the initial electoral victory had been achieved; a policy agenda which was both vulnerable in content and without political savvy; and a leader whose popularity was not based on what he stood for, but what he could do. Once the strains of government took hold, Williams argued, the policy renewal process came unraveled and the leader who stood behind it lost control. In short, for Williams, "there wasn't the depth. There was enough to slide by and win an election, but after that you've got trouble...".[326]

Harcourt, of course, does not share this view. He saw his modernization project as preparing the Party for government. He sought to change not only how members expressed themselves politically, but also what they understood as 'politics'. To him, political satisfaction could no longer rest in the smug satisfaction of personal vindications and Socred vilifications. Meaningful politics meant forming government. The Party had to work out its differences. The process of policy renewal was structured around meaningful consultation, substantive discussions, and coherent policy aims. Although the Party was still a political machine which sought political advantage in order to form government, Harcourt was unwilling to sacrifice long-term policy goals for immediate political gains; he would not sacrifice the process for populism. He saw the policy renewal as building

[325] The Party had won six successive by-elections between June of 1988 and December of 1989. More important, the Party had won three of those by-elections in traditional Socred strongholds: Boundary-Similkameen in June 1988, Cariboo in September 1989, and Oak Bay – Gordon Head in December 1989.
[326] Williams interview, April 12, 2002.

a wider trust with a larger political universe. His approach suggested that all his policy cards were on the table for voters to see for themselves. Through his unflappable commitment to process and policy, Harcourt attempted to foster a public trust that he would not attempt to "slip anything past" the voters.[327]

Aboriginal Policy Development

Thus far, I have explored both the goals and strategies of the Harcourt modernisation project and the structure and aims of policy renewal process. In the last section, I examine three connected aspects of Aboriginal policy development in the period between 1988 and 1990. First, the five principles established by the Aboriginal policy committee are interpreted. I argue these principles represent not only a renewal of previous ambitions, but also reflect Harcourt's vision for Aboriginal rights and treaty negotiations. They are the cumulative efforts of a policy process which Harcourt lead and would not relinquish. Second, I explore the political dynamics that surrounded Harcourt's Aboriginal agenda. I claim that despite his strong personal views, Harcourt was ever conscious of the popular limits of his passion. He recognised that he needed to maintain a personal discipline which would provide confidence to his Party critics, while also continuing to provide comfort to his disparate electoral universe. Third, I examine the faith Harcourt attempted to establish in the policy and Party renewal which founded all 'modernized' Party policy. I argue he was successful in his efforts to entrench his vision of Aboriginal policy by gaining the trust of most members and activists. He

[327] Lanyon interview, April 10, 2002.

established policy and political momentum which was unstoppable by the time his Aboriginal policy forum reached the convention floor. In short, the leadership, policy, and political momentum helped entrench Aboriginal policy as a major priority of the Party. The policy committee recognised Aboriginal title and the inherent right of Aboriginal self-government as founding principles for tri-partite treaty negotiations. The social consensus established in the policy renewal helped ensure that the electoral discipline required for an election campaign would be in place.[328]

At the 1990 Convention (March 9 - 11), the Party affirmed its commitment to Aboriginal rights and treaty negotiations. The policy committee responsible for Aboriginal issues, *Towards a Just and Honourable Settlement: Indian Land Claims in British Columbia*, recommended the Party accept five principles for treaty negotiations. They presented the Party's efforts to address Aboriginal title and self-government, provincial responsibility to enter treaty negotiations, third-party interests, economic development, and Charter amendments. The policy paper was a result of the policy renewal process. Although only eleven pages in length, it was the most substantive and clear outline for Aboriginal policy the Party had ever produced. Its centre-piece was the five principles:

> The New Democratic Party believes that resolution of the Indian Land Question in British Columbia is a critical political, economic and moral issue that can no longer be ignored. A just and honourable settlement of the Land Question is vital if we are to achieve sustainable economic development for the province as a whole.

[328] The Party had been preparing for an election call as early as the spring of 1990.

> Toward this end, the New Democratic Party is committed to:
> 1. recognition of aboriginal title and aboriginal peoples' inherent right to self-government;
> 2. provincial participation in modern-day treaty negotiations to achieve a just and honourable settlement of the land question;
> 3. third-party interests in negotiated treaties on the land question;
> 4. sustainable economic development initiatives in both aboriginal and non-aboriginal communities resulting from settlement of the land question;
> 5. renewal of constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada.[329]

Each of the principles represented a refinement and clarification of the Party position. The first principle, aboriginal title and self-government, was not new to the Party. As has been discussed in previous chapters, Skelly recognised Aboriginal title and the need for 'municipal type powers', and even Barrett had suggested or hinted at some acceptance of Aboriginal title. What separates this statement from previous ones was the Party's further acknowledgement that title "and rights to land and resources are meaningless without aboriginal jurisdiction over these lands and resources".[330] Moreover, in contrast to the failure of the final (1987) First Ministers Conference to recognise the inherent nature of Aboriginal self-government, the first principle of treaty negotiations acknowledges it as an important and viable concept for treaty talks.[331] With the first and most essential principle established, that Aboriginal title was indeed a burden upon the Crown and not "at the pleasure of the Crown" as Justice McEachern would soon describe it, the second principle sought a means for resolution.

[329] BC NDP "Towards a Just and Honourable Settlement: Indian land Claims in British Columbia". Vancouver, 1990 (1). For the purposes of clarity, I have cited the text in full.

[330] "Towards", 1. The policy paper expands upon each principle after listing them.

[331] David Hawkes. Aboriginal Peoples and Constitutional Reform: What Have We Learned? Institute of Intergovernmental Relations: Kingston, Ontario, 1989 (12). Within a year of forming government, Harcourt would recast the provincial appeal to the Supreme Court on the Delgamuukw case to accept aboriginal title and self-governance as "political rights". The Harcourt government was less willing to acknowledge, for negotiating purposes, aboriginal title as a 'legal right'. Frank Cassidy interview, April 19, 2002.

The second principle was a logical outcome of the first. The participation of the province in tri-partite negotiations was necessitated by recognising that the province, as legal guardian of the vast majority of Crown land, was burdened by aboriginal title. The province had to enter negotiations in order to clarify the competing interests over Crown land. The paper, however, cited other reasons for the province to enter negotiations. The province had a role at the table so that it could better defend its interests and the interests of population. It argued that while the federal government's "counter-productive negotiations priorities" had brought the process to a stand-still, thus creating economic uncertainty, an NDP government would inject new energy into the process. Moreover, while the document was careful to lay the primary financial cost for treaties at the feet of the federal government, it pledged that it would not allow treaty talks to be stalled while the provincial and federal government worked out a cost sharing agreement. This political 'football', which had been used by the Barrett government, would not stop negotiations. The cost sharing agreement, in other words, "should not be used by either government as an excuse for not negotiating".[332] In tune with Harcourt's positive message on treaties, the province must enter negotiations because it will "dispel the economic uncertainty facing British Columbia's regions".[333] Treaties are, the policy paper argues, thus not only a result of long-over due historical recognition, but also "a hand-up for economic development". It addresses third-party interests: the policy paper not only speaks to the concerns municipalities were raising in light of a potential treaty process, but also to the fears of property owners, ranchers, and other Crown land users whose collective

[332] "Towards", 2.
[333] "Towards", 2.

rights to Crown land would be in potential conflict with First Nations' interests. In one respect, the principle suggests an acknowledgement that the views of third party interests would be considered in a future treaty process. It does not state they will be partners in that process, however. More simply, the third principle follows the previous two, which establish why treaties are needed and hints at how they might work, to confirm non-Aboriginal rights in the process. Politically, the most dangerous element in this process was people's fear that private property was on the table.[334] To reassert that third party interests will be protected is an indirect way to restate: 'private property is not on the table'.[335] As much as the third principle adds to the consultative focus of future treaty-negotiations, it also seeks to quell fear.

The fourth principle promotes a positive message. The principle of sustainable economic development, which was a central to the Party's overall agenda, is embedded in the Party's vision of treaty negotiations. The fourth principle echoes Harcourt's message that significant economic benefits flow from treaties which profit both Aboriginal and non-aboriginal peoples. These benefits, in Harcourt's language, would inject "millions of new federal dollars" into the province, stimulate "economic development" which "breaks the cycle of poverty and dependence" of First Nations, result in the removal of a "major obstacle to public land-use planning", and put an end to the "$100,000,000 plus court cases".[336] Despite the opportunistic hue, the principle also speaks to an awakening tension between the environmentalists and aboriginal rights advocates within the Party.

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[334] It is no accident that twelve years later the first question on the 2002 treaty principles referendum plays to that same fear.
[335] Chilton admitted that almost up until the election, the Party, and Harcourt in particular, "were not as clear as they should have been" on the issue of private property. Chilton interview, April 17, 2002.
[336] "Towards", 2.

The development of economic projects within First Nations and amongst the regions is seemingly conditioned on the sustainability of the project. The fourth principle does not dispel the possibility of 'non-sustainable' but financially lucrative projects, such as strip-mine or a vast clear-cut, but it clearly leans toward development which has a more environmentally sustainable bent. It also can be read as a turn towards tempering the inherent right of self-government pledged in the first principle. That is, for example, if a self-governing First Nation assumes the authority to cut down trees or mine the earth without regard for the sustainability of this project, then this would be a contravention of the environmental standards set under the 'sustainability' principle. There is a possibility that the principle of inherent self-government of Aboriginal people could conflict with the public good associated with sustainable use of natural resources. The tensions between promises for self-government and sustainability are exposed. The fourth principle, sustainable economic development, suggests a prosperous outcome to the treaty process and sets the environmental goals around that development. As a political fixture, it highlights the potential conflict between Aboriginal economic needs and environmentalist concerns over land-use.

The last of the five principles sets the ambitious project of renewing the constitutional process in order to enshrine aboriginal rights within the constitution, yet also allows room for the Party to enshrine these same rights even if discussions break down at the federal level. With the failure of the First Minister Conferences on Aboriginal rights, and the rejection of the Meech Lake Accord, section 35 of the

Charter remained largely, though not entirely, unchanged from 1982.[337] It still did not provide clarification on title rights and self-governance. The fifth principle symbolises the Party's drive to recognise certain Aboriginal rights despite the lack of success at the federal level. It also contrasts with Vander Zalm's consistent resistance to entrench Aboriginal rights and recognise Aboriginal title. The policy paper adds to the initial statement that:

> in keeping with the unanimous findings of the all-party House of Commons Special Committee on Indian Self-Government (the "Penner Committee"), we are committed to the recognition of such rights in British Columbia regardless of success with constitutional processes at the federal/provincial level.[338]

In essence, the Party pledges to 'go it alone' if all else failed. Given the record of previous attempts to entrench Aboriginal rights, the caveat which trailed the commitment to pursue Constitutional changes, was an important one.

Cumulatively, the five principles were the result of an extensive process which produced a policy paper out of compromise and consultation. Yet, the principles bore the language, tone, and vision of Harcourt. More than simply adopting the language and political selling points that Harcourt had refined since he became leader, the principles represented his attempt to break free of the other traditional views of Aboriginal rights that were current at time.

Harcourt describes himself as representing one of four views which he saw represented in the public while he was leader. The first paradigm he describes as

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[337] As was noted in chapter four, the term "existing treaties" in section 35 of the Charter was interpreted to recognise future treaty negotiations.
[338] "Towards", 3.

the Joseph Trutch/Mel Smith tradition.[339] In this tradition, as was discussed in chapter four, Aboriginal title has little if any legal validity. If it existed, it was extinguished with confederation. If there are any remaining duties or obligations to Aboriginal people, they lie with the federal government. Harcourt also set himself apart from what he describes as the "socialist position". This view, outlined in chapter two and embodied in former Attorney General Alex MacDonald and Bob Williams, insists that Crown land exists for the benefit of all, regardless of history or place of origin. In this view, it is a deep shame that native people were treated unfairly in the past, but it would be equally unfair if "special rights" were granted to one group, and not to all. In this view, Indian people should accorded every opportunity to prosper and rise out of their unfortunate state, but this does not grant them land or governing rights apart from everyone else. The third view, which Harcourt was equally disdainful of, defines Aboriginal title as a right to Crown land in fee simple. This position was expressed famously in the dramatic claim that BC is owned by Aboriginals 'lock, stock, and barrel'. Harcourt contends that this interpretation is inconsistent with Aboriginal use and occupation traditions of Aboriginal people prior to colonisation. Moreover, in Harcourt's view, this position is politically unfeasible. It is the equivalent opposite of denying Aboriginal rights altogether. Because it represents a view not concurrent with traditional notions of title, and because it is "unworkable" in the present circumstances, Harcourt rejects the notion of Aboriginal title as land in fee simple.

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[339] This section borrows extensively from my interview with Harcourt, April 9, 2002.

Instead, Harcourt sees Aboriginal title as a "bundle of rights" vested in Crown land amongst a series of other rights.[340] Crown land consists of competing rights which, in Harcourt's view, carry a responsibility to negotiate and balance interests. The province must engage in negotiations because it is the trustee over the Crown lands. Treaties exist to make explicit Aboriginal rights within a larger context of competing rights. They define whose rights are going to be practised and how. If, as Harcourt argues, the purpose of treaties is to share the use and occupation of lands which results in sharing the benefits of the land and resources, then negotiations serve as a process by which a "business plan" for community development is defined. From this perspective, Harcourt states, the task of negotiations is to "share the benefits of a richly endowed province the size of Germany and France with 4,000,000 non-Aboriginals and 175,000 Aboriginal people".[341] For the good of both Aboriginal and non-Aboriginal peoples, the bundle of rights inherent to Crown land must be clarified through a tri-partite treaty process. Harcourt believed the five principles established by the policy Aboriginal policy committee, which he chaired, would be those which would guide an NDP government in those talks. In addition to the establishment of treaty principles which would guide a future treaty process, Harcourt attempted to bring greater knowledge and acceptance of Aboriginal issues to the larger NDP universe. With refined and redirected arguments, language and phrasing, he promoted the positive economic

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[340] Harcourt, as was noted at the beginning of this chapter, did not come to these conclusions alone. Outside of the direct influence of prominent Aboriginal leaders inside the Party and without, many prominent lawyers and legal professionals, academics, and federal and provincial bureaucrats and politicians understood Aboriginal rights in the same way. Harcourt's views are best understood as part of a context where the discourse around Aboriginal rights was expanding and developing.

[341] Harcourt interview, April 9, 2002.

and social aspects of treaty negotiations on his tours. For Harcourt, this change of attitude could not simply come from his conversion work. It was important that a dialogue be established between the Party and its members. Regional policy forums helped "flush out" more resistant members' anxieties and concerns. It was better, in Harcourt's view, that members have their fears addressed now, than later on in the backrooms of campaign offices during the election. Beyond the immediate membership, Harcourt made a point of addressing the concerns of business groups, municipalities, and resource companies. In his "Harcourt talks business" speech, he explained why treaties were needed and what benefits businesses could gain through them.[342] For treaties to succeed in the long-term, Harcourt held, they had at least to be understood, if not endorsed, by as wide a spectrum of the populace as possible. Harcourt set out to make that happen.

In order to make treaty negotiations a reality, Harcourt had to not only convince the public that treaties mattered, but also assure them they were not to be feared. One step Harcourt took to provide comfort to voters on this issue was to recruit two well-respected Aboriginal leaders as spokespersons for the Party. These people would refrain from the seemingly more "radical" language of some native groups and repeat Harcourt's main message that treaties were the best hope for a "win/win" scenario. Long time Party activist and Nuu' Chah' Nulth Tribal Council chair George Watts, along with Nisga'a NDP MLA Larry Guno were given the task. During the late 1980's it became common-place to see the two Aboriginal leaders sitting beside Harcourt at Aboriginal policy committee meetings, press releases and various party functions. Watts, who had been so electrifying at the 1975 convention,

[342] Harcourt interview, April 9, 2002.

again would be given a prominent role. He was a passionate Aboriginal advocate. Yet, he also had long ties to the Party and was widely viewed as holding well-tuned political senses.[343] As an advocate for Aboriginal rights both inside and outside the Party, he was adept at expressing his passion for Aboriginal justice while easing the concerns and fears of non-Aboriginal people. He believed, like Harcourt, that for treaty process to begin in earnest, the NDP had to form government.

The Socred's traditional opposition to treaty negotiations, however, was softening. In March 1987, Premier Vander Zalm established a Native Affairs Secretariat. In 1988, Vander Zalm appointed Bruce Strachan the first Minister of Native Affairs. Within a year, Jack Weisgerber replaced Strachan. He, along with Deputy Minister Eric Denhoff, would make what Paul Tennant describes as "giant strides in opening communications with Native political leaders".[344] In 1989, the Premier's Advisory Council on Native Affairs was established. With pressures mounting, Vander Zalm accepted the panel's recommendations to join federal negotiations in July of 1990. That fall, a body composed of representatives from the major Aboriginal organisations, the government of Canada, and BC was mandated to establish "the principles and procedures that should be followed in negotiations".[345] The seven principles of the BC Claims Task Force were endorsed by both levels of government and the major Aboriginal organisation leading the talks, the First Nations Summit. Despite Wiesgurber's success in starting the BC Treaty process, the Socreds were reluctant to embrace Aboriginal title and resisted

[343] Numerous interviewees commented on Watts' political savvy.
[344] Paul Tennant "Aboriginal Peoples and Aboriginal Title in British Columbia Politics" in Politics, Policy, and Government in British Columbia. Ed. R. K. Cary. Vancouver: UBC Press, 1996 (55).
[345] Ibid, 57.

the notion of Aboriginal self-government. Just two years previously, the Premier's Advisory Council had limited its recommendations to "assisting" the federal government in negotiations; it did not recommend the province enter as a full partner.[346] There had been a radical change in the Socred Native position in four year, but those changes did not necessarily extend to full acceptance of Aboriginal rights.

Harcourt recognised the need win power, but was sometimes carried away with his enthusiasm on Aboriginal rights. As the embodiment of the Party, what Harcourt said mattered. He was devoted to initiating modern treaties in BC. As Lanyon notes, "it was a 'first principle' in terms of what he believed in. Like how Tommy Douglas saw Medicare, he saw treaty negotiations".[347] Yet, he was forced to recognise the political limits of his vision. Chilton reports that sometimes Harcourt's enthusiasm for treaty issues had to be "reeled in", because he was speaking of them in a way which didn't have saliency with the electorate.[348]

Ever careful with language and phrasing, the Harcourt staff continually tested and re-tested words and arguments which 'spoke' to their electoral universe. It was discovered, for example, that individual native protests were generally unpopular amongst the non-Aboriginal populace, but the cumulative effect of protests raised awareness of Aboriginal concerns and could build sympathy and

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[346] Gawthrop, 212-213.
[347] Lanyon interview, April 10, 2002.
[348] Chilton interview, April 17, 2002.

support for treaty negotiations.[349] Harcourt responded by drawing attention away from specific protests, he rarely spoke of isolated demands, and towards the cause of these protests. He pointed at the Socred's resistance to negotiate modern treaties as the root cause of the problem. From that starting point, he would break into his old refrain that economic uncertainty was the result of government malaise on treaties, and that a New Democrat government would negotiate treaties which stimulated economic activity, in part, by the massive influx federal dollars into First Nations in particular, and BC as a whole. In short, it was the cost of not negotiating versus the benefits of treaties that Harcourt espoused. This argument was tested and shown to provide comfort for the NDP universe and kept Harcourt 'inside the message box' on treaty talks. His staff's job was to ensure he stayed 'on message'.

Nonetheless, Harcourt's persistence on Aboriginal rights invoked criticism inside the Party and inspired optimism amongst some Socred supporters. Internal Party critics, such as Williams and Clark, saw Harcourt 'giving' the Socred's an issue which would cost them the election. In Williams' view, Harcourt was acting recklessly. Instead of Harcourt keeping this issue away from the limelight and letting the Socreds self-destruct, he was flaunting an issue which could destroy the chances they had for forming government.[350] Amongst Socred supporters, the right-of-centre weekly magazine *British Columbia Report* reiterated this same point. Its staff writers encouraged Vander Zalm to seize the populist high-ground, oppose

[349] Pollard interview, date.
[350] Williams interview, April 12, 2002.

Aboriginal title, call a snap election, and wage the election on treaty negotiations. In late August of 1990, in the midst of a summer which saw several native blockades including the 'Oka standoff', the magazine contended:

> Premier Bill Vander Zalm stood poised last week to issue an election call within the next fortnight after NDP leader Mike Harcourt handed him an issue on which the Social Credit government was certain it could win strong support throughout the province.[351]

The article went on to outline how "anti-Indian backlash" could lead to a "swift and decisive" shift in support away from Harcourt. The real issue, it urged, was not about scandals or government largesse, "[b]ut when it came to solving the province's real problems, it would be better to let people with real experience handle it. That would be the Socred election stance."[352] The view, carried by both critics inside the party and political opponents on the right, was that Harcourt had over-extended himself. He had exposed an issue which the public could rally againstHarcourt's staff were well aware of the potential political peril Aboriginal issues presented. To quiet Williams and Clark, they invited them to bring forward any concerns they had around Aboriginal issues.[353] All key phrases and arguments would be focus-group tested to ensure that the NDP universe was always comfortable with the position Harcourt took on Aboriginal title, native protests, and the place of the province in treaty negotiations. Moreover, Harcourt's staff repeatedly assured the internal Party critics that Harcourt both recognised the populist limits of his fight and would not be allowed to stray 'too far out front' of

[351] Eddie Bartlett and Tim Gallagher. "Harcourt's 'gift' to Zalm." *British Columbia Report.* August 27, 1990 (6).
[352] Bartlett and Gallagher, 9.
[353] Chilton interview, April 17, 2002. Williams, who was then chair of Caucus (and who would not run in the next election), was also made Chair of the transition committee which oversaw the plan to implement a Harcourt government. Harcourt, consistent with his inclusive style, felt it was better to "keep everyone inside the tent", than let powerful critics sit on the sidelines. Pollard interview, June 3, 2002.

the electorate.[354] The staff worked with Harcourt to build up a language which would 'inoculate' their leader's stance on Aboriginal rights. Harcourt's up-beat and open approach to problem solving, his appeal as a moderate, and his work to recast treaty negotiations as a potential boon for the province, all helped Harcourt deflect Socred denunciations.

Moreover, the six by-elections between 1988 and 1989 provided a testing ground for the language and arguments Harcourt was using. With every victory, the message was refined. Instead of the contest serving as a sounding board for the local issues, the Party made every effort to ensure the by-elections were "a referendum on Bill Vander Zalm".[355] The NDP won all six. In the midst of numerous scandals, the Socreds lost three 'safe' seats. They were in no position to go on the political offensive. Meanwhile, the premier-in-waiting was given leeway to pursue 'his issues' so long as he stayed within the closely monitored 'message box'. Winning gave Harcourt not only the confidence that they were on the path to government, but also the power to pursue their agenda with less resistance inside the Party.

The political sensitivities of Aboriginal issues were likewise addressed by Harcourt's efforts to build faith through the policy renewal process. One lesson the Party had learned for the 1986 election was that for people to buy-in to the election program they had to feel ownership in the process. Harcourt understood this and was very successful integrating this into the operation of the Party. This meant

[354] Chilton interview, April 17, 2002.
[355] Pollard interview, June 3, 2002.

going out to meet with the activists within the Party who were passionate about Aboriginal issues and get them to believe in the sanctity of the policy process. Once this was achieved, it would be easier for them to accept that 'their issue' was not going to be the cornerstone of the election. It may even be played down or minimised during the cut and thrust of a campaign. On their own, Aboriginal issues were insufficiently popular to win an election. The success of the open and inclusive policy renewal process, it was hoped, would provide a means of Party discipline during the election. The reasoning was that since everyone had been invited and everyone had had a say, now everyone would have to 'sing from the same song-book'.[356] Harcourt's passion for Aboriginal issues and commitment to the renewal process would have to convince Aboriginal activists inside the Party and without, that regardless of the circumstances of the election, the Party was serious about implementing modern treaties in BC.

The principles had been established, the political path had been mediated, and the process had delivered the buy in required for electoral discipline and social consensus. Harcourt had been able to structurally entrench Aboriginal rights into mainstream of Party policy while at the same time building the political momentum necessary to deliver on his one promise - to win the election. Although, as Pollard states, Aboriginal issues would not take a high priority during the election, "everyone understood that it would have to be dealt with" once power had been achieved.[357]

Conclusion

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[356] Pollard interview, June 3, 2002.
[357] Pollard interview, June 3, 2002.

Between the end of 1986 and the summer of 1990, the BC NDP went through a dramatic period of change. Its leader implemented a modernisation project which laid out a plan for renewal. He began this transition by changing the role of the leader. Harcourt would not assume the traditionally antagonistic persona of previous NDP leaders. His talents did not lie here. Instead, he toured BC, visited with members, and met with a wide spectrum of stakeholder groups. He was 'on the road' to promote a new vision for the Party. Inside the Party, modernisation meant unification and policy renewal. Guided by a belief in Team New Democrat, Harcourt sought to foster a new spirit of inclusion and cooperation. The Party's renewal, it was hoped, would not be based on a shared enemy, but along common political and policy goals. These goals would be re-established according to the outcome of the policy renewal process. In this process, traditionally competing interests, such as resources workers and environmentalists, would resolve differences through negotiation and cooperation. Once this had been achieved, it was argued, that model of cooperation would serve as a template to resolve these same conflicts in the rest of the province. The Party was a microcosm of BC, in other words, if Harcourt could bring an end to the 'war in the woods' inside the Party, then he could do it outside the Party when in government. Harcourt believed that for the Party to be ready to govern, it had clarify its position on Aboriginal rights and create a political climate where treaty negotiations were publicly viewed as essential to BC's well-being. Guided by overall structure of the policy renewal process, Harcourt led the policy committee which formalised the Party's recognition of Aboriginal title and the inherent right of Aboriginal people to self-government. In this process, he consulted widely with members and interest

groups in order to flush out the anxieties they had over treaty negotiations and Aboriginal rights. Espousing the economic benefits of treaties, Harcourt built not so much a faith in the process of treaty negotiations, but a realisation that they were inevitable and were economically beneficial to entire province. Treaties were not, in Harcourt view, about costs, but about the creation of "win/win" scenarios. Harcourt and his staff refined the Party's messaging around Aboriginal rights so that the Party's political universe would find comfort in the Party's position. It was recognised that Aboriginal rights were never going to be a winning issue for the Party, but Harcourt attempted to show to critics that Aboriginal rights could be promoted in a way which did not assure the Party would loose elections.

Underneath the widespread membership acceptance of the modernisation project lay one basic assumption – Harcourt would bring the NDP to power in the next election. In many respects, this was the glue which allowed the many changes of the renewal process to occur. For the critics, such as Williams and Clark, the prospect of power muffled their disapproval, as they focused their energies into the task of winning the coming election. Williams appreciated Harcourt's efforts to address traditional Party cleavages, but saw the peace accords and compromises as flimsy. In his view, they would unravel once the Party was in power.

Indeed, much of what Harcourt asked of Party members was sacrifice. The policy process demanded, for example, that members accept the outcomes of the highly structured process. Although members were encouraged to contribute, once the process started, everyone had to accept the results – members had to "buy in", there was no other option. Moreover, with Harcourt as leader the Party was less

"ideologically pure", less strident, and less oppositional. To some members, Harcourt's efforts to bring the Party more into the centre of the political spectrum made the Party less politically satisfying. This shift in language and priorities included Harcourt's personal aspiration to bring Aboriginal rights and treaty negotiations to the heart of the Party's policy agenda. Members would have to accept that Harcourt would not lead the Party to power unless treaty negotiations were a cornerstone of where the Party intended to go as government. The modernisation process, in short, required members' faith in the policy renewal process, compromise in its solutions, and discipline on the part of the coalition of interests which made up the BC NDP to accept and support those decisions. In return, Harcourt promised to lead the Party out of the long years in opposition. For Harcourt, the Party would form government with a platform constructed by Team New Democrat, supported by its members, ready to govern, and committed to Aboriginal rights to land and self-government through treaty negotiations.

Harcourt vision of modern treaty negotiations guided by a recognition of Aboriginal rights was initiated when he became premier. In the year between the 1990 convention and the 1991 provincial election, Aboriginal issues retracted from the public and political consciousness. Even though the future Aboriginal Affairs minister Andrew Petter sat on the NDP transition committee, it made little effort to consider how to implement modern treaty negotiations. The public administration and political difficulties of treaties were not addressed. Indeed, the transition committee's chair, Bob Williams, returned to the age old argument that public support for treaties was a political liability, and that the new government would be

better off putting its energies elsewhere. Once the election was called it became clear that the Socred's support was in decline, the provincial Liberals had filled the political void left by the departed Socreds, and that Harcourt and the BC NDP would form government. Within a year and a half of coming to power, Harcourt met with Prime Minister Brian Mulroney and First Nations leaders to establish the British Columbia Treaty Process.[358] This body would serve as the agent through which all treaty negotiations would take (except for the Nisga'a treaty negotiations, which was run independently of the process). Although Harcourt resigned as Premier in 1995, the process he had helped start did not stop. The need to negotiate treaties had become entrenched not only within the Party, but also in the public. Harcourt's predecessor, Glen Clark, in a move that would have astonished most political commentators just a few years before, attempted to garner public support by making the ratification of the Nisga'a treaty a wedge issue. Even today, as the Gordon Campbell Liberal Government dismantles the last ten years of NDP government, they are unable to dissolve the province's obligation in modern treaty negotiations. Aboriginal rights and treaty negotiations have become part of the political landscape of British Columbia, and part of the credit for that achievement lies with Mike Harcourt.

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[358] As was noted earlier, however, Harcourt was not the 'father' of modern treaty negotiations in BC. That distinction lies with the previous Vander Zalm Administration, and Jack Weisgerber in particular. Weisgerber was responsible for initiating the BC Claims Task Force that beget the BC Treaty Commission. While it arguable whether Vander Zalm would have followed through with Task Force's recommendations (as Harcourt did) should he have won a second term in office, he did permit Weisgerber to initiate the process. Harcourt, perhaps instead, deserves recognition as the 'midwife' to the BC Treaty Commission. I thank Norman Ruff for this clarification.

Conclusion

Introduction

When I first began to consider a topic for my thesis, I asked what I thought was a simple question: What if Thomas Berger had won the 1969 provincial election? After some thought, I concluded that the value of the question lay not in its hypothetical answer, but in the acknowledgement that partisan politics, and particularly BC NDP politics, has played a substantial role in the development of Aboriginal rights in BC. What's more, this perspective had yet to be addressed by the canon of scholars who have investigated Aboriginal rights and BC history in other ways. Thus, I saw an opportunity to explore the advance of Aboriginal rights through the filter of BC NDP partisan politics.

In order to follow these changes I have examined the events, people, and structures that have been central to the changes within the Aboriginal policy of the BC NDP. Because changes that occurred inside the Party were impacted by changes that occurred outside the Party (such as court decisions, Aboriginal political organisation, federal government policy, and Social Credit positioning) I incorporated those developments into the scope of my work. Indeed, prominent Party members, such as Tom Berger and Frank Calder, were perhaps more influential in their roles on the Party's 'significant periphery' than inside the Party. Again, in periods where the Party was distracted or the leadership was less interested in Aboriginal rights, it was the developments at the Department of Indian and Northern Affairs, in the Supreme Court of Canada, or amongst competing Aboriginal organisations, which would set the course for future changes inside the Party.

It would be mistaken, however, to assume that the changes in attitude, expectations, and basic notions of Aboriginal rights inside the Party did not have repercussions in the wider society. Voters and sympathisers looked to the BC NDP for leadership on Aboriginal questions. Aside from educating its NDP universe, the Party's Aboriginal policy informed changes on the significant periphery. Thus, for example, when Barrett pulled away from the issue in the mid-1970s, Aboriginal organisations drew their lobbying efforts more towards the federal government, while Barrett's retreat on the issue allowed the Socreds to continue to ignore Aboriginal rights almost entirely. The relations of influence and reaction are complicated. At times, the significant periphery set the conditions of the debate, established the parameters of popular action, pressured the Party, and defined the legal limits of Aboriginal rights. At others times, the lead role was passed to the political arena; when the Supreme Court of Canada deferred to provinces to settle land claims, or when leading Socreds attacked the legal and political foundations of Aboriginal rights. Developments inside the Party are inseparable from and closely related to changes occurring on the significant periphery. I have assumed that to study Aboriginal policy development within the BC NDP is to recognise the Party's impact on a larger discussion. It is also a way to consider Aboriginal rights development inside a political space that has its own particular rules and dynamics that set it apart from other influences.

Kingdon's 3 Streams to Agenda Setting: Alternative analysis review

John Kingdon's Agendas, Alternatives, and Public Policies sets out to explain how some subjects rise on the government agenda and why people in government

pay attention to those issues but not others. In the next few pages, I will take this opportunity to define the major tenets of Kingdon's work, and explore how they might be applied to the development of Aboriginal policy within the BC NDP. Although not perfectly suited to the example at hand[359], I believe Kingdon's work can furnish unique insights that serve as a counter-point to the approach I have adopted and help explain the major trends I have investigated.

Kingdon understands the task of policy setting as the work of two main spheres - agenda setting and alternative specification. In the first sphere, the agenda is set through the fluid interaction of two agenda setting processes or "streams".[360] The first is the "problem stream". Kingdon defines this stream as the process whereby a condition of society becomes identified as a problem that demands action. If a condition draws sufficient attention, either through systematic indicators, formal or informal feedback, or a focusing event, it is transformed into a 'problem'. The second stream is political. The political stream consists of elected officials, interest groups, high-level appointees, career civil servants, interest group leaders, and other political actors who, independent of the problem stream, attempt to define government objectives and direct policy ends. This group is sensitive to swings in public opinion and what Kingdon describes as "national mood". They measure their success not only through election results, but also by having their "pet issues" placed high on the policy agenda. The people involved in these two streams Kingdon describes as "visible actors". They include the President, senior

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[359] Kingdon's analysis is situated within the context of American federal politics.

[360] He defines an agenda as "the list of subjects of problems to which government officials, and people outside of government closely associated with those officials, are paying some serious attention at any give time". Kingdon, 3.

appointees, top Congressional leaders, but also take in prominent members of the media. Visible actors include members of the political stream and other prominent actors and receive substantial public attention for the suggestions they make.

The second sphere, what Kingdon describes as "alternative specification", prescribes an inventory of possible policy solutions to meet issues on the public agenda. Alternative specification, according to Kingdon, consists of "hidden actors" working in the "policy stream". Existing outside the range of media attention ('hidden' from public view), communities of specialists inside and outside the formal structures of government make up the policy stream. These specialists circulate a wide array of possible policy alternatives in what Kingdon describes as a "policy primeval soup".[361] From a complex series of reformations and recombinations policy alternatives are narrowed by three main criteria: [1] technical feasibility; [2] congruence with values in and around government; and, [3] sensitivity to future constraints (particularly potential budgetary constraints). In the policy stream, unlike the political stream, ideas are first evaluated on their content not on their political merits.

> These specialists are affected by and react to the political events, to be sure. But the forces that drive the political stream and the forces that drive the policy stream are quite different: each has a life of its own, independent of the other.[362]

Despite their differences, both the policy agenda sphere and alternative specification sphere, cumulatively educate, remind, recast, and reinforce various policy aims over time. This process of making a policy goal or aim more acceptable to the two spheres is known as "softening". On the rare and short-lived occasions where the problem, political, and policy streams converge, a "policy window" is

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[361] Kingdon, 116.
[362] Ibid, 117 - 118.

created. In this window, government has an opportunity to act. With this synopsis of Kingdon's analysis model in hand, we can now consider how this model might explain policy development within the BC NDP.

My thesis addresses the shift in Aboriginal policy goals within the BC NDP from integrationist aims to policy based on Aboriginal rights. I also consider the changes in policy, values, and legal precedents that occur in the wider society. Applying Kingdon's model, the shifts I track inside the Party are largely those that occur within the political stream. That is, the BC NDP is a political unit seeking to impose its values on society through the edifice of government by means of elected office. The Party and its membership are mostly visible actors who seek public recognition for the decisions they make. The Party is, for the most part, not comprised of policy experts who forward complicated policy options based on technical feasibility or anticipated budget constraints. The Party's effort to orchestrate broad policy goals, which take on various guises including policy resolutions, leadership proposals, election platforms among others, aims at meeting the aspirations of its members while attracting the broadest possible public support. The Party's policy choices reflect its electoral interests and ideological make-up more than its policy expertise. Even so, the Party swayed to and from a more comprehensive policy making role depending on circumstances and leadership. Thus, for example, while Dave Barrett was premier, Party policy was identified largely as government policy. The gulf between the integrationist Aboriginal programs Barrett would promote as premier versus membership demands for a fuller recognition of Aboriginal title highlighted the ideological divide between 'government policy' and 'Party policy'.

Barrett was limited by his ministers' integrationist values, their perception that the general public would find treaty negotiations "laughable" and a lack of federal cooperation and expertise in treaty negotiations. Policy resolutions were neither concerned with future constraints, technical feasibility, or national mood, but were a reflection of a shift in values away from the integrationist paradigm and towards an Aboriginal rights perspective.

When Harcourt became leader, he assumed every member shared the same view on Aboriginal rights. He focused his efforts on two goals. One, he sought to create 'workable' (feasible), 'priced-out' (anticipated budget constraints) Aboriginal policy that included the work of specialists alongside public and Party input. Two, he sought to affect the public mood, by recasting the 'problem', not in terms of costs, but in his own 'win-win' language. While consistently aware of the potential political vulnerability Aboriginal rights posed, Harcourt refined his language to build a trust amongst the wider public. Harcourt's modernisation plan, particularly the policy renewal process, veered the Party towards a more policy oriented machine (in Kingdon's sense). Because the problem, the need to resolve disputes between First Nations and the provincial and federal governments, was widely recognised inside the Party and amongst the Party's political universe, Harcourt - expecting to form government after the next election - could turn his attention towards extensive policy renewal and refined messaging. He was preparing the Party, in short, to apply their Aboriginal agenda when the policy window opened.

For the majority of the period under review, the BC NDP served in opposition to the ruling Social Credit governments. Using Kingdon's model, the BC

NDP's aboriginal policy development can be understood as part of a larger series of actors and events that challenged the framing of Aboriginal issues and their relative importance on the public agenda. Thus, for example, while the Trudeau government's White Paper served as a "focusing event" which drew the public attention to the condition of Native people, it was Thomas Berger, along with various Aboriginal leaders, who pressed the federal government to rethink its assimilationist proposals.[363] Because political actors (the Socreds and NDP) compete to imprint their 'issues' on the public agenda, when stronger advocates for Aboriginal rights led the Party, such as Berger and Skelly, Aboriginal issues were more prominent on the public agenda. When Skelly introduced and assumed the critic role for Aboriginal issues, he was pressing the Socreds to more clearly enunciate their own vision of Aboriginal policy. He assumed this critic portfolio not only out his strong personal convictions, but also because he recognised a growing (though still small) segment of the public wanted this topic pushed up the political agenda. His actions did not in themselves necessitate a shift in the larger agenda (although they were a powerful symbolic gesture) but were part of a larger series of events (First Ministers Conferences, protests blockades, legal action) that reinforced a trend in the public. Each wave of protest helped 'soften' the way for a new set of expectations and demands. Harcourt did not have to convince most members that Aboriginal issues should be on the Party's policy agenda. Because Aboriginal / non-Aboriginal relations were widely considered a problem important enough to address, Harcourt could focus the Party's energies on Aboriginal policy renewal and political messaging. In Kingdon's terms, because Aboriginal issues were part of the

[363] Berger's success in this regard, was more a result of his legal work rather than his political advocacy.

'problem stream', Harcourt could turn his energies to the policy and political streams. The problem of Aboriginal rights was on the agenda.

Shifting Values and Political Consequences

Throughout this paper two themes or trends are evident in the development of Aboriginal policy within the BC NDP from 1969 to 1990. The first is the Party's gradual shift from its integrationist view of Aboriginal rights it held in the late 1960s and 1970s to the Aboriginal rights perspective that became more pervasive in the 1980s and 1990s. In 1969, recognition of Aboriginal rights was limited to a handful of activists including the pre-eminent Native lawyer and short-lived Party leader, Thomas Berger. Outside of this small group, to the extent that Indian concerns were considered at all, liberal equality, social integration, and the end to the paternalism of the Indian Act were seen as central policy aims. Berger was the first prominent Party member to tie Aboriginal well-being to identity, governance, and land title. Prior to Berger, integrationists viewed the end of reserves, separate rights, and traditional societies, as inevitable products of liberal progress.

During the Barrett Government, two prominent integrationists - Bob Williams and Norm Levi - divided the Cabinet. While Party activists began to push towards far reaching resolutions that recognised some form of Aboriginal title (and the duty of the Province to negotiate because of that title), Williams and Levi promoted competing projects: Williams saw the primary goal for Native people as economic and social development, while Levi established the Land Cut-Off Committee in order to redress the unfair treatment Natives had received at the

hands of the McKenna-McBride Commission. Neither accepted the notion of Aboriginal title. The Party paid little attention to Aboriginal rights while Barrett led the NDP in opposition (1975 - 1984). Barrett did make a 'one-off' promise to negotiate a treaty with the Nisga'a, but this promise was not extended to other First Nations nor established as a Party policy aim.

A series of important and high profile legal decisions augmented Bob Skelly's efforts to move the Party towards widespread acceptance of Aboriginal rights. This effort was also assisted by the series of First Ministers Conferences that set out to better define Aboriginal rights within the Charter. Despite Skelly's leadership on this issue, his inability to establish a firm policy structure (no doubt distracted by internal unrest) meant that no formal policy process affirmed Skelly's belief in the need to recognise Aboriginal title and for the province to enter negotiations based on that. Mike Harcourt's modernisation project saw a complete policy renewal as one of its key objectives. Besides moderating the public image of the Party, Harcourt and staff revamped the entire policy making process. He believed that resolution based policy process was incoherent and divisive. In its place, Harcourt established twelve policy tables that attempted to provide a coherent, inclusive, politically salient, and widely accepted policy forum. Closely linked to this development was Harcourt's insistence that one of the twelve policy tables be focused on Aboriginal rights. Harcourt then took the extra step of chairing that forum. Thus, through re-energised policy process Harcourt put in writing the changes in perspective that had been taking place over twenty years. By taking the lead role on the Aboriginal policy making body, he formalised past policy promises (to respect Aboriginal title,

to enter tri-partite negotiations, to recognise the inherent right of Aboriginal self-government) while entrenching these values at the heart of Party policy.

The second theme this thesis has suggests is that the Party struggled to build internal cohesion on an issue that had potentially negative electoral consequences. The first part of this problem could simply be blamed on the deficiency of clear Party policy on Aboriginal rights. That is, there was a lack of cohesion simply because the Party was lacked clear policy making procedures. Yet, more than lacking well-defined policy making structures and the means to reproduce clear policy aims at a given moment, the Party was divided by rival visions of Aboriginal rights, while also remaining unwilling to expose itself to a political vulnerability.

Alongside a general shift from integrationist to an Aboriginal rights perspective was a three phase change in the framing of Aboriginal issues. In broad terms, in the first phase of development, Native issues were seen as a 'good cause' for a desperate people. They were not an electoral priority, but could be counted among the noble struggles the Party prided itself on fighting. Native issues were 'moral issue' and shrouded in the language of good and evil.

Although Norm Levi can be seen to have implemented policy that hinted at historical redress, the impetus for change came from elsewhere in the Party. George Watts shook the Party's traditional framing of Aboriginal issues when he demanded the 1975 BC NDP convention address Native issues not as 'charity cases', but as legal rights. Watts' demand, alongside the repercussion of the Calder case, the initiation of federal government negotiations with the Nisga'a, the patriation of the Charter, and the increased threat of litigation from frustrated First Nations,

resulted in the Party's gradual transition towards recognising Aboriginal issues within a legal context. Skelly's insistence that First Nations be understood as sovereign entities with legal rights that had to be addressed through the Premier's office marked the apex of this view within the Party. To Skelly's internal critics, his position on Aboriginal issues exemplified his lack of electoral savvy. The Socreds, critics like Bob Williams argued, would take advantage of Skelly's 'radical' Aboriginal agenda. The electoral calculation was simple: the public fear of the costs of treaties, alongside general ignorance of the reasons for treaty negotiations, would shift public support away from the camera shy Skelly and towards the charismatic Vander Zalm. Aboriginal issues, it turned out, were not an issue in the 1986 election, but Skelly's lack of personal appeal was.

Harcourt, like Skelly, was dedicated to promoting Aboriginal rights and implementing treaties. Harcourt, however, was able to muffle internal critics, present an electorally acceptable series of answers to voters, and build broad acceptance of clearly defined policy goals. Within a year of assuming Party leadership, Harcourt and his staff re-situated Aboriginal rights discussion to center on the economic necessity of treaties. He conscientiously ignored the moral tone of the debate. In his view, if you did not agree with the notion of Aboriginal rights, you were a racist - you were also out of the target political universe Harcourt sought. He also, after some trial and error, rid his public speeches of the more formal legal arguments for negotiations. Discussions on potential treaty processes confused the electorate. It was better to assume, as the courts had done, that negotiations were inevitable and focus on the potential benefits that sprung from

treaty talks. The benefits were economic. Treaties encouraged investor certainty, saw a large influx of federal dollars, and provided the opportunity for First Nations to shift from 'welfare dependency to self-sufficient communities'. Through the use of focus groups testing Harcourt's staff continued to reassure internal Aboriginal critics that Harcourt was not 'too far out front of the electorate' and that potential political sensitivities had been 'inoculated'. Aside from working to expand the NDP's political universe, Harcourt sought to build a consensus on Aboriginal policy inside the Party. As has been mentioned earlier, he set in motion the far reaching policy renewal initiative, which formalised the policy making process. Harcourt envisioned that the process would build a trust amongst the membership, flush out anxieties in the rural communities, and develop a social consensus on Aboriginal policy that could withstand the hard choices that would come with government.

The extent to which the Party was prepared to implement its Aboriginal policy agenda upon assuming government is not within the scope of this paper. It is clear that Harcourt's victory in 1991 allowed for a fortification of Aboriginal rights, particularly treaty negotiations, from which there is no turning back. That is, the process of Aboriginal rights development within the Party over twenty years has helped to entrench treaty negotiations in the political agenda of the province of British Columbia. Upon reflection, it also clear that Harcourt, his staff, and the Party underestimated the difficulties that implementing treaty negotiations would pose. The literature around the 1991 election suggests that treaty negotiations would be completed by the end of the decade. As much as this time frame was overly optimistic and certainly - in retrospect - naive, it also provided an additional

electoral challenge for the BC NDP in 1996. With all of Harcourt's efforts to get negotiations moving, not a single treaty within the BC Treaty Process was ready for ratification by 1996. The task was too big; the expectations were set too high.

This presented an electoral obstacle for the new Party leader, Glen Clark. Clark, however, possessed no love of process. He saw politics in same the tradition of Dave Barrett – it was a populist pursuit of power. In the 1996 election campaign, he made it clear a Clark government would pick up the pace of governing, remove the cumbersome processes Harcourt had implemented, and be ready to move quickly on various policy questions. Soon after he was elected, however, Clark's popularity plummeted. It is a testament to the scope of change Aboriginal rights had undergone in the previous twenty years, that when Clark reached for an issue to rescue his popularity, he chose the ratification of the Nisga'a treaty agreement. Although not previously a noted advocate of Aboriginal issues, Clark attempted to make the Nisga'a agreement a 'wedge issue'. Although Clark was unsuccessful in rallying support for the Party, it was not because of a lack of support for the Nisga'a agreement. Indeed, once Gordon Campbell and the Liberals swept to power, they could not ignore Aboriginal title's burden upon the Crown. Despite their vast majority in the Legislature, the Campbell Government must face the arduous but necessary task of reconciling Aboriginal rights with Crown title.

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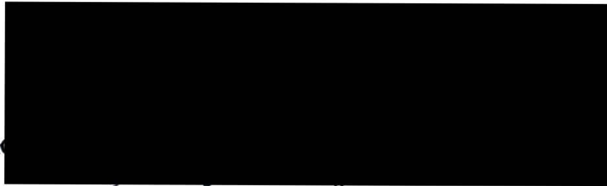

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