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ECONOMIC, POLITICAL AND SOCIAL IMPLICATIONS OF THE NISGA'A TREATY

BY

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MAGISTER PHILOSOPHIAE (ECONOMICS)

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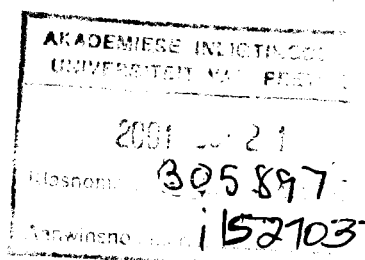
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Victoria, December 2000

Deborough Dowsling



SUMMARY

Indian treaties in Canada are agreements between the Crown (today provincial or federal authorities) and specific Aboriginal population groups, whereby native people exchange some of their interests in parts of their ancestral territories in return for an assortment of payments and guarantees from Crown officials. Historic treaties assisted the Crown in settling and developing much of present-day Canada.

British Columbia was the only province in Canada where no modern treaties were signed, until the treaty between the federal and provincial authorities and representatives of the Nisga'a nation, which became law on 13 April 2000. This dissertation considers, in particular, two aspects of the Nisga'a Treaty. The first is its economic implications in terms of traditional welfare theory. The essential finding is that the treaty is likely to result in a more productive use of natural resources through a more efficient property rights regime. The second aspect is the question whether the Nisga'a Treaty is an example of South African-type apartheid, which has sometimes been alleged. Here it is found that apartheid in South Africa derived from completely different sources than the ethnically related policies in Canada. It was a uniquely ambitious social experiment, quite unknown in Canada - probably elsewhere too.



OPSOMMING

Indiaanse verdrae in Kanada is ooreenkomste tussen die Kroon (vandag provinsiale of federale owerhede) en sekere oorspronklike inwonersgroepe, waardeur die inheemse bevolking afstand doen van bepaalde belange in gedeeltes van hul erfgrond in ruil vir 'n verskeidenheid betalings en waarborge deur die betrokke staatsamptenare. In die geskiedenis het hierdie verdrae die Kroon gehelp om groot dele van Kanada te koloniseer en ontwikkel.

British Columbia was die enigste Kanadese provinsie waar daar geen moderne verdrae geteken is nie, tot die sluiting van die verdrag tussen die federale en provinsiale owerhede en verteenwoordigers van die Nisga'a-volk wat 13 April 2000 in die wetboek opgeneem is. In hierdie verhandeling word veral twee aspekte van die Nisga'a-verdrag beskou. Eerstens word sy ekonomiese implikasies volgens die tradisionele welvaartteorie ontleed. Die belangrikste bevinding is dat die verdrag waarskynlik 'n meer produktiewe aanwending van natuurlike hulpbronne sal bevorder, deur die daarstelling van 'n meer doeltreffende eiendomsregstelsel. Die tweede aspek ondersoek die vraag of die Nisga'a-verdrag 'n voorbeeld van apartheid is, soos daar soms beweer word. Die bevinding van hierdie studie is egter dat apartheid in Suid-Afrika uit heeltemal eiesoortige oorsake voortgespruit het, wat feitlik niks met rasverwante praktyke in Kanada - of elders - te make gehad het nie.

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CHAPTER 1: INTRODUCTION

In his book *The Electronic Elephant*, Dan Jacobson (1995: 291) advises that the following statement should appear at the border of every tribal, ethnic and national territory where mixed communities live:

NO GROUP'S CLAIM TO THE TERRITORY IT INHABITS IS
MORALLY SUPERIOR TO ANY OTHER'S

EVERY GROUP ON EARTH WILL BELIEVE ITSELF TO BE AN
EXCEPTION TO THIS RULE

NO GROUP THAT HAS LOST A PIECE OF TERRITORY IT ONCE
HELD, AND IS STILL CONSCIOUS OF ITSELF AS A GROUP,
WILL EVER GIVE UP ITS CLAIM TO WHAT HAS BEEN LOST

HOW DO YOU MAKE SENSE OF THIS?

DON'T TRY

In spite of Dan Jacobson's admonishment, this dissertation attempts to make sense of certain aspects of the current Treaty System in British Columbia (BC). The province is the only one in Canada where, in general, treaties were not signed and, therefore, much of the province remains subject to outstanding Aboriginal land claims. The decision to negotiate these Aboriginal land claims has been contentious, however, unless treaties are negotiated, concerns around land, resources and investment will continue.

The recognition of "existing Aboriginal and treaty rights" in the *Constitution Act* of 1982 and the system of law courts have both played a large part in changing Canadian Indian policy. Chapter 2 of this dissertation sets out the key historical dates leading to the current Treaty System in BC as well as important court cases. Terms and concepts relating to treaties and Aboriginal people are also defined in this chapter.

The Indian Treaty System in general, is the subject of Chapter 3. In order to understand the current Aboriginal land question in British Columbia, the Canadian government's past policies towards Native people must be examined, particularly the *Indian Act* and the *Statement of the Government of Canada on Indian Policy* (the *White Paper* of 1969). The province's first Indian treaty – with the Nisga'a nation – became law in April 2000.

Chapter 4 in turn looks at what the Treaty System means in terms of economic efficiency rather than economic growth. Economic growth is a process still far removed from Canada's Aboriginal population. If Aboriginal people are to experience economic growth, development



and betterment, the Treaty System – by improving economic efficiency – may provide the necessary impetus. A ratified Nisga'a Treaty also resolves much of the current uncertainty surrounding economic resource use in BC and may thus afford long-term, economic opportunities for both Aboriginal and non-Aboriginal investors and business people there.

Canada has always been proud of its progressive attitude and presents itself as a liberal country tolerant of different cultures. However, Canada's past, and present, policies towards Aboriginal people have been compared to South Africa's previous apartheid policies towards Black and other non-White people. In particular, it has been argued that the *Indian Act* and the reserve system in Canada set apart certain population groups, by law, on an ethnic basis. Critics of the current Treaty System in general and the Nisga'a Treaty in particular, also argue that these treaties will create a form of "race-based homelands" – in effect, apartheid. Chapter 5 therefore examines the similarities and differences between the two countries in order to establish whether these comments are justified. Chapter 6 is a brief conclusion to the study.

CHAPTER 2: TERMINOLOGY, CHRONOLOGY AND LITIGATION

2.1 INTRODUCTION

The following passage is excerpted from *The Report of The British Columbia Claims Task Force*, June 28, 1991:

The conflict over the rights of aboriginal peoples in British Columbia is not solely a product of our time. The dispute has its genesis in the early years of European settlement. It is a conflict that speaks to the difficulties in reconciling fundamentally different philosophical and cultural systems. Historically, the conflict has focused on rights to land, sea, and resources. However, the ultimate solution lies in a much wider political and legal reconciliation between aboriginal and non-aboriginal societies. Addressing the problem will require an appreciation on the historical relationship between aboriginal and non-aboriginal people, and an understanding of how this history has shaped the political and legal reality today.

This relationship has, in several important ways, found expression in numerous treaties concluded between the Aboriginal people of Canada and the public authorities established after European contact.

As understood by the Government of Canada and the courts, a treaty is an agreement between the Crown and a specific group (or groups) of Indian people in which the parties establish mutually binding responsibilities and obligations. The treaty will set out, usually in writing, the promises, obligations, and benefits of the individual parties to the treaty. In addition, the treaty will define the collective rights of the Aboriginal group signing the treaty with respect to land and resources in a specified area. Self-government authority of a First Nation may also be defined in the treaty.

British Columbia (BC) is the only province in Canada where treaties were not signed and therefore much of the province remains subject to outstanding Aboriginal land claims. From the late 1800s, the BC government denied the legitimacy of these claims and argued that any Aboriginal rights or title were extinguished before the province became part of Canada. Furthermore, BC argued that if any claims were found to exist, they were the responsibility of the federal government. This changed in 1990. In 1993, Canada, British Columbia and the province's Aboriginal people established the British Columbia Treaty Commission (BCTC) to facilitate the negotiation of treaties.

The courts in Canada have played a large role in land claims and Aboriginal rights issues. The courts have recognized Aboriginal rights in law and have said that any definition of these rights should be sought through negotiation. For this reason, and to gain certainty with respect to land and resources, the province of British Columbia is now committed to the negotiation of modern treaties with Aboriginal people.

In order to understand the current situation with regard to treaty negotiation in British Columbia, and the Nisga'a Treaty, it is necessary to examine certain terms and concepts relating to Aboriginal people, land claims and treaties as well as the historical events leading up to the current situation in British Columbia. A review of important legal decisions is also included in this chapter.

2.2 TERMS RELATING TO ABORIGINAL PEOPLE

Aboriginal People

- The Concise Oxford Dictionary definition of Aboriginal is “inhabiting or existing in a land from the earliest times or from before the arrival of colonists”. The term is defined in the *Constitution Act* of 1982 as referring to all indigenous people in Canada and recognizes three groups of Aboriginal people – Indians, Metis and Inuit.

Aboriginal people make up only 2.8 per cent of the total Canadian population. In the 1991 census, 1,002,675 people in Canada reported Aboriginal origins. There were 603,340 Status Indians in Canada in August 1996. British Columbia had approximately 17.5 % of Canada's total Aboriginal population. According to Statistics Canada about 3.8 per cent of BC's total population—almost 139,655 people—identify themselves as Aboriginal. In 1996, there were 134,890 persons in BC who directly identified themselves as Aboriginal, another 4,235 who did not identify as Aboriginal but were “registered Indians” and a further 525 who were neither of the above but were members of an Indian Band.¹

Over 35 per cent of the Aboriginal people in British Columbia are under 15 years of age. This compares to 19 per cent of the non-Aboriginal population. Fifty-seven per cent of Aboriginal people in the province are under 24 years of age and represent the fastest growing demographic group. Aboriginal people 55 years of age and over constitute only 7% of BC's Aboriginal population while non-Aboriginal people over the age of 55 account for almost 23 per cent of the non-Aboriginal population.

Native

- This term is also used to refer to Aboriginal people.

First Nation

- A term that came into common usage in the 1970s to replace the word “Indian”, which some people found offensive. Although the term is widely used, there is no legal definition. The term may refer to the Indian people of Canada, both Status and Non-Status. Some people have replaced the term “band”, in the name of their community, with the term “First Nation”.

¹ In censuses before 1996, the identification of Aboriginal persons was derived from a question on ancestry, namely “To which ethnic or cultural group(s) did this person's ancestors belong?” In 1996 Statistics Canada introduced the term “Aboriginal Identity” and stipulated that the 1996 “Aboriginal Identity” data should not be compared to the 1991 “Aboriginal Ancestry” data.

Indian

- A term used to describe all of the Aboriginal people in Canada who are not Inuit or Metis. Indian people are one of the three groups of people recognized in the *Constitution Act* of 1982. The act specifies that Aboriginal people in the country are: Indians, Inuit and Metis people. There are three legal definitions that apply to Indian people: Status, Non-Status and Treaty Indians.

Inuit

- The word “Inuit” literally means “people” in the Inuktitut language. The Inuit are an Aboriginal people living above the tree line in northern Canada, in the eastern Arctic region of the Northwest Territories and along the coastlines of Labrador and Quebec

Status (or registered) Indian

- A person recorded as an Indian in the Indian Register. The *Indian Act* defines who is eligible for registration as an Indian. Most registered Indians are members of an Indian band (for example, the Sechelt Indian Band). There were 642,414 Status Indians in Canada in December 1998. (Source: Department of Indian and Northern Affairs, Basic Departmental Data 1999. Available: http://www.inac.gc.ca/pr/sts/bdd99/Bdd99_e.pdf)

Non-Status Indians

- Non-Status Indians are people of Indian ancestry and cultural affiliation, who are not registered under the *Indian Act* or persons who lost their right to be registered as Indians under the *Indian Act* before it was amended in 1985 (for instance, Indian women who married non-Indian men). The amended *Act* of 1985 entitles these people to be reinstated to Indian status and band membership. Metis and Non-Status Indians are not covered by the *Indian Act*.

TREATY INDIANS

- Treaty Indians are Status Indians who are members of, or connected with, a band that signed a treaty. The rights of individual Treaty Indians depend on the precise terms and conditions of their band’s treaty. Indian bands and tribes signed treaties with various British colonial, and later, Canadian governments before and after Confederation in 1867. No two treaties are identical but they usually provide for certain rights, including annual payments for ammunition, annuities, clothing every three years, hunting, fishing, reserve lands, and other benefits.

Metis

- These are people of mixed First Nation and European ancestry who identify themselves as Metis as distinct from “Indian” or “First Nation” people, Inuit or non-Aboriginal people. The Metis represent a culture unique to Canada with such diverse ancestral origins as Scottish, French or Cree.

2.3 CONCEPTS RELATING TO ABORIGINAL PEOPLE

Indian Act

- This is the Canadian federal legislation, first passed in 1876, that sets out federal, government obligations and regulates the management of Indian reserve land. The *Indian Act* pertains only to those people who are registered, Status or Treaty Indians. This *Act* requires the Minister of Indian Affairs and Northern Development to manage certain moneys belonging to a First Nation and to approve or disallow First Nations' by-laws. The *Indian Act* was subject to frequent legislative fine-tuning and amendments. However, until the 1985 amendments, its basic features remained the same from 1867 to 1985.

Indian Band

- A band is a group of Indians, declared by the Governor-in-Council to be a band for the purposes of the *Indian Act*, for whose common use and benefit lands have been set apart and money is held by the Crown. Each band has its own governing band council. The council is a body elected according to provisions of the *Indian Act*, charged with the responsibility for "the good government of the band" and delegated the authority to pass by-laws on Indian reserve lands. Band council members may be elected or chosen through traditional tribal custom. There are 197 First Nation bands in British Columbia, or approximately 33% of Canada's total bands (these figures are subject to change but are accurate as of 17 October 2000. Source: Department of Indian Affairs and Northern Development, Basic Departmental Data 1999. Available: http://www.inac.gc.ca/pr/sts/bdd99/Bdd99_e.pdf.

A tribal council is a regional group of First Nations' members that deliver services to a group of First Nations.

Indian Reserves

- An Indian reserve is defined in Section 2 of the *Indian Act* as a tract of land that has been set apart by the federal government for the use and benefit of an Indian band. The legal title to Indian reserve land is vested in the federal government. Any registered Indian -- who is also a band member -- may live on a reserve and use these lands. The personal property of a registered Indian living on a reserve cannot be seized by anyone other than another Indian or the band. BC has approximately 1,650 or 72 per cent of all Canada's 2,300 reserves. Many of these reserves are small; reserve land accounts for 0.36 per cent (343,741 hectares) of British Columbia's total land. BC reserves account for 13 per cent of the total area of Canadian reserves (2,684,448 hectares). In 1991, 24 per cent of the Aboriginal population in BC lived on a reserve, down from 28 per cent in 1986.

2.4 CONCEPTS RELATED TO LAND CLAIMS AND TREATIES

Treaty

- In the provincial context, a treaty is an agreement arrived at between British Columbia, Canada and Aboriginal people. It can clarify Aboriginal rights to land and resources and address issues such as self-government and the social, economic and environmental concerns of all parties. Treaties are intended to meet the government's requirement to recognize and negotiate with First Nations. Treaties will define, for example, the application of Aboriginal rights and the extent and exercise of First Nation's governance. Chief Joseph Gosnell, in a speech to the British Columbia Legislature on December 2, 1998, said: "To us [Nisga'a], a treaty is a sacred instrument. It represents an understanding between distinct cultures and shows respect for each other's way of life. We know we are here for a long time together."

Land Claim

- Land claim is a phrase used to denote Aboriginal people's attempt to gain recognition of their rights to land and natural resources in their traditional territories. Many Aboriginal people consider the term a misnomer as it suggests they are claiming something that belongs to the government, and some refer to the issue as the land question. The Government of Canada has been committed to settling Aboriginal land claims since 1973 when it recognized two classes of claims – comprehensive and specific.

Comprehensive land claims are based on the concept of continuing Aboriginal rights and title which have not been dealt with by treaty or other legal means. These are, in general, the types of claims currently being negotiated in British Columbia. The province is one of the few places in the country that did not negotiate treaties in the past.

Specific land claims are claims arising from alleged non-fulfillment of Indian treaties and other lawful obligations, or from the alleged improper administration of lands and other assets under the *Indian Act* or other formal agreements. These claims are negotiated outside of the treaty process. For example, a "cut-off claim" is a specific claim by a First Nation arising from the removal of portions of Indian reserves which occurred following the recommendations of the 1913-1916 federal-provincial McKenna-McBride Commission.

Royal Proclamation

- The *Royal Proclamation* of 1763 by King George III recognized Aboriginal people as "nations or tribes" and acknowledges that they continued to possess their traditional territories until these were "ceded to or purchased by" the Crown. The *Royal Proclamation inter alia* states the following:

... Whereas it is just and reasonable, and essential to Our Interest, and the Security of Our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds . . .

And We do further declare it to be Our Royal Will and Pleasure, for the present . . . to reserve under Our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included with limits of Our said new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and the North West . . .

Aboriginal Rights

- By the 1850s the Crown had signed major treaties with First Nations in eastern Canada and that process continued west to the Rocky Mountains. In most of these treaties, First Nations ceded title to the Crown in exchange for land reserves and other rights. This policy was not pursued west of the Rocky Mountains (present day British Columbia) and, as a result, the questions surrounding the rights of First Nations in British Columbia were not resolved.

Aboriginal rights were recognized and affirmed in Section 35(1) of the *Constitution Act* of 1982. The Constitution, however, does not define Aboriginal rights, thereby leaving room for a wide range of opinions about what constitutes an Aboriginal right. While there is no clear definition of Aboriginal rights, the law courts have provided some guidance as to what the rights likely do and do not include.

Aboriginal rights, in relation to land, generally consist of the use of certain areas for the purpose of carrying out communal practices integral to the distinctive culture of the Aboriginal society. To qualify as an Aboriginal right, the practice, tradition, or custom must have been a central and significant part of a society's culture prior to contact with European society. Different Aboriginal rights may exist in different places, depending upon the traditional use or occupation of the land in question.

Treaty Rights

- Treaty rights are those rights held by a specific Aboriginal group under a particular treaty. They are recognized and affirmed in Section 35 of the *Constitution Act*, 1982. Treaty rights vary in scope from one treaty to another and also between historic and modern times. Historic treaties generally serve to extinguish Aboriginal title and/or rights to the land, replacing them with treaty rights. Land claims agreements may modify existing Aboriginal rights and title to defined treaty rights.

2.5 BRITISH COLUMBIA TREATY PROCESS

The process for treaty making and the principles which govern negotiations are set out in the BC Claims Task Force Report of 1991 and are incorporated in the tripartite Treaty Commission Agreement of 1992. The British Columbia Treaty Commission is responsible for accepting First Nations into the treaty making process, assessing when the parties are ready to start negotiations, and allocating funding, primarily in the form of loans, to First Nations. The Commission monitors and reports on the progress of negotiations, identifies problems and offers advice, and

assists the parties in resolving disputes. As of January 31, 1999 there were 51 First Nations participating in the treaty process. There are six stages in the treaty negotiation process:

- Submission of Statement of Intent: First Nations indicate they want to enter the treaty process.
- Readiness to Negotiate: The parties assemble negotiating teams and prepare for negotiation.
- Negotiation of a Framework Agreement: An agenda is negotiated which identifies what is to be discussed in the next stage and outlines any special procedural arrangements.
- Negotiation of an Agreement-in-Principle: The parties reach the major agreements, which will form the basis of a treaty.
- Negotiation to finalize a treaty: The parties formalize the agreements reached in the previous stage, and agree on an implementation plan.
- Implementation of a treaty: The parties work together to implement the treaty according to their agreed plan.

2.5.1 Other Treaty Terms

Entrenchment

- A term occasionally misused in the context of treaties to refer to protection under the constitution. Aboriginal rights and treaty rights are protected under s.35 of the *Constitution Act, 1982*. Entrenchment of treaty rights does not mean that treaties become part of the constitution.

Extinguishment

- A term used to describe the cessation or surrender of Aboriginal rights to lands and resources in exchange for rights granted in a treaty. To date, Canada has required full or partial extinguishment to conclude treaties.

Fee simple

- A legal interest in land that is commonly characterized as private ownership. This is also referred to as freehold tenure.

Fiduciary duty

- The legal obligation of one party to act in the best interests of another. Canada has a fiduciary obligation with respect to Indians and lands reserved for Indians.

Douglas Treaties

- Fourteen treaties (1850 and 1854) between the British Crown, represented by Sir James Douglas, and certain Vancouver Island First Nations.

Delgamuukw Obligations

- An informal term used to refer to the legal obligations of the Crown to Aboriginal people arising out of the Court of Appeal decision in *Delgamuukw*. (See also section 2.7 Landmark Court Cases Concerning Aboriginal Rights).

2.6 KEY HISTORICAL DATES

1763

The *Royal Proclamation* of 1763 by King George III recognizes Aboriginal people as “nations or tribes” and acknowledges that they continue to possess traditional territories until they are “ceded to or purchased by” the Crown.

1774

First recorded contact by Spanish Explorer Juan Perez Hernandez when he meets the Haida people near Haida Gwaii (also called Queen Charlotte Islands). Oral history indicates that some BC First Nations may have had prior contact with Europeans.

1778

Captain Cook lands on the coast of British Columbia and claims the land for Britain.

1793

British sea captain George Vancouver sails into Observatory Inlet (*Ts'im Gits'oohl*) and makes first contact between the Nisga'a and explorers.

1843 -- 1849

Fort Victoria is established by James Douglas. Vancouver Island becomes a British colony. James Blanshard is appointed as first governor. The British Crown gives trading rights to the Hudson's Bay Company, and places it in charge of immigration and settlement.

1850 -- 1854

James Douglas, chief factor of Fort Victoria, under instructions to purchase First Nations lands, makes a series of fourteen land purchases from Aboriginal peoples. The Douglas Treaties cover approximately 358 square miles of land around Victoria, Saanich, Sooke, Nanaimo and Port Hardy. Natives are paid in blankets and promised the rights to hunt on unsettled lands and to carry on fisheries “as formerly”.

1851 -- 1859

James Douglas is appointed governor of the Vancouver Island colony, while retaining his Hudson's Bay Company position. The Mainland becomes the Colony of British Columbia and James Douglas is appointed governor of the new colony. He resigns his Hudson's Bay Company position. New Westminster becomes the first capital of British Columbia.



1861

Douglas instructs R.C. Moody, the chief commissioner of lands and works of the mainland colony, to ensure that the extent of the Indian Reserves be defined as they may be pointed out by the Natives themselves.

1862

Devastating smallpox epidemic kills approximately one of every three Aboriginal people.

1864 – 1866

Governor Douglas retires and A.E. Kennedy is appointed in his place. Joseph Trutch is appointed Chief Commissioner of Lands. The Colony of Vancouver Island and the Colony of British Columbia are united into the single colony of British Columbia.

1867

Canada becomes a country when confederation joins Nova Scotia, New Brunswick, Quebec and Ontario. The federal government is given authority under Section 91(24) of the *Constitution Act 1867* (Canada's first constitution) "to make laws for the Peace, Order, and good Government of Canada" including laws about "Indians and lands reserved for Indians".

1870

Joseph Trutch, as Chief Commissioner of Lands and Works, writes a memorandum denying the existence of Aboriginal title.

1871

The Colony of British Columbia becomes a province within the Canadian confederation. British Columbia is the sixth province to join the Dominion of Canada. The Terms of Union between British Columbia and Canada states that the federal government will assume responsibility for Indians and British Columbia will retain authority over land and resources. Joseph Trutch is appointed as the province's first Lieutenant-Governor.

1872 -- 1874

Hundreds of Coast Salish people rally outside the provincial land registry in New Westminster, on the Lower Mainland, seeking settlement of the land question. Fifty-six chiefs approve a petition to federal Indian Commissioner Israel Powell asking for implementation of a federal proposal that reserves contain 80 acres per family.

1876

The *Indian Act* is passed. The *Act* focuses on three main areas: land, membership, and local government. It also consolidates all previous Indian legislation; defines Indian status; and gives the Superintendent General administrative powers over Indian affairs.

1880s

European population surpasses Aboriginal population -- many Aboriginal people have died from contact with European diseases.

Christian missions -- Protestant on the central and north coasts, Roman Catholic on the south coast and in the interior -- are by now widely established.

Removal of Native children from home and family for education and “civilization” begins. (See section 3.8 Canadian Indian Policies)

1881

Chief Mountain leads a Nisga'a protest delegation to Victoria.

1884

Indian Act (section 140) is amended to outlaw cultural and religious ceremonies such as the potlatch, the major social, economic and political institution of the coastal peoples. The potlatch ceremony had many purposes and could be held for different types of occasions (such as marriage or a funeral) that the people were called upon to witness. One of the most important functions of the potlatch was to record land title within the traditional system and to carry title from generation to generation. This amendment to the *Indian Act* (Tennant, 1990:101) banned the celebration of the potlatch on the grounds that it was a corrupt and destructive ceremony. Many Aboriginal people went to jail because of this amendment. The government ban did not take into account that the potlatch was the social and cultural heart of the Pacific Coast tribes.

1884 – 1890

Three Tsimshian chiefs travel to Ottawa and meet with Prime Minister Macdonald to discuss “our troubles about our land”. The Nisga'a in the Upper Nass resist surveyors and begin an organized pursuit of land claims. Nisga'a and Tsimshian chiefs travel to Victoria to discuss the land question and self-government with Premier William Smithe. Premier Smithe responds: “When the whites first came among you, you were little better than the wild beasts of the field”. (Tennant, 1990: 58) This establishes the myth that Indians could no more be seen as landowners than could the birds or the bears. The first Nisga'a Land Committee is established.

1898

The flow of gold-seekers to the Yukon is blocked at Fort St. John by Natives demanding a treaty that defines and protects traditional territories.

1899

Treaty Number 8 is extended westward from Alberta into British Columbia and allocates a 5,500 square mile section of northeastern BC to the Indians there. The Government of British Columbia continues to reject the concept of Aboriginal title but does not object to the treaty.

1909

The Nisga'a Land Committee arranges with other North Coast tribes to form the Native Tribes of BC.

A delegation representing 20 British Columbia Indian Nations travels to England to make a presentation to the Crown regarding the land question.

1910

Prime Minister Laurier in Prince Rupert promises to settle the land question.

1912

The federal and provincial governments agree that a Royal Commission should re-examine the size of every reserve in the province.

1913

Nisga'a land committee submits a petition to British Privy Council to resolve the land question. The petition is referred back to Canada.

1916

McKenna-McBride Royal Commission report, intended to provide a final adjustment of all matters related to Indian Affairs in the province, recommends changing and redistributing reserve lands. The Commission recommends enlargement of some reserves, but also advises that much valuable land be cut from others.

The Allied Tribes of British Columbia, the first province-wide First Nations organization, is formed to pursue land claims and secure treaties. The alliance represents the majority of tribal groups in the province.

1919

The Allied Tribes of British Columbia files a petition to the federal and provincial governments. It is a comprehensive presentation of all Indian land claims in the province.

1920

Bill 13 -- *British Columbia Indian Lands Settlement Act* -- is passed by the federal government, and implements the McKenna-McBride recommendations. This allows reductions or cut-offs of reserves without consent of Aboriginal people, contrary to provisions of the *Indian Act*.

Ditchburn-Clark team is established to review the Report of the Royal Commission. The review is completed in 1923 and finds inaccuracies regarding acreages and descriptions.

1923

Aboriginal people are allowed commercial saltwater fishing licences.

1924

Cut-offs of reserves are carried out with 76 square kilometres of reserve land allocated to the Nisga'a.

1926

Chief William Pierrish of the Neskonlith goes to London, England, with two other Chiefs to petition the Imperial government regarding the land question. They are intercepted by the High Commissioner of Canada who undertakes to deliver the Petition and persuades Chief Pierrish to return to Canada.



1927

Parliament appoints a special joint committee of the Senate and House of Commons of Canada to respond to the Allied Indian Tribes of British Columbia. The joint committee decides unanimously that their claim to Indian title in British Columbia is without merit.

Parliament amends the *Indian Act* to make it illegal to “receive, obtain, solicit or request from any Indian any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim” without the consent of the Superintendent General of Indian Affairs.

1929

Aboriginal population in BC numbers less than 30,000, its lowest point since European contact.

1931

Native Brotherhood of BC is formed and secretly keeps the land question discussions alive.

1938

British Columbia Order-in-Council 1036 gives final conveyance of title to Indian reserves in British Columbia to the federal government.

1949

British Columbia government unilaterally grants Indian people the right to vote in provincial elections. Frank Calder is the first Native to be elected to the provincial legislature.

1951

Parliament repeals the provisions of the *Indian Act* that outlawed the potlatch and prohibited land claims activity.

1955

The Nisga'a Land Committee is re-established as the Nisga'a Tribal Council.

1960

Aboriginal people on reserves are granted the right to vote in federal elections. Phasing out of Indian residential schools begins.

1965

Nanaimo Natives are arrested for hunting in unoccupied portion of Nanaimo treaty area. Province argues Douglas agreements are not treaties. Supreme Court of Canada disagrees, causing Aboriginal rights to emerge as a serious issue in Canadian courts.

1966

The federal Department of Indian Affairs and Northern Development (DIAND) is formed.

1968

Nisga'a take the land question to court (*Calder*), seeking a declaration that they had held Aboriginal title to the land prior to colonization and that their title had never been extinguished.

1969

BC Association of Non-Status Indians (BCANSI) forms. The Union of BC Indian Chiefs (UBCIC) is formed to proceed with a land claim on behalf of all BC Status Indians.

1973

In what becomes known as the *Calder* Decision, the Supreme Court of Canada rules that the Nisga'a had held Aboriginal title before settlers came, but the judges split evenly on the question of the continuing existence of their title.

1974

Federal government starts negotiations with Nisga'a in northwestern BC.

1976

The federal government adopts a comprehensive land claims policy. Under the Comprehensive Claims policy, only six land claims can be negotiated in Canada at any one time, and only one per province. In British Columbia, negotiations are started with the Nisga'a Nation without the participation of the Government of British Columbia. The Nisga'a land claim is the only claim in BC started under the Comprehensive Claims policy.

1982

The *Constitution Act* recognizes and affirms existing Aboriginal and treaty rights, but leaves the question of unextinguished title open for courts to decide. Section 35 of the *Constitution Act*, 1982 states "the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed".

1984

Guerin v. The Queen: Final ruling in the Musqueam Indian Band's 1975 lawsuit against the federal government over the lease of 162 acres of reserve land to the Shaughnessy Golf Club (in Vancouver) in the late 1950s. The Supreme Court of Canada recognizes that Aboriginal rights existed before Canada became a country and that those rights apply both on- and off-reserve. It also confirms that the federal government must protect the interests of Aboriginal people.

Delgamuukw Case: Gitskan and Wet'suwet'en First Nations file suit against the province, claiming ownership of 57,000 square kilometres of traditional territories near Hazelton, as well as the right to self-government and compensation for lost land and resources.

1985

Important changes are made to Canada's *Indian Act* on June 28, 1985, when Parliament passed Bill C-31. This brings the *Act* into line with the provisions of the Canadian Charter of Rights and Freedoms.

1986

Ruling in the case of Ronald Sparrow, a Musqueam person charged with violating federal fishing regulations while fishing off-reserve in the lower Fraser River. The Court of Appeal rules that Aboriginal rights to fish for food continue to exist in non-treaty areas of the province (See also section 2.7 Landmark Court Cases Concerning Aboriginal Rights). The court ruled that any government regulations that infringe on the exercise of an Aboriginal right must be justified.

Federal government introduces *Sechelt Indian Band Government Act*, grants title to lands in traditional Sechelt territory and provides for self-government through legislation.

1987

The Native Affairs Secretariat is created by the Government of British Columbia. In 1998, the Native Affairs Secretariat becomes the Ministry of Native Affairs.

1990

The Supreme Court of Canada rules in *Sparrow v. The Queen* that Section 35 of the *Constitution Act* provides “a strong measure of protection” for Aboriginal rights. The Court further rules that Aboriginal and treaty rights are capable of evolving over time and must be interpreted in a generous and liberal manner. The Court also rules that after conservation goals are met, Aboriginal people must be given priority to fish for food over other user groups.

In August, the Province of British Columbia agrees to join the First Nations and Government of Canada in negotiations, and proceeds to immediately enter the negotiations underway between the Nisga'a and the Government of Canada.

In October, leaders of First Nations met with the Prime Minister of Canada and then with the Premier and Cabinet of British Columbia, urging the appointment of a tripartite task force to develop a process for negotiations. On December 3, the British Columbia Claims Task Force is established. The terms of reference call upon the task force to make recommendations on the scope of negotiations, the organizations and process of negotiations, interim measures, and public education.

1991

Delgamuukw Decision: The BC Court of Appeal rules that the Gitksan and Wet'suwet'en people have unextinguished non-exclusive Aboriginal rights, other than right of ownership to much of their traditional territory. The Court urged the parties to negotiate the scope and content of those rights.

In June the British Columbia Claims Task Force makes several recommendations. All of the recommendations are accepted by the First Nations Summit and the federal and provincial governments. The recommendations include establishing a six-stage treaty process for negotiating treaties.

Government of British Columbia officially recognizes the inherent rights of First Nations to Aboriginal title and to self-government, and pledged to negotiate just and honourable treaties.

The Ministry of Native Affairs is renamed the Ministry of Aboriginal Affairs and given expanded responsibilities to reflect the provincial government's new direction.

1992

BC Treaty Commission Agreement is established by the First Nations Summit, provincial and federal governments in response to one of the 19 recommendations made by the BC Claims Task Force.

1993

On April 15, the British Columbia Treaty Commission is appointed. The Commission is the keeper of the treaty-making process -- its role is to facilitate the negotiation of treaties. It is not an arm of any government and it does not negotiate treaties.

In June, the BC Court of Appeal (*Delgamuukw*) recognizes the continuing existence of Aboriginal rights.

On December 15, the BC Treaty Commission begins the treaty-making process by accepting Statements of Intent from First Nations, the first stage of a six-stage negotiation process.

1994

The federal government accepts Section 35 of the *Constitution Act* as including the Aboriginal right to self-government.

1996

Negotiators for Canada, British Columbia and the Nisga'a Tribal Council initial an agreement-in-principle on February 15. This would form the basis for the first modern-day treaty in BC. On March 22, 1996, at an historic ceremony in New Aiyansh, the federal Indian and Northern Affairs Minister Ronald A. Irwin and BC's Aboriginal Affairs Minister John Cashore joined with Nisga'a Tribal Council President Joseph Gosnell Sr. to sign the agreement-in-principle. This sets the stage for the negotiation of a final agreement and implementation of the treaty.

1997

Major Supreme Court of Canada decisions regarding Aboriginal title: *Delgamuukw v. British Columbia* (December 11, 1997). The Supreme Court of Canada set out principles with respect to Aboriginal title and provided criteria that must be met by the Aboriginal group asserting title.

2.7 LANDMARK COURT CASES CONCERNING ABORIGINAL RIGHTS

In British Columbia, the courts have played an important role in the ongoing efforts of Aboriginal people to have their rights recognized. Frustrated by the refusal of past provincial governments to recognize Aboriginal rights, and to negotiate treaties that would define those rights, First Nations started turning to the courts of justice. Beginning with the 1973 *Calder* Case, a number of landmark court rulings have gone a long way to define Aboriginal rights.

Calder decision, Supreme Court of Canada, 1973

- The Nisga'a Tribal council asked the courts to support their claim that Aboriginal title had never been extinguished in the Nass Valley, their traditional territory. The Supreme Court of Canada ruled that Aboriginal title is rooted in the longtime occupation, possession and use of traditional territories. As such, title existed at the time of original contact with Europeans, regardless of whether or not Europeans recognized it. As a result of this decision, Canada agreed to begin negotiating a modern treaty to define Aboriginal rights to land and resources within the Nisga'a traditional territory in the Nass Valley. This was reflected in the agreement in principle signed by the federal and provincial governments on February 15, 1996 (23 years later).

Guerin Decision, Supreme Court of Canada, 1984

- The Musqueam First Nation sued the federal Crown for breach of trust concerning 162 acres of Indian reserve land that had been leased to the Shaughnessy Golf Club in the late 1950s. The Supreme Court of Canada ruled that the federal government, as trustee of the lands, had not provided the Musqueam people with proper protection of lands held in trust for them by the government under the *Indian Act*. The ruling recognized pre-existing Aboriginal rights both on Indian reserves and outside reserves. It also confirmed that the federal government has a “fiduciary responsibility” to safeguard Aboriginal interests.

Sparrow Decision, Supreme Court of Canada, 1990

- A member of the Musqueam First Nation (Ron Sparrow) appealed his conviction on a charge of fishing with a longer driftnet than permitted by the terms Aboriginal food fishing under the *Fisheries Act*. The appeal was based on that the assumption that the charge was inconsistent with Section 35 of the *Constitution Act*, 1982 that recognizes and affirms Aboriginal and treaty rights. The Supreme Court ruled that any government regulations that infringe on the exercise of an Aboriginal right must be constitutionally justified. Governments may regulate existing Aboriginal rights only for a compelling and substantial objective such as conservation, and management of resources. After conservation goals are met, Aboriginal people must be given priority to fish for food over other user groups.

The Court recognized that the Musqueam (and by extension other) First Nation peoples had an unextinguished Aboriginal right to fish for food, social and ceremonial purposes. These rights were rights held by a collective and are in keeping with the culture and existence of that group. The government may constitutionally justify infringement of Aboriginal rights in certain circumstances. The Court provided a framework known as the “*Sparrow Test*” for assessing:

Is there an existing Aboriginal right?

Does the proposed government activity interfere with the right because it: is unreasonable; imposes undue hardship; or prevents the holder of the right the preferred means of exercising it?

If the right is interfered with, is the interference justified because: there is a valid legislative

objective, such as conservation; after conservation measures are taken, priority is given to First Nations; there is as little infringement as possible; in the case of expropriation there is fair compensation; and there has been consultation.

According to *Sparrow*, any proposed government regulations that infringes Aboriginal rights must be constitutionally justified. The court further ruled that:

Aboriginal and treaty rights are capable of evolving over time and must be interpreted in a generous manner.

Governments may regulate existing Aboriginal rights only for a compelling and substantial objective such as the conservation and management of resources. However, once conservation goals are met, Aboriginal people must be given priority to fish for food.

Delgamuukw 1 (1991) — BC Supreme Court

- The Gitksan Wet'suwet'en First Nations asked the BC Supreme Court to recognize their ownership of 57,000 sq. kilometres of traditional lands, the right to govern their traditional lands and to receive compensation for loss of lands and resources. The McEachran decision ruled that Aboriginal rights were extinguished at the time of confederation, but as such, the province had a legal obligation to permit Aboriginal sustenance activities on unoccupied Crown land until the land was dedicated to another purpose. The court's findings were that all Aboriginal rights in BC were extinguished. First Nations were found to have a right to use unoccupied Crown lands for sustenance and cultural purposes. However, the court also found that the Crown owes a fiduciary duty to First Nations and therefore has a duty to consult with First Nations and keep their "best interests" in mind.

Delgamuukw 2 (1993)--BC Court of Appeal

- In the *Delgamuukw* decision of June 1993, the BC Court of Appeal found that Aboriginal rights in British Columbia were not extinguished on a blanket basis prior to the province entering confederation in 1871 and, therefore, Aboriginal rights continued to exist. Formerly protected as common law, these rights now carried constitutional protection by virtue of Section 35 of the *Constitution Act, 1982*.

The court found that the Plaintiffs had unextinguished non-exclusive, Aboriginal rights of use and occupation other than a right of ownership. The Court rejected a claim of Aboriginal law-making power, but found a limited right of internal self-regulation, or a right to practice certain traditions, provided that there was no conflict between the exercise of those Aboriginal traditions and general law of the province or Canada. The claims for ownership, jurisdiction and damages were dismissed.

In addition the court strongly recommended that the scope and content of the Aboriginal rights would be best defined through negotiation rather than litigation.

Delgamuukw 3 (1997) – Supreme Court of Canada

- The Court of Appeal decision on *Delgamuukw* was appealed to the Supreme Court of Canada by hereditary chiefs of the Gitksan and Wet'suwet'en people and the provincial government. A decision was rendered in December 1997. In its decision, the Supreme Court discussed legal principles including Aboriginal title together with its source, content, proof and inherent limitation with respect to change of use. No determination with respect to the specific claims of the Gitksan and Wet'suwet'en to Aboriginal title and self-government was made. No specific findings of existence of Aboriginal title in British Columbia were made.

The Supreme Court of Canada set out principles with respect to Aboriginal title. To prove Aboriginal title, the group asserting the title must meet the following criteria:

The land must have been exclusively occupied prior to sovereignty (1846);

If present occupation is relied on as proof of pre-sovereignty occupation, there must have been a continuity between present and pre-sovereignty occupation;

Occupation must have been exclusive at sovereignty, although there may have been, in some cases, shared exclusivity resulting in joint title.

The *Delgamuukw* decision described Aboriginal title as a particular type of Aboriginal right, being a right to the land itself. When proven, Aboriginal title is a proprietary right, held communally, and includes the right to choose how the land can be used. Aboriginal title is subject of the ultimate limit that Aboriginal uses of land cannot destroy the ability of the land to sustain activities that gave rise to the claim in the first place. The onus of Aboriginal title lies with First Nations; the Crown does not assume the burden of Aboriginal title where its existence has not been legally proven.

Both the federal and provincial governments can infringe Aboriginal title in furtherance of a compelling substantial legislative objective. The infringement must be consistent with the special fiduciary relationship between the Crown and Aboriginal people. The Crown may justifiably infringe Aboriginal title for a variety of objectives including land settlement, economic development and environmental protection, provided that it can reconcile these with the specific elements of Aboriginal title in question. Where Aboriginal title has been proven to exist, compensation may be payable as part of the justification for infringement.



2.8 THE NISGA'A TREATY

2.8.1 Chronology of Events Leading to the Nisga'a Treaty

1887	Nisga'a chiefs travel to Victoria to demand recognition of title, negotiation of treaties and provision for self-government.
1890	Nisga'a establish their first Land Committee to begin the campaign for recognition of territorial rights.
1913	Nisga'a send a petition to British Privy Council seeking to resolve the land question.
1927	Parliament of Canada holds hearings on Aboriginal title and passes legislation to prohibit First Nations organisations from discussing or spending money on land claims.
1951	Parliament of Canada repeals legislation prohibiting potlatches and organising to pursue land claims.
1955	The Nisga'a Land Committee re-establishes as the Nisga'a Tribal Council.
1968	The Nisga'a Tribal Council initiates litigation in the BC Supreme Court on the land question which later became known as the <i>Calder</i> case.
1973	In the <i>Calder</i> case, the Supreme Court of Canada unanimously recognises the possible existence of Aboriginal rights to land and resources but splits on whether or not this title has been extinguished. This decision prompts the federal government to develop a new policy to address Aboriginal land claims.
1976	CANADA BEGINS NEGOTIATING WITH THE NISGA'A TRIBAL COUNCIL.
1989	Canada and the Nisga'a Tribal Council sign a bilateral framework agreement which sets out the scope, process and topics for bilateral negotiation.
1990	The BC government, recognizing that their involvement was necessary to resolve questions around lands and resources, formally joins Canada and the Nisga'a Tribal Council at the negotiating table.
1991	Canada, BC and the Nisga'a Tribal Council sign a tripartite framework agreement which sets out the scope, process and topics for negotiation.
1991 – 1995	Federal and provincial negotiators hold close to 200 consultation and public information meetings in northwestern BC.
1996	Canada, British Columbia and the Nisga'a Tribal Council initial an agreement-in-principle which will form the basis for the first modern-day treaty in BC.
2000	Nisga'a Treaty comes into effect.

Daniel Raunet, in his book *Without Surrender Without Consent* (1996: 16) comments:

After more than a century of resistance to encroachment, the Nisga'a of British Columbia offer one of the most vivid examples of tenacity in the Canadian Native community.



2.8.2 The Nisga'a Treaty in the Canadian Context

On May 11 2000, over one hundred years after the Nisga'a chiefs travelled to Victoria to petition for a treaty, the Nisga'a Treaty came into effect. It differs from earlier treaties in that it does not require the Nisga'a to "cede, release and surrender" their Aboriginal rights. Instead, it modifies any Aboriginal rights or title they may have had into treaty rights as set out in the agreement. The treaty spells out all the rights the Nisga'a now have under section 35 of the *Constitution Act*, 1982 as well as establishing the characteristics and geographic boundary of those rights.

The Nisga'a Treaty functions within the Canadian legal and constitutional framework and reconciles the rights of the Nisga'a people with the title and sovereignty of the Crown. Canada's full legal framework is reflected throughout the treaty and its relationship to Canada's Constitution, Canada's laws and the Charter of Rights and Freedoms is fundamental. The General Provisions Chapter reinforces that federal and provincial laws apply to the Nisga'a, and to Nisga'a Lands. The final agreement makes it clear that the Canadian Charter of Rights and Freedoms will apply to all activities of the Nisga'a Government and that the protections of the Charter will be available to all persons affected by any Nisga'a Government decisions. Under the treaty's self-government provisions, the Nisga'a may make their own laws. Nisga'a laws will operate together with federal and provincial laws which will apply to the Nisga'a people, their lands and their government.

In summary, the Nisga'a Treaty clearly describes the relationship between the federal and provincial governments and the Nisga'a and is designed to address all the matters that may arise among the parties. A copy of the Nisga'a Final Agreement In Brief and a summary of one-time costs follow below. (Indian and Northern Affairs Canada: Nisga'a Final Agreement and Background Information: Available: [://www.inac.gc.ca/pr/agr/nsga/index_e.html](http://www.inac.gc.ca/pr/agr/nsga/index_e.html)2000/05/29)

Chart I: Nisga'a Settlement Land is in the back pocket attached to the back inside cover of the dissertation.

2.8.3 Nisga'a Final Agreement In Brief²

Preamble

The Final Agreement is intended to be the just and equitable settlement of the Nisga'a land question.

The Canadian courts have stated that reconciliation between Aboriginal and non-Aboriginal people is best achieved through negotiation and agreement, rather than through litigation and conflict. As such, the parties intend the Final Agreement to establish a new relationship based on mutual sharing and recognition.

The Parties intend that the Final Agreement will provide certainty with respect to ownership and use of lands and resources, and the relationship of laws within the Nass area.

General Provisions

The Nisga'a will continue to be an Aboriginal people under the *Constitution Act, 1982*.

The Nisga'a will continue to enjoy the same rights and benefits as other Canadian citizens.

Lands owned by the Nisga'a will no longer be reserve lands under the *Indian Act*.

The Canadian Charter of Rights and Freedoms will apply to the Nisga'a Government and its institutions.

Federal and provincial laws (such as the *Criminal Code of Canada*) will continue to apply to Nisga'a citizens and others on Nisga'a Lands.

The Treaty addresses the issue of certainty through a number of provisions. Key among these is a clause which provides that the Treaty is a full and final settlement of Nisga'a Aboriginal rights. Another provision clearly states that the Treaty exhaustively sets out the Nisga'a section 35 rights. There is also an agreement that the Nisga'a Aboriginal rights and title are modified and continue as set out in the Treaty. Finally, the Nisga'a agree to release any Aboriginal rights, including Aboriginal title, that are not set out in the Treaty or which are different in attributes or geographical extent from the Nisga'a section 35 rights set out in the Treaty.

The Final Agreement can only be amended with the consent of all three parties. Canada would give consent to any proposed amendments by order of the Governor in Council, and British Columbia would do so by resolution of the Legislature.

The Aboriginal rights of other Aboriginal groups are protected by the Nisga'a Final Agreement. The Agreement directs the court to adjust any treaty rights under the Nisga'a Final Agreement, to

² Source: Ministry of Aboriginal Affairs. Online: <http://www.aaf.gov.bc.ca/aaf/treaty/nisgaa/docs/newbrief.htm>.

the extent necessary, so that the Nisga'a Treaty rights do not adversely affect any other First Nation's Aboriginal rights. The Treaty also provides for the negotiation of replacement rights in the event that another treaty is concluded which adversely affects Nisga'a Treaty rights.

Lands

The Nisga'a will own approximately 1,992 square kilometres of land in the lower Nass Valley. The land will be held in fee simple by the Nisga'a – the same kind of land ownership enjoyed by other landowners.

Nisga'a Lands will include approximately 1,930 square kilometres of transferred Crown land and 62 square kilometres of Indian reserves that will cease to be reserves on the effective date of the Treaty.

Nisga'a Lands will not include existing fee simple lands, or lands subject to agricultural leases and wood lot licenses.

Mineral Resources

The Nisga'a will own all subsurface resources on the Nisga'a Lands.

Interests within Nisga'a Lands

Existing legal interests on Nisga'a Lands will continue or be re-issued on their current terms. The Nisga'a, as the owners of the Nisga'a Lands, will be able to set conditions on any new interests it grants in the future.

Fee Simple Lands Outside Nisga'a Lands

Land contained within 18 Indian reserves outside of the Nisga'a Lands, and a small amount of adjacent land, will become fee simple lands owned by the Nisga'a and subject to provincial laws. The Nisga'a will own the subsurface resources of these lands.

The Nisga'a will also own an additional 15 parcels of fee simple land, totaling approximately 2.5 square kilometres. Subsurface resources on these lands will continue to be owned by the province and will be under provincial jurisdiction.

Commercial Recreation Tenure

The Nisga'a will receive a commercial recreation tenure for guiding which will operate under provincial laws.

Heritage Sites and Key Geographic Features

Important cultural sites will be protected through heritage site designation. Some key geographic features will be renamed with Nisga'a names.

Parks and Ecological Reserve

British Columbia's authority and responsibilities over the Nisga'a Memorial Lava Bed Park and Gingietl Creek Ecological Reserve will continue.

Nisga'a history and culture are, and will be promoted as, the primary cultural features of the Park.

Nisga'a citizens have the right to use the lands and resources within the Park and Ecological Reserve for traditional purposes.

Water Volumes

Existing water licences will remain in place.

British Columbia will establish a Nisga'a water reservation of 300,000 cubic decametres of water per year to meet domestic, industrial and agricultural purposes.

Land Title

Nisga'a Lands will be owned by the Nisga'a. Any fee simple parcels within Nisga'a Lands that exist on the effective date will continue to be subject to the *Land Title Act* and the provincial land title system generally.

Individual parcels within Nisga'a Lands will initially be registered under a Nisga'a land title system and, following a transition period, may be registered under the provincial land title system.

Forest Resources

The Nisga'a will own all forest resources on Nisga'a Lands.

Existing licences will be in effect for a five year transition period to allow licensees to adjust their operations and will then be replaced by new licences. The licensees are required to meet certain obligations under the licences through the transition period and beyond, including silviculture obligations.

Following the transition period, the Nisga'a will manage forestry on Nisga'a Lands.

The Nisga'a Government will be able to implement forest management standards, provided that these meet or exceed provincial standards such as the Forest Practices Code.

Timber Processing

Provincial laws pertaining to the manufacture of timber products harvested on Crown lands will apply equally to timber harvested on Nisga'a Lands.

The Nisga'a will not establish a primary timber processing facility for 10 years after the effective date of the Treaty.

Forest Resources Outside Nisga'a Lands

The province agrees in principle to the Nisga'a purchase of forest tenure(s) with an aggregate allowable annual cut of up to 150,000 cubic metres. Any such acquisition would be subject to the *Forest Act*.

Access

There will be reasonable public access to Nisga'a Public Lands for non-commercial purposes such as hunting, fishing and recreation.

Residents of Nisga'a Lands who are not Nisga'a will have access to their private land.

The Nisga'a Government may make laws regulating public access for the purposes of public safety, protection of environmental, cultural or historic features, and protection of habitat.

The federal and provincial governments will have access to Nisga'a Lands for purposes such as the delivery or management of government services and emergency response. Likewise, representatives of the Nisga'a Government may, in accordance with the laws of general application, have temporary access to lands other than Nisga'a Lands for similar purposes.

Roads and Rights of Way

The province will continue to own the Nisga'a Highway (which is the main road through Nisga'a Lands) and will maintain the secondary provincial roads. The province may also acquire portions of Nisga'a Lands to create additional rights of way for road or public utility purposes.

The Nisga'a Government will regulate and maintain all Nisga'a roads.

Fisheries

Nisga'a citizens will have the right to harvest fish and aquatic plants subject to conservation requirements and legislation enacted to protect public health and safety.

Salmon

The Nisga'a will receive an annual allocation of salmon under the Treaty and harvest agreement, which will, on average, comprise approximately 26 percent of the Canadian Nass River total allowable catch. In addition, the Nisga'a will be able to sell their salmon, subject to monitoring, enforcement and laws of general application. A Harvest Agreement, separate from the Final Agreement, allows for the harvesting of sockeye and pink salmon.

If, in any year, there are no directed Canadian commercial or recreational fisheries for a species of Nass salmon, a Nisga'a commercial fishery will not be permitted for that species.

Steelhead

The Nisga'a have the right to harvest steelhead for domestic purposes.

Enhancement

The Nisga'a Government may conduct enhancement activities for Nass salmon with the approval of the Minister of Fisheries and Oceans.

Non-Salmon Species and Aquatic Plants

The Nisga'a may harvest non-salmon species. The allocation will be for domestic purposes, meaning that the harvest cannot be sold. The Final Agreement provides for a shellfish allocation and the Nisga'a may negotiate an allocation for other species, such as halibut and crab.

Fisheries Management

The Minister of Fisheries and Oceans and the province will retain responsibility for conservation and management of the fisheries and fish habitat, according to their respective jurisdictions. In addition, the Nisga'a Government may make laws to manage the Nisga'a harvest, if those laws are consistent with the Nisga'a Annual Fishing Plan approved by the Minister.

The parties will establish and be represented on a Joint Fisheries Management Committee (JFMC) to facilitate the cooperative planning and conduct of Nisga'a fisheries and enhancement activities. The committee will make recommendations to the federal and provincial governments on these matters.

The Nisga'a will prepare a Nisga'a Annual Fishing Plan for all species of salmon and other fish. The Nisga'a Annual Fishing Plan will be reviewed by the JFMC and, if satisfactory, approved by the Minister of Fisheries and Oceans.

The agreement also provides for Nisga'a participation in any future regional or watershed-based fisheries management, should the need arise.

Lisims Fisheries Conservation Trust

The Trust will be established to promote conservation and protection of Nass area fish species, facilitate sustainable management of the fisheries for the benefit of all Canadians, and promote and support Nisga'a participation in the stewardship of the Nass fisheries.

Canada will contribute \$10 million to this initiative and the Nisga'a will contribute \$3 million.

Nisga'a Participation in the General Commercial Fishery

The Nisga'a will receive \$11.5 million from Canada and B.C. to participate in the general commercial fishing industry.

The Nisga'a will not establish large-scale fish-processing facilities within eight years of the effective date of the Treaty.

Wildlife and Migratory Birds

The Nisga'a will receive a wildlife hunting allocation for domestic purposes in the Nass Wildlife Area. There are specific allocations for moose, grizzly bear and mountain goat. In the future, mammals other than these may be designated and an allocation established.

Hunting will be subject to conservation requirements and legislation enacted for the purposes of public health and safety. The Nisga'a right to hunt cannot interfere with other authorized uses of Crown land and does not preclude the Crown from authorizing uses of or disposing of Crown land, subject to certain considerations.

The Nisga'a may also harvest migratory birds, subject to laws of general application and appropriate international conventions.

Wildlife Management

The Minister of Environment, Lands and Parks is responsible for all wildlife. A wildlife committee will be established to promote cooperative management of the resource in the Nass area and advise the Minister on management and Nisga'a hunting matters. The committee will have equal representation from the Nisga'a and the province, with one representative from Canada.

The Nisga'a will develop an annual management plan for their hunt which will require provincial approval. The management plan will be reviewed by the wildlife committee and approved by the provincial Minister.

Nisga'a citizens who hunt outside the management area will be subject to provincial laws

Trade, Barter and Sale

The Nisga'a will be able to trade or barter wildlife, wildlife parts and migratory birds among themselves, or with other Aboriginal people. The Nisga'a harvest of wildlife is for domestic purposes.

Trapping

Trapping will be regulated in accordance with provincial laws.

Guiding

Guiding activities will continue to be subject to laws of general application.

The Nisga'a may receive a guide outfitter's certificate in the Nisga'a Lands, if a current certificate ceases to apply.

The Nisga'a will receive an angling licence for certain watercourses outside of the Nisga'a Lands.

Environmental Assessment and Protection

The Nisga'a Government will have the power to make laws relating to environmental assessment and protection. The environmental standards defined in these laws must meet or exceed federal and provincial standards.

The Nisga'a may undertake environmental assessments of proposed projects on their lands. Assessments will include public participation; and, the results will be available to the public, except where information must remain confidential by law. Federal and provincial environmental assessment processes continue to apply on Nisga'a Lands.

Canada and British Columbia will participate in environmental assessments in cases where a project will have effects outside the Nisga'a Lands. To avoid duplication, the agreement provides for the harmonization of Nisga'a environmental assessments processes with those of Canada and British Columbia.

Nisga'a Government

The Nisga'a will be governed by the Nisga'a Lisims Government (central government) and four Nisga'a Village Governments.

Nisga'a Constitution

The Nisga'a will adopt a Constitution which will set out the terms of governance and recognize the rights and freedoms of Nisga'a citizens. The Constitution must be passed by at least 70 percent of the voters who participate in the vote to ratify the Final Agreement.

Relations with Individuals who are not Nisga'a Citizens

The Nisga'a Government will be required to consult with other residents of Nisga'a Lands about decisions that significantly and directly affect them. Likewise, residents who are not Nisga'a will be able to participate in elected bodies that directly and significantly affect them. The means of participation can include opportunities to make representations, to vote for or seek election on Nisga'a Public Institutions, and to have the same means of appeal as Nisga'a citizens. Some local laws, such as traffic and transportation will apply to other residents of Nisga'a Lands, but in the majority of cases Nisga'a laws will only pertain to Nisga'a citizens.

Transitional Provisions

The first elections for Nisga'a Government will be held no later than six months after the effective date of the Treaty. Prior to the elections, the Nisga'a Tribal Council will continue to manage Nisga'a affairs, in accordance with the transition provisions.

Legislative Jurisdiction and Authority

The Nisga'a Government will have the power to make laws required to carry out its responsibilities and exercise its authority under this agreement. In addition, the Nisga'a Government may make laws governing such things as Nisga'a citizenship; Nisga'a language and culture; Nisga'a property in Nisga'a Lands; public order, peace and safety; employment; traffic and transportation; the solemnization of marriages; child and family, social and health services; child custody, adoption, and education.

Federal and provincial laws continue to apply to Nisga'a citizens and Nisga'a Lands, and the relationship between these laws and Nisga'a laws has been clearly set out in the Final Agreement.

Administration of Justice

The Nisga'a Government may provide policing, correctional, and court services on Nisga'a Lands in accordance with the terms of the Treaty.

Police Services

If the Nisga'a Government decides to provide its own policing within Nisga'a Lands, it may do so with the approval of the Lieutenant Governor in Council. The Nisga'a Police Service will have the full range of police responsibilities and the authority to enforce Nisga'a, provincial and federal laws, including the *Criminal Code of Canada*, within the Nisga'a Lands. The police force will be required to meet provincial qualification, training and professional standards. It will also be independent and accountable.

Community Corrections Services

The Nisga'a may enter into agreements with Canada or British Columbia to provide community correctional services in accordance with generally accepted standards, and consistent with the needs and priorities of the Nisga'a Government.

Nisga'a Court

The Nisga'a may establish a Nisga'a Court for approval by the Lieutenant Governor in Council. The Nisga'a Court will adjudicate prosecutions and civil disputes arising under Nisga'a laws and review the administrative decisions of Nisga'a public institutions.

The judges will be appointed by the Nisga'a Government, according to a method of selection approved by the Lieutenant Governor in Council, and will comply with generally recognized principles of judicial fairness, independence and impartiality.

In proceedings where the accused could face imprisonment under Nisga'a law, he or she may elect to be tried in the Provincial Court of British Columbia.

Final decisions by the Nisga'a Court may be appealed to the Supreme Court of British Columbia on the same basis as decisions made at the Provincial Court of British Columbia.

Indian Act Transition

Provisions will be made to facilitate the transition from jurisdiction under the *Indian Act* to provincial or Nisga'a jurisdiction for such things as wills, administration of estates, and governance arrangements.

Capital Transfer and Loan Repayment

The cash settlement benefit of \$190 million (in 1996 dollars) will be paid through capital transfers over a period of 15 years according to a schedule agreed to by the parties.

The loans made by the Nisga'a to support their participation in treaty negotiations over the years will be fully repaid over 15 years according to a schedule agreed to by the parties.

Fiscal Relations

The Nisga'a Government will be responsible for ensuring the provision of programs and services at levels reasonably comparable to those generally available in northwest British Columbia.

Every five years, the Treaty requires the parties to negotiate a fiscal financing agreement through which funding will be provided to the Nisga'a Government to enable the delivery of programs and services including health, education, social services, local services, capital asset maintenance and replacement, housing, and resource management.

The Fiscal Financing Agreement will take into account the Nisga'a Government's ability to raise its own revenues consistent with an own source revenue agreement. The first Own Source Revenue Agreement will provide for a phased-in contribution of Nisga'a revenues over a period of twelve years. After the initial agreement, the Own Source Revenue Agreement will be renegotiable every two years, if requested by any of the parties.

The Treaty confirms that the funding of Nisga'a Government is a shared responsibility of the parties and that it is the parties' objective that, where feasible, the reliance of the Nisga'a Government and the Nisga'a Villages on transfers will be reduced over time.

Taxation

The Nisga'a Government will have the power to tax Nisga'a citizens on Nisga'a Lands.

The Nisga'a Government, Canada and British Columbia may negotiate tax delegation agreements for other taxes and the parties may make agreements to coordinate their respective tax systems on Nisga'a Lands.

The *Indian Act* tax exemption for Nisga'a citizens will be eliminated after a transitional period of eight years for transaction (e.g. sales) taxes and 12 years for other (e.g. income) taxes.

Pursuant to a taxation agreement, the Nisga'a Government and Nisga'a Village Governments will be treated in the same way as municipalities for tax purposes.

Cultural Artifacts and Heritage

The Royal British Columbia Museum and the Canadian Museum of Civilization will return a portion of their collections of Nisga'a artifacts to the Nisga'a. The museums will also retain some collections of Nisga'a artifacts for public exhibitions.

The Nisga'a Government and the province will coordinate their activities to manage heritage sites within Nisga'a Lands to preserve their heritage value from activities which may otherwise adversely affect them.

Local and Regional Government Relations

Nisga'a Lands will continue to be part of the Electoral Area "A" in the Regional District of Kitimat-Stikine.

The Nisga'a and the Regional District may enter into servicing agreements or otherwise coordinate their activities with respect to common areas of responsibility.

Dispute Resolution

If disputes arise regarding the interpretation, application or implementation of the Treaty, the parties will try to resolve them through cooperation and consultation. If the parties are unable to resolve the dispute in this manner, they may resort to mediation or another form of dispute resolution that would facilitate the parties' efforts to agree. If these efforts fail, the parties will have recourse to arbitration, if they agree, or the British Columbia Supreme Court.

Eligibility and Enrolment

To be eligible to receive benefits from the Nisga'a Treaty, a person must meet enrolment criteria that are largely based on Nisga'a ancestry.

The task of determining eligibility will be carried out by an eight-member Enrolment Committee, which will create a register of names during an initial enrolment period. Thereafter, the Nisga'a Government will maintain the register. The decisions of the Enrolment Committee and the Nisga'a Government with respect to eligibility and enrolment are final and binding, within the bounds of an appeals process.

Ratification

The Final Agreement has no force or effect unless ratified by the Nisga'a, British Columbia, and Canada.

Those Nisga'a who were enrolled by the Enrolment Committee voted on the agreement by secret ballot. A Ratification Committee, with Nisga'a, federal and provincial representatives, oversaw the conduct of the vote. The agreement was ratified by a 61 per cent majority of all eligible voters (72% of actual voters).

British Columbia and Canada must ratify the agreement in the British Columbia Legislature and Parliament, respectively, by the enactment of legislation giving effect to the Treaty. The provincial *Nisga'a Final Agreement Act* received Royal Assent on April 26, 1999. The three parties subsequently signed the Final Agreement, leaving Parliamentary approval as the last ratification step.

Implementation

The Treaty will be implemented according to an Implementation Plan that is separate from the Final Agreement. The Implementation Plan sets out the steps to be taken to properly make the Treaty work on the ground. The plan will be for a term of ten years starting from the effective date of the Treaty.

Federal Treaty Negotiation Office
PO Box 11576
2700 - 650 West Georgia Street
Vancouver, BC V6B 4N8
Telephone: (604) 775-7114
or toll-free at 1-800-665-9320

B.C. Ministry of Aboriginal Affairs
908 Pandora Avenue
Victoria, BC V8V 1X4
Telephone: (250) 356-8281
or toll-free at 1-800-880-1022

October, 1999

2.8.4 Summary of One-Time Costs

NISGA'A FINAL AGREEMENT Summary of One-Time Costs³

The Nisga'a Final Agreement represents significant value for long term investment in the British Columbia economy. As it relates to the Nisga'a, the Treaty will bring certainty to the use and ownership of lands and resources in the region.

As specified in the Final Agreement, the Nisga'a will receive:		
<ul style="list-style-type: none"> a capital transfer paid over 15 years 	\$190.0 million (1996\$)	\$196.1 million (1999\$)
<ul style="list-style-type: none"> funding to increase their participation in the commercial fishing industry through the purchase of vessels and licences 	\$ 11.5 million (1996\$)	\$ 11.8 million (1999\$)
<ul style="list-style-type: none"> transition, training and other one-time implementation funding paid over five years 	\$ 40.4 million of which: \$10.4 million (1997\$) \$30.0 million (current\$)	\$ 40.6 million (1999\$)
<ul style="list-style-type: none"> forestry transition funding, estimated by B.C. 	\$ 4.4 million (1997\$)	\$ 4.5 million (1999\$)
In total, the Nisga'a will receive one-time payments of:		\$253.0 million (1999\$)
Other related costs include:		
<ul style="list-style-type: none"> Canada's contribution to the Lisims Fisheries Conservation Trust, which will support fisheries science on the Nass River, benefiting all Canadians (the Nisga'a will also contribute \$3 million) 	\$ 10.0 million (1996\$)	\$ 10.3 million (1999\$)
<ul style="list-style-type: none"> Canada's contribution to B.C. to assist those who may be affected by the Treaty 	\$ 3.0 million (1993\$)	\$ 3.2 million (1999\$)
<ul style="list-style-type: none"> surveys 	\$ 3.1 million (1997\$)	\$ 3.1 million (1999\$)

³ Some of the amounts have been adjusted pursuant to provisions of the Final Agreement. For comparative purposes, the bolded numbers are shown in 1999 dollars.



• purchase of third party interests	\$ 30.0 million (est.)	\$ 30.0 million (est.)
• British Columbia has also agreed to pave the Nisga'a Highway	\$ 41.0 million (1998\$)	\$ 41.4 million (1999\$)
The Province of British Columbia has ascribed values to:		
• Nisga'a Lands and fee simple parcels, totalling 2,019 square kilometres	\$106.6 million (1997\$)	\$108.6 million (1999\$)
• Foregone forest revenues	\$ 36.0 million (1995\$)	\$ 37.5 million (1999\$)
Including these ascribed values, the total one-time cost of this Treaty is:		\$487.1 million (1999\$)
Canada's share of this cost is:		\$255.0 million (1999\$)

October, 1999

CHAPTER 3: INDIAN TREATIES AND POLICIES IN CANADA

3.1 TREATY MAKING IN CANADA

No discussion of the Nisga'a Treaty, or indeed of any treaty or land claim settlement in Canada, can begin without first looking at the historical context. Treaty making has deep historical roots and the practice is not a new one. Since the time of the first contact, Europeans and Indian people in North America have entered into arrangements in order to try to resolve their differences and accommodate each others' interests. Early treaties were often a means of formalizing military alliances between the two groups. Treaties involving land became more commonplace as the colonial powers became more firmly established in North America. Colonial governments wanted to establish more control over the land and, through settlement, they wanted to exploit the vast natural resources. Often the Europeans' desire for private ownership and exclusive use of land conflicted with the Indians traditional land uses (*Living Treaties, 1985: 1*).

Indian treaties in Canada are agreements between the Crown and specific Aboriginal groups whereby Native people exchange some of their interests in parts of their traditional territories in return for an assortment of payments and guarantees from the Crown's officials. Historic treaties assisted the Crown in settling and developing much of present day Canada. These historic treaties are a reflection of their time (from 1725 to 1923) when military conflict, colonial and post-colonial settlement, railway construction, agricultural development, and extraction of natural resources characterized Canadian history.

3.1.1 Historic Indian Treaties

In general, historic Indian treaties belong either to the pre-Confederation era (1725 to 1867) or the post-Confederation era (1867 to 1923). Within these two time periods, historic Indian treaties are further divisible into particular groups.

3.1.1.1 Pre-Confederation Treaties

Maritime Peace and Friendship Treaties (1725 to 1779)

These treaties were between the Mi'kmaq and Maliseet people in the present-day provinces of Nova Scotia and New Brunswick and the British colonial administration. Their main purpose was to end hostilities between the parties. In exchange, the Crown promised the Mi'kmaq and Maliseet Indians that they could continue hunting and fishing, trade with the British and pursue their traditional practices. There was no cession of land.

Murray Treaty (1760)

This treaty, made in September 1760, guaranteed the Huron Indians safe passage to their village at Lorette, Quebec. Their customary and religious practices were recognized as were their rights to trade with the British.

Upper Canada Treaties (1764 to 1862)

The Ontario land surrender treaties can be divided into three distinct groups. (1) In the period from 1764 to 1806, the Crown acquired the cession of lands of the shoreline of the upper St. Lawrence River and those of lakes Erie and Ontario. (2) From 1815 to 1827, the Crown acquired the lands extending from the Ottawa River to the eastern shores of Georgian Bay. (3) From 1836 to 1862, the northern and northwestern areas of what then was known as Upper Canada were acquired through the Manitoulin Island Treaty of 1862, the Robinson-Huron Treaty of 1850, and the Robinson-Superior Treaty of 1850. The Robinson treaties required First Nations "to surrender, cede, grant and convey unto Her Majesty, her heirs and successors forever, all their rights, title and interest to the land, and the right to fish and hunt in the lands they surrendered, until these lands are sold or leased to individuals or companies." (*The Robinson Treaties*. Available: http://www.inac.gc.ca/pr/pub/fnc/nwcm_e.html#robi)

Vancouver Island Treaties (1850 to 1854)

Governor James Douglas negotiated fourteen land surrender treaties, known as the Douglas Treaties, with the First Nations living on Vancouver Island. The area thus ceded was approximately one fortieth of the total area of Vancouver Island. The First Nations received lump-sum payments and retained their hunting and fishing rights. Some land was provided for reserves.

3.1.1.2 Post-Confederation Treaties

Numbered Treaties (1871 to 1921)

The numbered treaties - Treaty Nos. 1 to 11 - covered northern and northwestern Ontario, the entire area of Manitoba, Alberta, and Saskatchewan, a portion of the Northwest Territories, and the northeastern portion of British Columbia. In exchange for the surrender of their interest in the land, the signatories to these treaties received reserve lands, agricultural equipment, livestock, annuities, ammunition, gratuities, and clothing. They kept their rights to hunt and fish on the lands they had ceded as long as these areas remained unoccupied. The Crown agreed to maintain schools on the reserves and/or to provide teachers when requested to do so by the Treaty First Nations. Treaty No. 6 also contained the promise of a medicine chest, in each community to be kept by the Indian agent.

Williams Treaties (1923)

The signatories to these treaties received a lump-sum cash payment in exchange for the surrender of their interests in the lands of central southeastern Ontario and their hunting and fishing rights.

In total, sixty-seven historic Indian treaties were made between the Crown and the Indian people of Canada. This list may grow as the courts in Canada continue to be asked to consider the validity of previously unknown historic Indian treaties. For example, the Murray Treaty of 1760 with the Hurons in *R. V. Sioui*, the Treaty of 1701 (the Beaver Hunting Ground Treaty), in *R. V.*

Ireland and Jamieson, and the Treaty of Swegatchy of 1760, in R. V. Coté. (*Historic Indian Treaties*. Available: http://www.inac.gc.ca/pr/info/info3_e.html)

3.2 TREATY INTERPRETATION AND PROTECTION

Treaty First Nations and the federal government often have different views when it comes to the interpretation of historic treaties. The promise of schools on reserve has been interpreted by First Nations as a commitment to provide education; the promise of a medicine chest in one treaty has been held by the courts to be a promise of health care services. First Nations argue for a spirit and intent interpretation of their treaties. Canada and the provinces argue for a black-letter interpretation of treaty documents and deny any commitments beyond the exact wording. The controversy surrounding the interpretation of historic treaties is illustrated by recent court cases in different parts of Canada. Because section 35 of the *Constitution Act*, 1982 gives treaties greater legal protection than ever before, the interpretation of the historic treaties is increasingly important. Where the terms of the treaty are unambiguous and clear, the courts will gnarly interpret the treaty in its ordinary sense. However, if the terms of a historic treaty are ambiguous, the courts may use a variety of tools -- historical evidence, Indian oral history, and the historical records of government officials -- to determine the original intention of the parties. There is a growing body of treaty-related case law, which has lead to the development of certain principles of interpretation. Modern treaties and comprehensive land claims settlements are also protected by Section 35(3) of the *Constitution Act*, 1982 but these are different from historic treaties and the rules of interpretation do not apply to them.

3.3 THE ABORIGINAL LAND QUESTION IN BRITISH COLUMBIA

British Columbia is only now beginning to resolve the complex questions of jurisdiction, Aboriginal rights and title on Crown lands and over natural resources. This is a contentious issue and has caused anger, resentment and unrest in both the Aboriginal and non-Aboriginal communities. Once the land question is resolved, the socio-economic conditions in many Aboriginal communities may well improve. The success of the treaty process may also result in greater economic and social stability throughout BC by removing the uncertainty that has discouraged investment in the provincial economy.

The *Royal Proclamation* of 1763 spelled out British colonial policy in the acquisition of Indian lands and established the principle of acquisition by consent. It established a process whereby the acquisition of the land in question was made through the surrender of Aboriginal title and subsequent purchase by the Crown. *The Royal Proclamation* established a framework for the settlement of Aboriginal lands and the resulting treaty making process occurred across most of Canada.

Only 15 treaties were signed in what is now the province of British Columbia. Between 1850 and 1854, James Douglas signed fourteen treaties on southern Vancouver Island. Another treaty -- Treaty No. 8 -- was signed in 1899 by the federal government and covers the northern part of the province as well as northern Alberta. In 1864, Douglas retired and, in 1866, the colonies of Vancouver Island and the Mainland were united as the Colony of British Columbia. In 1871,

British Columbia entered Confederation with Canada. During this time period, Joseph Trutch became the Commissioner of Lands and Works and the first Lieutenant Governor of BC. He directed the Aboriginal land policy in the province. In Trutch's opinion Indians were primitive savages with no concept of land title or ownership and no prior rights to land and resources (Tennant, 1990: 40). Under Trutch, the province adopted the doctrine of *terra nullius* and denied that pre-contact ownership and occupation had existed. With the acceptance of this doctrine, the province effectively denied the relevance of the *Royal Proclamation* and eliminated the need to negotiate treaties. For the next 120 years, *terra nullius* guided provincial Aboriginal policy.

When British Columbia joined Confederation in 1871, article 13 of the terms of union stated that the federal government would assume responsibility for Indian people. The Province would give lands needed by the federal government in the implementation of its Indian policy. After Confederation, the federal government maintained a policy of clearing title through treaty making in the prairie provinces, and apparently favoured a similar approach in British Columbia. In 1872, however, Trutch wrote to Prime Minister John A. MacDonalad advising him that Canada's policy on treaty making was not appropriate for British Columbia. The Report of the Task Force to Review Comprehensive Claims Policy (*Living Treaties*, 1985: 50) stated in 1985:

Historically, the posture of the Province of British Columbia towards Aboriginal claims has been a sore point both for Aboriginal groups and for the federal government... Although the matter is not free from doubt, a good argument can be made upon the terms of union in 1871, that the Province of British Columbia has a constitutional obligation to participate in federal claims policy. Aboriginal title litigation launched by frustrated Aboriginal groups is emerging throughout British Columbia, and may contribute to deteriorating relationships and hardened positions over the short term. The gravity of the situation in British Columbia for Aboriginal groups has forced us to consider seriously whether the federal government should refer a question to the Supreme Court concerning the existence and extent of British Columbia's constitutional obligation.

British Columbia has now started to negotiate treaties. The BC Treaty Commission (BCTC) was established on April 14, 1992 to facilitate the negotiation of treaties between the BC First Nations people, the Province of BC and the federal government. (**Chart II: Treaty Negotiations in British Columbia** is in the back pocket attached to the back inside cover of the dissertation.) The stated goal of the treaty process is to achieve social stability and economic certainty for all residents of British Columbia by negotiating the land claim issue through the treaty process rather than in the courts. However, the judiciary system has played an important role in recognition of Aboriginal rights and helped lay the foundation for the province to begin resolving the Aboriginal land question. The *Calder* case established that Aboriginal rights were not extinguished when British Columbia entered Confederation. The *Guerin* case confirmed that the federal government has a "fiduciary responsibility" to protect Aboriginal interests and rights. The *Sparrow* case recognized Aboriginal fishing rights within a modern context as a priority after conservation goals had been met. The first *Delgamuukw* case recognized that Aboriginal people had unextinguished and nonexclusive Aboriginal rights to much of their traditional territories for hunting, fishing and sustenance activities. With the 1997 *Delgamuukw* decision,

the Supreme Court of Canada discussed legal principles with respect to the existence, content and limitations of Aboriginal title and described Aboriginal title as a particular type of Aboriginal right - a right to the land itself.

The signing of an agreement with the Nisga'a, although not part of the BC Treaty process, is the first time that the Aboriginal land question in BC been adequately dealt with by the both the federal and provincial governments. Negotiations between the Nisga'a and Canada had been underway since 1976. British Columbia joined the process in 1990.

3.4 AREAS OF UNCERTAINTY SURROUNDING ABORIGINAL LAND CLAIM SETTLEMENTS

For years, the provincial policy was clear: British Columbia refused to negotiate Aboriginal land claims. While the province was willing to work on certain new arrangements for local self-government, the delivery of services to reserves and the possibility of co-management of natural resources, there was no change in the basic point of view that Aboriginal title and rights, if they had ever existed, had long since been extinguished. However, the tide began to turn and the Aboriginal land question could no longer be ignored. In 1987, the federal Minister of Indian and Northern Affairs Canada, Bill McKnight, was quoted in an interview with the *Financial Post* as saying he firmly believe that the lost opportunity cost, the lack of economic self-reliance, the lack of development, the inability to plan in the claimant areas, was greater than the cost of settlement (Cassidy, 1988: 30).

Now, although both the provincial and federal governments have agreed to settle the land question in BC through the treaty process, there remain some areas of uncertainty, particularly in terms of natural resources. Treaty settlements will obviously contain provisions for the ownership and management of natural resources including fisheries (4th in terms of aggregate impact on BC's economy but fundamental to the Aboriginal way of life), forestry and non-renewable resources (1st and 2nd aggregate economic impact). This uncertainty surrounding natural resources contains economic, political and environmental dimensions.

The economic dimension of treaty settlement includes the capture and distribution of the direct economic benefits of natural resource use and the extent and responsibility for related costs. The economic aspect is not restricted to the cost of settlement although compensation to Aboriginal people is an important issue. There is also a large degree of uncertainty regarding economic development after settlement. The political dimension can include the extent and nature of governance and regulatory systems for the planning and review processes for resource development. The environmental dimension deals with the state of the resource base and its health and can included concerns regarding integrated resource management as well as responsibility for enforcing standards on treaty settlement land. The health of the resource base is very important to all parties in BC since this sector is a major economic factor in the province. In short, there are many concerns on the part of the federal and provincial government, business and industry and the public with respect to land claims and treaty settlement including the costs of agreements, who pays, who benefits, types of business and financial relationships and the effect on the pace and direction of development.

The possible benefits of Native claims settlement may be tangible but they are often hard to assess. Aboriginal people want economic benefits from land and resources and employment is very important to them. Investors however could view guaranteed employment for Aboriginal people after treaty settlement as an additional cost to resource development. Aboriginal people have indicated that as a outcome of treaty negotiation or land claims they may have a much higher degree of control to establish, own and operate natural resource companies. Non-Natives worry that this could cause a potential displacement of non-Native jobs and businesses. There is also concern about who would guide and manage future economic relationships after settlement. However, both Aboriginal and non-Aboriginal groups may come to realize that economic prosperity is usually accompanied by a high degree of trust and a positive economic relationship between the various interested parties (Cassidy, 1989: 23).

3.5. POTENTIAL ECONOMIC OPPORTUNITIES FOR FIRST NATIONS AFTER ABORIGINAL LAND CLAIM SETTLEMENTS

While it is true that the potential benefits of land claim settlements may be difficult to assess, there are some potential economic opportunities for Aboriginal people inherent in the negotiation process.

Treaties often afford Aboriginal groups the financial and administrative means to plot a new economic future. Aboriginal people have used the land claims process as a means of participating more fully in the broader Canadian economy. The establishment of for-profit companies, joint ventures with non-Aboriginal corporations, community development plans and similar projects are often an important part of the both the land claim settlement process and treaty implementation. Education and training for Aboriginal people also figure prominently in post-settlement environments. Treaties typically involve a range of administrative powers and responsibilities, greater community autonomy, and more access to economic resources. In order to capitalize on the opportunities presented by treaty settlement, First Nations must have trained people ready to start implementing the treaty. In recent years, some of these groups have placed a strong emphasis on education and training while land claim negotiations proceeded. Aboriginal people have also expressed a great desire to protect their language and culture and to interest non-Aboriginal people in their heritage. This may well be one of the most important aspects of land claims negotiations because it helps to build lasting, culturally based links between peoples.

3.6 SOCIAL AND ECONOMIC IMPACTS OF ABORIGINAL LAND CLAIM SETTLEMENTS

The resolution of Aboriginal land claims is a provincial priority affecting the economy. The decision to negotiate these land claims has been contentious; however, unless treaties are negotiated, the existing concerns around land, resources and investment will continue.

British Columbians may see the current land claims as unique but many of the same problems, questions and expectations have been experienced in other parts of Canada and the world including Australia, New Zealand and the USA. Final agreements in BC will, of course, reflect

the specific historical and contemporary realities of the province and of the First Nations living there.

The modern treaty process began in the 1960s when national governments began to acknowledge Aboriginal demands for land settlements. The process is quite different from historical treaty making. When looking at modern treaties in Canada and overseas, it becomes apparent that it is, in general, easier to reach agreements with indigenous peoples in thinly populated, isolated regions than it is in more populated agricultural and urban areas. (The Tainui settlement in New Zealand is an exception to this general rule.) There are a number of reasons for this:

- National governments in Canada, the United States and Australia have greater constitutional control over their territories than they do over states or provinces making it easier to negotiate settlements there.
- An indigenous majority or large minority in the claim area means there is a greater need to resolve outstanding claims.
- The comparative absence of third-party interests in remote or thinly populated areas is an important factor.
- The general populace does not feel that treaties that cover areas far removed from major centres will negatively effect their welfare.

British Columbia's treaty process represents a shift in emphasis since negotiations in the province range from those with indigenous groups in isolated, thinly populated regions to treaty discussions with indigenous groups living in urban areas. Due to the vast natural resources in the province, third-party interests are a very important consideration. However, while it may be impossible to dispel the uncertainty and public concern about the treaty process and its consequences, it may be possible to make certain assumptions about modern treaties in BC by looking at some Aboriginal settlements implemented both in Canada and some other parts of the world during the past 25 years.

3.6.1 Case Studies -- Modern Treaties

The past quarter century has seen a significant number of major treaty settlements which provided financial resources, land and other considerations for the indigenous peoples involved. These settlements helped resolve disputes over land tenure and resource control and provided a larger degree certainty and economic stability for governments, businesses and the non-indigenous peoples in the affected areas.

3.6.1.1 The Waikato-Tainui Deed of Settlement (1995) -- New Zealand

The Tainui (Maori) people signed a treaty with the Government of New Zealand in October 1995. The settlement agreement received all-party endorsement and the legislation passed unanimously. The terms of the agreement are straight-forward: NZ \$170 million for the

purchase of privately held lands for the use of the Maori people and approximately NZ \$100 million worth of Crown lands. Most of the ongoing funding will come from the leases and rentals of properties transferred from the Crown. The Tainui will also have a role in the evaluation of proposals for resource development and will participate in the delivery of social services. Most observers have accepted the agreement and its implementation as a major advance.

3.6.1.2 Alaska Native Claims Settlement Act (1971) -- U. S. A

In 1967, indigenous land rights became important in Alaska when an oil deposit was discovered at Prudoe Bay. Four years later, the *Alaska Native Claims Settlement Act* (ANCSA), was implemented. Native people received over US \$960 million, revenue sharing from resource developments, and 44 million acres of land. Regional/village corporations were established under the agreement and the money and resources were allocated to them. They, in turn, paid out shares to the Aboriginal beneficiaries. Most of the corporations faltered financially. When it appeared possible that outside interests would gain control of traditional lands and resources, the law was amended to ensure continued Native ownership. ANCSA became an example of what indigenous people should avoid.

3.6.1.3 James Bay Northern Quebec Agreement (1975) -- Canada

A proposed hydroelectric development in Northern Quebec prompted the settlement of this Aboriginal land claim. After several years of negotiation, the Cree and Inuit signed the James Bay Northern Quebec Agreement. The settlement provided the indigenous peoples with direct ownership of 14,000 square kilometres, exclusive harvesting rights over an additional 150,000 square kilometres and preferential access to resources over a million square kilometre area. Cash payments totalled C\$225 million. The Cree received C\$135 million and the Inuit the remaining C\$90 million. The focus in this settlement was on the protection of harvesting rights and lifestyle but it also provided Aboriginal people with a voice in resource management and government service delivery. As the first of the modern Canadian treaties, the James Bay and Northern Quebec Agreement set expectations for subsequent negotiations.

3.6.1.4. The Aboriginal Land Rights (Northern Territory) Act (1976) -- Australia

In the 1960s, the Aboriginal people of the Northern Territory of Australia began looking for a land settlement agreement. The *Aboriginal Land Rights (NT) Act*, passed in 1976, provided them with the opportunity to claim traditional lands. The initial settlement was for 258,000 square kilometres but this was increased through subsequent claims to 520,000 sq. km. The *Act* also established land councils to administer the land and allowed for Aboriginal input in future resource development decisions as well as a share of the royalties. The government subsequently revised the *Act* to give greater certainty to resource developers.

3.6.1.5 The Western Arctic (Inuvialuit) Native Claims Settlement Act (1984) -- Canada

With the discovery of oil in the Beaufort Sea, the Canadian government moved to finish negotiations with the Inuvialuit of the Western Arctic. The final agreement provided absolute title to 91,000 square kilometres of land and surface rights to an additional 13,000 square kilometres, a cash settlement of C\$152 million spread over the 1984-1997 period, as well as special grants for economic development (C\$10 million) and social development (C\$7.5 million). The Inuvialuit were also guaranteed harvesting rights and a role in resource management. The final agreement established a baseline for subsequent Canadian treaty negotiations.

3.6.1.6 The Council for Yukon Indians Umbrella Final Agreement (1993) -- Canada

Negotiations on the Council for Yukon Indians' claims began in 1973. The Yukon treaty was finally signed in 1991 and implemented in 1995. The treaty came in two stages: an Umbrella Final Agreement that set out the general terms and conditions of the settlement and additional agreements with each of the fourteen First Nations in the Yukon Territory. The Yukon treaty is comprehensive, providing C\$242.7 million in cash, direct ownership of 41,400 square kilometres, surface rights to an additional 15,500 square kilometres, a share in government royalties from resource developments on owned lands, the opportunity to conclude self-government agreements, and a significant role in the management of the territory's renewable and non-renewable resources. The Yukon agreement is the most relevant of the modern treaties for British Columbia since it addresses many of the same issues.

3.6.1.7 Nisga'a Treaty – 2000, British Columbia, Canada

BC's first modern treaty provides for a cash payment of over C\$190 million and the establishment of a Nisga'a central government with ownership of approximately 2,000 square kilometres of land. The Nisga'a will assume responsibility for approximately 45,000 hectares of productive forestland including stumpage fees and rents for forest activities on Nisga'a lands. Forestry, fisheries and tourism related business ventures could increase economic activity and growth in settlement lands. The Nisga'a will be able to provide agreed-upon public services comparable to other communities in northwest BC. The Nisga'a government will also receive revenue for programs and services through taxation of Nisga'a citizens. It is anticipated that the treaty will bring long term economic benefits, reduce economic uncertainty in the region and encourage investment in Nisga'a lands and resources. (See also Chapter 4 Economic Implications of the Treaty System.)

3.7 SOME CONCLUSION REGARDING THE SOCIO-ECONOMIC IMPACTS OF MODERN TREATIES

Settlements vary and it may well be unreasonable to look to other agreement as a template for British Columbia. Time, place, legal requirements, economic urgency, political will and national realities are all aspects of land claims agreements as are historical, political, cultural and legal circumstances. However, a few assumptions can be made based on a comparative case study analysis (ARA Consulting, 1995).

Land claim settlements have not caused political or economic chaos. In all cases, people have adjusted to the new arrangements, political systems have adapted and businesses have found new ways of responding to the post-settlement environment. All of the modern treaties have respected and accepted private land holdings and leases. For example, in New Zealand, the majority of farmland in the Waikato region has long been privately owned, and both the Maori and the New Zealand government agreed that there would be no transfer of privately held land. Instead, a reasonable cash settlement was provided to the Aboriginal group to purchase land at current market prices. One of the most contentious issues surrounding treaty settlements is the management of natural resources. Agreements in remote, sparsely populated areas generally contain provisions relating to the control, regulation and exploitation of natural resources while giving indigenous people a say in the use of those resources. In more populous areas, it is important that resource use and control be fully explained to lessen concerns about the future of businesses and communities that rely on resource development. However, in every case, national governments have maintained enough power in the final agreements to override indigenous protests if national interests were deemed to be at stake. Following some settlements, many people expected a vast increase in local spending associated with the treaty and were surprised when the indigenous groups invested their money more broadly -- some funds on local development and training, and other capital on more financially profitable investments outside the region. In some instances Aboriginal leaders have stood in the way of economic growth and in others they have again embraced and encouraged it.

Some aspects of modern treaties have not worked out as planned while others have indeed met expectations. Like most negotiated settlements, treaties cannot anticipate all eventualities. However, the reality of the post-settlement period is that life, generally, has proceeded much as before. Some areas and groups have capitalized on opportunities quickly and dramatically; others have opted for slower, longer-term growth. Taken as a group, modern treaties have not caused the degree of disruption, disharmony and dislocation that critics forecast, neither have they offered immediate solutions to difficult problems, as some proponents seemed to expect. The previous case studies provide some reassurance that changes, even substantial ones, are not necessarily unsettling and the post-settlement reality in BC need not be chaotic or disruptive. Treaties are not a panacea, nor are they a massive threat.

3.8 CANADIAN INDIAN POLICIES

In order to understand the current Aboriginal land question in British Columbia, or the desire of many Aboriginal groups in Canada to revisit their historic treaties, the Canadian government's past policies towards Native people must be examined. The beginning of the modern system of administration for Indian people in Canada is generally considered to be 1830 when Aboriginal settlement on reserves began under government guardianship. After the War of 1812, when Indians stopped being useful as military allies, the responsibility for Indian administration was taken away from the military and put in the hands of civilians. One of the goals of this civilian administration was the complete assimilation of scattered Aboriginal groups and various means of assimilation were considered ranging from placing Aboriginal people among the settlers to

learn through imitation to isolating them on reserves where teachers, government agents and missionaries would serve as instructors.

During the 1800s several royal commissions looked at the condition of Indians in Canada. The Royal Commission of 1844 recommended a variety of improvements in the administration of First Nations' lands to stop the loss of these lands to squatters, loggers, poachers and others. In 1850, it was decided that stronger measures were required to protect First Nations and their lands, and acts were passed to achieve this in both Lower Canada (Quebec) and Upper Canada (Ontario).

In 1857 an act was passed designed specifically to assimilate Indians into the mainstream of colonial life. At the core of this act was the concept of "enfranchisement." An Aboriginal man, over the age of 21, literate in English or French, educated to an elementary level, of good moral character and free of debt, could become a full citizen and was no longer deemed to be an Indian. To further encourage giving up their Aboriginal identity, enfranchised Indian men would be granted fee simple title to as much as 20 hectares of reserve land plus an amount of money.

During the next decade a whole range of acts were passed encouraging Aboriginal people to move toward the social and political world of non-Aboriginal Canadians. These acts also protected First Nations lands from alienation, guarded First Nations against the effects of alcohol, and provided for the management of Aboriginal schools and monies. The new nation of Canada inherited this legislation when it gained its independence from Britain in 1867.

In 1876, the Canadian Parliament passed the first *Indian Act*. This *Act* has had several major revisions but many of its provisions remain to this day. The *Indian Act* allowed for government control over reserve lands and Indians living on reserves. It was during this period that the distinction between "Status" and "non-Status Indians" first came into being. (Status Indians are those who are registered with the federal government as Indians according to the terms of the *Indian Act*. Non-Status Indians are those who are not registered.) The Act of 1876 forbade the selling, alienation or leasing of any reserve land unless it was first surrendered or leased to the Crown. An 1889 amendment gave the government even more control and allowed the federal government to override any Aboriginal group's reluctance to have its land leased. In 1927, in response to the Nisga'a pursuit of a land claim in British Columbia, the government passed another amendment prohibiting anyone from raising money among First Nations for the purpose of pursuing any land claim without the written consent of the Superintendent General of Indian Affairs. In his book *Without Surrender Without Consent A History of the Nisga'a Land Claims*, Daniel Raunet (1996: 141) discusses this situation:

...the Canadian Parliament decided to put a stop to the land controversy by making it illegal to press Native land claims. Such basic rights as freedom of speech and opinion were denied to an important minority by a system that could not restrain its repressive tendencies. By challenging the legitimacy of the British Columbia land grab, Native people had attacked the very nature of white power and for this they had to be chastised.

Enfranchisement was a key provision of the *Indian Act* and the government's goal remained the total assimilation of the Aboriginal population. Indian status was viewed by government as a handicap that could be overcome only by assimilation (Raunet, 1996: 173). However, in 1880, when few Indians had chosen to become enfranchised, another amendment was made to the act. This amendment declared that any Aboriginal person obtaining a university degree would be automatically enfranchised. Duncan Campbell Scott, Deputy Superintendent of the Department of Indian Affairs from 1893 to 1932 stated that the objective was to absorb every single Indian into the body politic until there was no Indian question (Tennant, 1990: 92). This reflected the official national policy of assimilation of Indians into Canadian society. In 1933, enforced enfranchisement went even further and the government was empowered to order the enfranchisement of Indians meeting the qualifications set out in the act, without the individuals concerned requesting this.

Under the *Indian Act*, Aboriginal people were also denied certain basic human rights. For example: the right to vote in BC elections was denied until 1951; Aboriginal children were removed from their families and sent to Christian residential school until 1960; the potlatch - the major socio-economic, political institution and governance body of the coastal people of BC - was outlawed until 1951; it was illegal for Indians to gather or pursue discussions on land claims until 1951, an Indian who obtained a university degree was enfranchised as a Canadian citizen and lost status as a registered Indian under the *Indian Act*; and an Indian woman who married a White man lost her status as a registered Indian under the *Indian Act* as did her descendants. Thus, the *Indian Act* deprived Aboriginal peoples of power, attempted to strip them of their cultural identity and kept them locked in a state of dependency.

Federal and provincial legislation had been designed to assimilate Indian people, often by denying them access to legal and political institutions. These laws deprived Indians people of their material wealth by denying them access to their traditional lands and resources and made elements of traditional Indian political life and cultural identity illegal. They also prohibited Indian governments from exercising real power in the political and legal systems. Much of the legislation passed seemed dedicated to destroying the Indian identity in Canada.

The economic consequences of the loss of lands and resources are easy to understand. It is more difficult to access the consequences of the *Indian Act*, which was often used to destroy traditional institutions of Indian government and abolish cultural practices that defined Indian identity. In British Columbia, this focused on the potlatch and the practices of the longhouse -- traditionally the centre of Indian government and spiritual community.

One of the most important functions of the potlatch was to carry title from generation to generation. The Nisga'a social world was based in kinship and matrilineal descent groups. Resources were controlled and harvested through the social system. At the core of the resource harvesting system were corporate groups, that is, groups that own property, land, titles, and traditions. These corporate groups (houses) owned the fishing and harvesting places and exercised control through leaders with titles or high-ranking names. The basic elements of the resource ownership and harvesting system -- land titles, traditions, houses -- worked together to ensure the continuity of the Nisga'a form of sovereignty (Suttles, 1990: 289). The potlatch was a

way of registering land title within the Nisga'a traditional system; it was the proof of ownership of the land and the continuation of Aboriginal title. At an International Conference in July 1985, Rod Robinson, then Executive Vice-President of the Nisga'a Tribal Council, explained the relationship between Aboriginal title, or ownership, and the potlatch:

We, the Nishga people, have owned the land of the Nass Valley, as everyone knows, since time immemorial. For countless centuries, my people have lived in the Nass Valley and have utilized its abundant resources. We have always practised the potlatch... When I talk about Aboriginal title, it is important that you understand what I am saying. When I say that the Nishga Nation collectively exercise ownership over a territory, I am referring to land title and ownership in a sense which is very different from the way Europeans understand the rights of an individual to his land... when a chief passes on a potlatch, he is passing on title to the territory owned to the next in line. The ranking chiefs must be present to witness and to participate and to approve of this investiture (cited in Sinclair, 1985:79: 80).

White observers of the potlatch, however, believed that the organizer of the ceremony was condemning himself to the most abject poverty. They saw the custom as an obstacle in the way of native economic progress (Raunet, 1996: 30).

Having outlawed the political institutions and traditional forms of Indian government, the federal government proceeded to impose its own form of government on Indians. The Band Council system was introduced through the *Indian Act* and functioned on European perceptions of what constituted proper government. Once stripped of independent political power, Indians were denied access to the political institutions of non-Indian governments. Indians were prohibited from voting. Federal Elections Acts, up to and including the *Canadian Elections Act* of 1952, specifically disqualified Indians from voting. At the provincial level, Municipal Election Acts, up to the *Municipal Elections Act* of 1948 and the *Provincial Elections Act* up to 1949, prohibited Indians (plus Chinese and Japanese people) from voting. Indian communities were denied any degree of self-reliance while at the same time prohibited from functioning in the larger society. The federal government's goal was enfranchisement. However, Indians saw enfranchisement as an end to their existence as a distinct people with a strong focus on assimilation into White society.

In the 1880s, Indian Agents and missionaries had realized that the suppression of traditional culture would not by itself promote assimilation. They regarded Indian children as the key. Effective schooling, in terms of regular attendance and inculcation of values, was impossible if parents retained custody and influence over their children. The solution was to remove the children. The residential school system began. At these schools, children could not speak their own language. The goal was to render them incapable of speaking their mother tongue; therefore, the "fundamental cultural and personal link between tradition and posterity would be shattered and assimilation promoted" (Tennant, 1990: 79). Schooling was originally intended as an instrument of cultural annihilation that would transform Indians into an unskilled or semi-skilled workforce in the Anglo-Canadian economy.

In the early 1900s, one assumption underlying the federal policy of Indian assimilation had been that the more intelligent, able and educated Indians would give up Indian status and leave the reserves in order to acquire the rights of full British subjects, that is to accept enfranchisement. By the 1920s, it was clear that few Indians wanted to take this step. It was also becoming obvious that residential school was not leading to assimilation. However, throughout the early 20th century, the federal government continued to regard residential schools as an important factor in the plan to destroy Indian culture. Since language is an expression of a culture and provides a sense of identity to a people, its destruction is important in the assimilation process. Residential schools were used to destroy Indian languages to ensure that Indian children would be assimilated into the White culture (York, 1990: 36). (Between the generations there is still a generation gap since residential school has forcibly divided generations, due to their inability to speak each other's language. However, an unintended side effect of residential schools may have been the beginnings of a "Pan-Indian" movement since these schools brought together children from different locations and tribal groups.) The overall quality of Indian education was low and dropout rates high. When White public opinion in Canada started turning against racially segregated schools -- particular with the news media accounts of black school desegregation in the United States -- the federal government started to phase out residential schools in the early 1960s. The new policy of sending Indian children to provincial schools may have resulted, in part, from feelings of egalitarianism, but the desire to assimilate Indian children into White society still remained a motivating factor.

3.8.1 The White Paper -- Statement of the Government of Canada on Indian Policy

In 1969, the federal government under Prime Minister Trudeau with Jean Chrétien as Minister of Indian Affairs, attempted a grand design for Indian assimilation into Canadian society through a discussion paper called the *Statement of the Government of Canada on Indian Policy*, or more commonly known as the *White Paper* of 1969. The federal government proposed the abolition of Indian status; the elimination of the Department of Indian Affairs within 5 years and the ending of the special responsibility of the federal government to Status Indians as a legal concept or responsibility. In effect this was the culmination of the national Indian policy to eliminate the Indian people as a known entity in Canada that was pronounced by Trutch and Duncan Campbell Scott nearly 100 years before. The *White Paper* of 1969 was unilaterally denounced by the First Nations people and thus began the self-determination process that we are witnessing today in the courts and negotiating tables between the BC First Nations, Canada and the Province of BC. Paul Tennant, in his book, *Aboriginal Peoples and Politics*, describes the popular sentiments of the day:

...[the] white assumption was that the Canadian Indian population was composed of individuals without any serious desire to survive as members of Indian communities or tribal entities... (Tennant, 1990: 145)

The federal government had argued that Aboriginal and treaty rights were of no real consequence in the modern world. Rather, it was the economic, social and educational conditions affecting Native peoples that should be the focus of Native, public and government attention. In the 1960s, federal Indian policy was rooted in the small "I" liberal ideological view that individual

Indians desired to be, and should be, assimilated as equals into the larger Canadian society. This view ignored the attachment of Indians to their ancestral customs, communities and tribal groups.

The *Indian Act* had always been a paradox for Indian people; it confirmed the special status of Indians, but could also be viewed as a mechanism of social control and assimilation. The *Act* treated Indians as a homogenous group without taking into account variations in culture, language, resources, size and location of communities. The inflexibility of the *Act* was been perceived as an instrument of assimilation.

The federal government's grand design for Indian assimilation and equality came to a head in June 1969 when Jean Chrétien, the Minister of Indian Affairs, issued the *Statement of the Government of Canada on Indian Policy*. This document was supposed to be the culmination of the consultation process with Native people regarding amendments to the *Indian Act*. In accordance with federal government policy this should have been termed a white paper but Jean Chrétien was astute enough to avoid this term and instead it was referred to as the green paper (Tennant, 1990: 149).

Between July 1968 and May 1969, the Department of Indian Affairs was setting out to consult with the Indian people about amendments to the *Indian Act*. This fitted in with the participatory democracy much in favour at that time with the Liberal Party and Prime Minister Trudeau. Chrétien presented consultation process as an opportunity for Indian people to have a real influence on Indian policy. The "consultation process", as it became known, remains the most comprehensive such effort ever undertaken in Canada among Indians or any other group. In March 1968, the department had mailed booklets entitled "Choosing a Path" to all status households in the country. This booklet presented the main provisions of the *Indian Act*, asked questions regarding amendments to the *Act* and suggested possible alternatives. Indian bands were asked to hold public meetings and choose delegates to attend a zone meeting. At the zone meetings, participants were elected to attend a national consultation meeting, to be held in Ottawa. The meetings had scarcely been completed when the government tabled its *White Paper on Indian Policy*, which called for far-reaching changes in legislative framework governing Indian-Canada relations, including the repeal of the *Indian Act*. The government proposed the elimination of the Department of Indian Affairs within 5 years, ending of the special responsibility of the federal government for provision of services to Indians people -- who would receive services from the provincial government as did other Canadians-- and the elimination of Indian status as a legal concept. Indian reserves would be turned over to Indians as private land holdings. Most Indian leaders were shocked that the *White Paper* made a mockery of the whole consultation process by proposing not the amendment but the abolition of the *Indian Act*. They were also angered by the perceived treachery of the federal government in obviously having prepared the *White Paper* even before the Ottawa consultation had been completed (Tennant, 1990: 150).

The federal government stated that the 1969 *White Paper* was based on the fundamental right of Indian people to full and equal participation in the cultural, social, economic and political life of Canada. The fundamental basis behind the policy was that no Canadian should be excluded from

participation in community life, and none should expect to withdraw and still enjoy the benefits that flow to those who participate. Any argument against this position was as an argument for discrimination, isolation and separation of Indian people. The legislative and constitutional bases of discrimination were to be removed. Prime Minister Trudeau had a vision of a “just society” and this vision was incompatible with discriminatory legislation on Canadian statute books. The ultimate aim of the *White Paper* was the removal of specific references to Indians in the constitution in order to end the legal distinction between Indians and other Canadians.

This principle of equality demanded recognition of each other’s cultural heritage. Canada had changed since the first *Indian Act*. In 1969, Canada was a multi-cultural country comprised of many different peoples and it was widely held that the larger ethnic groups would accept other people and cultures, with all their distinctive traits, without prejudice. For years, Indians had only two choices within Canada -- reserve living or assimilation. With the *White Paper*, it seemed a third choice might be available: a full role in Canadian society and economy while maintaining an Indian identity.

The *White Paper* stated that programs and services must come through the same channels and through the same government agencies for all Canadians. Indians would no longer be excluded from the right to be treated within their provinces as full and equal citizens. The federal government would negotiate with the provinces and conclude agreements to assure Indian people would be served by the provinces and local systems. As part of this initiative, all federal responsibilities for Indians would no longer be handled through the Department of Indian Affairs. Responsibility for specific issues such as economic development or employment would be transferred to the appropriate government departments instead.

The *White Paper* stated that control over reserve land should be transferred to Indian people and that the Indian people should have the opportunity to develop the resources of their reserves in order to contribute to their own well being and to the economy of the nation. The reserve system had provided lands that were, generally, protected against alienation. Title to reserve lands was vested in the Crown as a trust. As long as this trust existed, the Government, as trustee, was required to supervise all business connected with the land. But a result of Crown title and trusteeship, and the *Indian Act*, had been a land system that lacked flexibility and inhibited development. The federal government position was that full Indian ownership of reserve land would mean such things as free choice of use, retention or of disposition. A proposed Indian Lands Act would place full management of the land in the hands of the Indian bands. If the bands wanted to, they or individual members would be able to take title to their land without restrictions. However, there would also be an obligation to pay for certain services through taxation. Under the provisions of some treaties and the *Indian Act*, Indian people on reserve had been excluded from taxation.

While the government acknowledged that the economic base for many Indians was their reserve land, they also admitted that the development of that land had lagged and many Indian people and Native communities were far below the national average in terms of income or employment. The book *The Indian: Assimilation, Integration or Separation* discusses the economic situation on many Canadian Indian reserves in the following way (Bowles, 1972: 205-206):

Among the many factors that determine economic growth of reserves, their location and size are particularly important. There are a number of reserves located with or near growing industrial areas which could provide substantial employment and income to their owners if they were properly developed. There are others in agricultural areas which could provide a livelihood for a larger number of family units than is presently the case. The majority of the reserves, however, are located in the boreal or wooded regions of Canada, most of them geographically isolated and many having little economic potential. In these areas, low income, unemployment and under-employment are characteristic of Indians and non-Indians alike. Even where reserves have economic potential, the Indians have been handicapped. Private investors have been reluctant to supply capital for projects on land which cannot be pledged as security.

The suggested proposals were intended to help improve the economic circumstances of Indian communities. Special legislation was a possibility, in the interim, to protect the reserve land, until the Indians were satisfied that their land holdings are solely within their control.

Prime Minister Trudeau also said that Indians “believe that lands have been taken from them in an improper manner or without adequate compensation, that their funds have been improperly administered, their treaty rights breached. Their sense of grievance influences their relations with governments and the community and limits their participation in Canadian life” (Bowles, 1972: 206). Grievances related to Aboriginal claims to land were said to be so general and undefined that it was unrealistic to think of them as specific claims that could be remedied. Trudeau felt that treaties had failed in meeting the economic, educational, health and welfare needs of Indian people and that their significance would continue to decline. Only through policies and programs that ended discrimination and injustice to Indians as members of the Canadian community would these needs be met. Once Indian land was in Indian control, the anomaly of treaties between groups within the Canadian society and the government of that society would become apparent and existing treaties would have to be reviewed to see how they could be equitably ended.

“Citizenship” in Indian communities was another issue discussed in the *White Paper* -- that is to say, who is a member of the band and therefore can share in its assets. Qualifications for band membership had been imposed as part of the *Indian Act*. Government interpreted and applied these qualifications and therefore determined who was Indian. With the *Indian Act* abolished and title of Indian land in the hands of the bands, they would be able to define and apply qualifications and determine who was a member.

3.8.2 Reactions to the White Paper

In an article entitled “The Last Years of the Indian Nation – White by Act of Parliament”, Indian activist Lloyd Caibaosai attacked the federal government’s *White Paper*. He stated that while the stated objective of new Indian policy was the integration of Indian people into the mainstream of Canadian society, such integration was impossible because of the inherent racism existing within the cultural life of Western civilization. He went on to say that the dominant

society would take precedence over the interests of Indian people in any major policy decision and Indian interests would be considered only when they coincided with “White interests”. These sentiments are also expressed in this quote from the book *The Indian: Assimilation, Integration or Separation* (1972: 211):

... when integration is on the White man’s term; it is assimilation. To be deliberately separated or segregated means to be controlled. To be assimilated means to be controlled. It means to not be in control of your own destiny.

In Lloyd Caibaosai’s view, both the Prime Minister and the Minister of Indian Affairs had ignored the fact that Indian people would remain a series of separate and identifiable people even if individuals were absorbed into the dominant society. The government’s new deal gave only limited opportunity to Indians regarding housing, education, welfare and citizenship rights and was no guarantee of the protection of Indian lands or of treaty entitlements to education, medical and tax exemptions. Furthermore, provincial governments had often been hostile in their dealings with Indians and were less likely than the federal government to take Indian interests to heart. For example, in British Columbia, the provincial government had refused to honour Native property rights or negotiate treaties. What, then, could Indians expect from provincial governments? According to the authors of the *White Paper*, Indians would have the same rights and responsibilities as other Canadians but the stated goals of the paper could very well be different from the consequences. Indians may well have felt that the end result of the proposed *White Paper* could signal the extinction of the Indian people as a visible people and first citizens by denying their special status and, therefore, their existence.

A statement of the Indian National Brotherhood, released in Ottawa, also records the bitter opposition of the Indian community to the termination of federal responsibility in Canada. Native people saw the policy of termination as an attempt at forced assimilation by legislation.

In June 1970, the Indian Chiefs of Alberta rejected the *White Paper* statement that the legislative and constitutional bases of discrimination should be removed. The Chiefs went on to say (Bowles, 1972: 33):

Ethnic groups which represent the object of some form of discrimination are sometimes accepted and tolerated by the dominating groups at the cost of having to abandon completely their cultural identity.

The Chiefs argued that the recognition of Indian status was essential for justice and that justice required that the special history, rights and circumstances of Indian people be recognized. The legal definition of Indian had to remain to protect these people from extinction and to protect treaty and Aboriginal rights. The option to renounce “Indian status” had been available for a long time, but most Indians choose not to give it up. In short, Indians did not want to vanish into Canadian “pluralism” but, rather, to retain their culture and pass it on to future generations.

The Chiefs also insisted that existing treaties must be honoured. These treaties ensured for Indian people health care and education, paid by federal government. They stated that: Our

treaty rights cost Canada very little in relation to the Gross National Product or to the value of the land ceded, but they are essential to us. Treaty benefits were not a handout because Indian people had paid for them by surrendering their lands and the federal government was historically, morally and legally bound to provide the actual services. The Chiefs recommended keeping the Department of Indian Affairs but changing it to become the “keeper” of the Queens promises regarding treaties and land (Bowles, 1972: 220).

The *White Paper* was said to be based on the assumption that any legislation which set a particular segment of the population apart from the mainstream led to a denial of equality and was, therefore, discriminatory. Here again, the Chiefs disagreed (Bowles, 1972: 219): “Equality in law precludes discrimination of any kind, whereas equality in fact may involve the necessity of different treatment in order to obtain a result which establishes an equilibrium between different situations...”

The Chiefs did agree with the intent of the *White Paper* in that control of Indian lands should be transferred to Indian people. However, they argued that the government wrongly thought the land was owned by the Crown, not held in trust by the Crown for the Indian people. They maintained that:

The Indians are the beneficial (actual) owners of the lands. The legal title has been held for us by the Crown to prevent the sale or breaking up of our land. We are opposed to any system of allotment that would give individuals ownership of rights to sell (Bowles, 1972: 222).

The *Indian Act*, ensured that the land was safe and secure, held in trust for the common use and benefit of the tribe, and that the land could never be sold, mortgaged or taxed.

The Indian Chiefs of Alberta prepared a “Red Paper” in response to the government’s *White Paper*. The Red Paper rejected the proposal that the *Indian Act* be repealed. It was considered essential to review the *Act*, but not before the question of treaties was settled. Some sections could be altered, amended, or deleted readily. Other sections needed careful study, because the *Indian Act* provided for Indians the legal framework that is provided in many federal and provincial statutes for other Canadians. Some Native people argued that the *White Paper* was based on a false premise and that the *Indian Act* was not the cause of discrimination; rather, it was the legal expression of the theft of the land and resources without which Native societies had no future. They felt that without the *Indian Act*, they would have been pushed from one ghetto into another (Raunet, 1996: 177).

The federal government’s *White Paper* had promised to make substantial funds available for Indian economic development as an interim measure, but the Chiefs worried that this would not be adequate or that the funds would not actually be made available for economic development. Under the *Indian Act*, there was reliance on government assistance, but total reliance on government was viewed as a mistake. One suggested approach was to look at the potential contribution of private enterprise since it was “probable that the lack of private enterprise participation is one of the main causes of failure to solve the problems of the poor and under-

developed” (Bowles, 1972: 231). Private large-scale investment in Indian communities was seen to be an expensive venture due to such factors as transportation costs and training for Native workers to acquire necessary skills. However, the Chiefs felt that the most effective way to encourage new enterprise in reserve communities was through tax incentives, training incentives and labour guarantees or even the establishment of a Community Development Corporation as was proposed by the Indian Association of Alberta. Leadership within Indian communities was also seen as an important factor relating to economic development.

3.8.3 The Minister Defends the White Paper

Minister of Indian Affairs Jean Chrétien defended the policy saying that Indian people had been asking for the right to manage their own affairs, for equal treatment, for an end to the bureaucratic control of their lives and an end to paternalism. After a year of extensive consultation, it had become clear that the existing framework discriminated against Indian people on the basis of race, set them apart and denied them the same freedom to manage their own affairs as others. The government of the day was faced with two basic choices: keep the existing framework that set Indians apart and hindered their development or change the framework to enable Indians to develop their culture in an environment of legal, social and economic equality with other Canadians. The *White Paper* had embraced the second choice and proposed an end to federal trusteeship of Indian land, to return the land to Indian people, to phase out the Department of Indian Affairs, repeal the *Indian Act* and to work with provincial governments to insure that Indian people are treated as full citizens, in the provinces where they lived.

Minister Chrétien also denied the charges that the federal government was trying to evade its responsibilities and abandon Indians or that integration was cultural genocide. For many years, the prevailing point of view had been that Indians would, if not protected, be separated from their land. Many Canadians had expressed the belief that changes, if made too quickly, would result in disaster but Chrétien felt Indians should have the opportunity to be treated as Canadian citizens, not as a race apart. The Minister went on to say:

Assimilation is a word which should be abolished from Canadian usage. Canada is a country with many different peoples... Success does not develop in a vacuum. The existence of a special department does much to create such a vacuum, to make of the Indian people a race apart, isolated from the mainstream of Canadian society (Bowles, 1972: 218).

The *White Paper* was withdrawn in 1971. The recognition of "existing Aboriginal and treaty rights" in the *Constitution Act*, 1982 and the proclamation of the Canadian Charter of Rights and Freedoms have led to important changes in Indian policy. Government had long promised to remove involuntary enfranchisement from the *Indian Act*, especially the clause that deprived Indian women of their status and band membership when they married non-Indian men. (Non-Indian women who married Indian men gained status and membership.) When section 15 -- the equal rights provision of the Charter -- came into effect in April 1985, Bill C-31 was enacted to remove this discriminatory provision. In fact, Bill C-31 went much further, reinstating those women and their children who had previously lost status. This move greatly increased the Status

Indian population, creating increased demands upon community and government resources. These issues have yet to be resolved.

3.9 CONCLUSION REGARDING ASSIMILATION POLICIES AND ABORIGINAL PEOPLE

Aboriginal peoples have never accepted the notion that the price of their well-being in the land of their ancestors was the abandonment of their cultural distinctiveness and special Aboriginal status. Through centuries of social and economic hardship and a sustained government policy of assimilation, their deep sense of Aboriginal identity has remained remarkably strong, and their communities have survived (*Living Treaties*, 1985: 16).

CHAPTER 4: ECONOMIC IMPLICATIONS OF THE TREATY SYSTEM

4.1 GENERAL ECONOMIC SITUATION OF ABORIGINAL PEOPLE IN CANADA AT PRESENT

What lies behind economic achievement and progress? The answer may appear obvious or trivial. Peter Bauer, in an article entitled "Creating The Third World", puts forth the idea that economic achievement and progress rest in the conduct of people, including that of governments. Economic achievement and advance depends on personal, cultural and social factors and on political arrangements, not just on financial or natural resources. The contemporary Third World is not short on natural resources and Bauer makes the following point: "Poverty and riches depend on man, his culture, his motivations, and his political arrangements. Herein lies the wealth and poverty of nations" (Bauer, 1988: 66).

Aboriginal people in Canada live in the midst of a country that is highly developed in economic terms yet they must attempt to overcome internal and external social, cultural and political barriers that serve to exclude them from full participation in the Canadian economy. The following comment is typical: "Aboriginal people, particularly Indians, continue to be the most economically disadvantaged people in Canada" (EC, 1989: 1). Interference by the Canadian government in the normal evolution of the traditional Aboriginal economy may be partly to blame for the current situation. If this traditional economy had been allowed to follow the normal course of economies, the decline of traditional means of subsistence may have been compensated for with other forms of economic activity. In a land of opportunity, alternatives such as farming, ranching and industry may well have supplanted traditional occupations such as hunting or fishing (Boldt, 1993: 225). Economic dependence on the Canadian government has also weakened Aboriginal cultures, undermined traditional roles and caused social malfunction. In many cases, Aboriginal people have come to view the solution to their economically disadvantaged position to be social assistance by government.

Until Confederation, there was no need for publicly funded support for Aboriginal people and, as recently as the 1950s, a few bands or tribes continued to be economically self-supporting. During the fur trade, the national interest was well served by Aboriginal participation in the Canadian economy. But when settler agriculture, resource extraction, land speculation and industrial development superseded the fur trade in economic importance, traditional Aboriginal economic pursuits were often seen as a hindrance to development of the new economy. The Canadian government quickly cleared as much Indian land as possible to make room for more profitable economic pursuits. By diverting these lands away from the economic interests of Aboriginal people, opportunities to expand or modernize their economies were at first narrowed and then closed. With their traditional economy virtually destroyed, the Canadian government transformed Aboriginal people into dependent wards. Further strengthening the bond of dependence is the fact that, historically, less than 10 per cent of the Canadian government's appropriations for Indian Affairs has been directed to economic development and job creation.

In recent times, the economic interests of Aboriginal people have often been subordinated to political interests. This has been caused, in part, by concern over such issues as 1969 *White*

Paper and the entrenchment of Aboriginal rights in the Canadian Constitution. Menno Boldt explains how this has occurred:

In part, Indian leaders' neglect of economic independence and self-sufficiency concerns derive from the absence (despite the destitution of most of their people) of any real economic exigency. Whereas the leadership in third-world nations, concurrent with their emergence from colonialism, were overwhelmed by the task of providing for the basic survival needs of their citizens, Indian leaders can neglect economic concerns in the sure knowledge that the Canadian government has the resources and a constitutional, political, and moral obligation to provide their people with a "reasonable" standard of living (Boldt, 1993: 228).

Numerous Aboriginal people seem to have a preference for economic development that will confirm and complement their cultural traditions and identity. Supporters of a traditional economy propose to achieve the necessary land base and resources within the framework of land-claims settlements. Negotiations on land claims and treaties may however not allow development of the band/tribal traditional economy to a meaningful level. Overall, economic development on the basis of traditional norms has very limited potential for contributing to the economic well-being of Aboriginal people. The desire among some Aboriginal people for a traditional economy may be due to nostalgia and is likely to be an obstacle to economic growth.

Many Aboriginal leaders consider a reserve-based economy an essential part of self-determination. To achieve this, they would like the Canadian government to allocate more money for on-reserve economic development. However, provisions in the *Indian Act* present major obstacles to on-reserve economic development. For example, Section 98 of the *Act* states that Indian land cannot be provided as chattel security for a loan. This results in a handicap when borrowing money from conventional sources, such as banks, for on-reserve development. However, this provision of the *Indian Act* merely legalizes what most Aboriginal people insist upon – namely, protection of their lands from the risk of possible seizure in the event of a loan default. In order to compensate for this hiatus, the federal government may set up economic development funds for Indian commercial, industrial and other economic enterprises but the reserve is often not viewed as the location of choice for these ventures. On the whole, on-reserve economic development has the potential for only marginal improvements to the present employment situation there. The potential for on-reserve economic development is further circumscribed by the absence of economies of scale. The average band population is approximately 550 people, more than 80 per cent of bands have fewer than 1,000 members. Attempts to overcome the lack of economies of scale through cooperative pan-Indian arrangements are hindered by geographical dispersion, isolation of bands from each other, and a variety of cultural/political barriers.

Aboriginal leaders sometimes support the notion that the Canadian government owes their people an "annuity in perpetuity" for the land and resources that have been taken from them. However, an economic strategy based on massive government support will not liberate Aboriginal people from their state of economic dependence. No matter how generous the Canadian government might be in providing funding, or how government grants are labelled and

structured, or how completely band/tribal councils control their budgetary process, it will not alter their fundamental relationship of political and economic dependence on the Canadian government. A demonstration of this dependence on government grants occurred in 1975:

In that year, the Annual Assembly of the Union of British Columbia Indian Chiefs (UBCIC) voted 132 to 2, with 41 abstentions, to protest Canadian injustice to their people by refusing all government funding. The consequence of this action was chaos and embarrassment for the band/tribes as they quickly ran out of operating funds (Boldt, 1993: 236).

It is only by getting rid of the complete dependence on government funding and by becoming an effective part of the Canadian mainstream economy and labour market, that Aboriginal people can pay their way and thus achieve economic independence. At present, they are not truly integrated into the Canadian labour force. This suggests an implicit acceptance of the historical *status quo* that has segregated Aboriginal people, as a group, and trapped them in a state of dependence outside the Canadian economy.

Aboriginal people must challenge the internal and external obstacles that prevent them from participating fully in the Canadian economy. Many reserves and band councils do not actively encourage their members to become part of the Canadian mainstream economy, and there is often an informal social ethos that views individuals who leave to pursue careers as hurting both themselves and their community. This attitude may derive, at least in part, from a concern that such participation in the Canadian mainstream economy is the pathway to cultural assimilation. While this perception may have a basis in fact - Aboriginal success in the Canadian economy is often achieved at significant cost of cultural and kinship ties - estrangement and assimilation are not necessarily an outcome of participation and economic segregation does not safeguard Aboriginal culture (Boldt, 1993: 242).

4.2 THE NISGA'A TREATY

In British Columbia, the Nisga'a Treaty may provide the opportunity for Nisga'a people to begin moving towards equal participation in both the Canadian and British Columbia economy. The treaty is designed to create a climate of trust between Aboriginal and non-Aboriginal people. The history of both Canada and British Columbia so far, has served to produce a collective and individual Indian attitude of distrust towards the dominant society. This distrust has, in the past, been translated into a profound reluctance to enter the Canadian social and economic mainstream. With this treaty, the rights, interests, needs and aspirations of an Aboriginal group gain equal status to those of other Canadians, and the Nisga'a may finally discard the colonial, political and bureaucratic structures that have frustrated their socio-economic growth and development.

The Nisga'a Treaty became law in April 2000 and is the first modern treaty in the history of British Columbia. Under the treaty the Nisga'a will own 1,992 square km of land, approximately 8% of their traditional territory. They will receive approximately \$190 million (1999 Canadian dollars) in cash paid over 15 years. The treaty also provides for Nisga'a entitlements to forestry,

fishery and wildlife resources to help increase their self-sufficiency. To the Nisga'a, however, the treaty is more than just land and resources. It is a triumph. As Nisga'a Chief Joseph Gosnell explained to the British Columbia Legislature on December 2nd, 1998:

A triumph, I believe, which proves to the world that reasonable people can sit down and settle historical wrongs. It proves that a modern society can correct the mistakes of the past. As British Columbians, as Canadians, we should all be very proud.

A triumph because, under the Treaty, the Nisga'a people will join Canada and British Columbia as free citizens - full and equal participants in the social, economic and political life of this province, of this country.

A triumph because, under the Treaty, we will no longer be wards of the state, no longer beggars in our own lands.

A triumph because, under the Treaty, we will collectively own about 2,000 square kilometres of land, far exceeding the postage-stamp reserves set aside for us by colonial governments. We will once again govern ourselves by our own institutions, but within the context of Canadian law.

It is a triumph because, under the Treaty, we will be allowed to make our own mistakes, to savour our own victories, to stand on our own feet once again.

A triumph because, clause by clause, the Nisga'a Treaty emphasizes self-reliance, personal responsibility and modern education. It also encourages, for the first time, investment in Nisga'a lands and resources, and allows us to pursue meaningful employment from the resources of our own territory, for our own people.

To investors, it provides economic certainty and gives us a fighting chance to establish legitimate economic independence -- to prosper in common with our non-Aboriginal neighbours in a new and proud Canada. (*Nisga'a Treaty News*. Available: <http://www.ntc.bc.ca/speeches/speeches.make.html>)

4.3 ECONOMIC GROWTH AND EFFICIENCY

The success or failure of economic activity is most directly assessed in terms of two performance criteria: the degree of efficiency with which available resources are allocated between alternative uses at any given moment in time, and the rate of the economy's resource stock (its productive) in the course of time. Briefly put, *efficiency* and *growth* may be seen as the two most basic criteria that measure the performance of the economy (Truu, 1995: 5-6). Of these two performance criteria, growth is almost invariably the more prominent one. For example, Samuelson and Nordhaus write in their best-selling textbook: "Economic growth is the single most important factor in the economic success of nations in the long run" (1992: 546).

So far the approach to the economic situation of Canadian Aboriginal people in general, and the Nisga'a of British Columbia in particular, has been taken from the perspective of Development Economics. Obviously the Treaty System can, at best, be no more than the initial impetus to a sustained process of economic growth and development. However, a question that has seldom been asked in the present context is: what does the Treaty System mean in terms of economic efficiency? The answer to this question must however be sought in the realm of Welfare Economics, and most of the rest of this chapter is applied to this particular task.

Whereas economic growth and “league tables” (though subject to criticism) are prolific in their occurrence, there is at present no generally accepted measure of economic efficiency – in many ways the prerequisite for sustained growth. J de V Graaff, a world authority on the subject, has made the following, no less than astounding, comment:

I believe that the concept or the degree of economic efficiency is important (and) that ...it can provide us with useful information about an economy. Perhaps in years to come it will form part of our standard descriptive apparatus, joining such familiar indicators as the rate of growth, level of employment and volume of foreign trade. If it does, having regard to the evident waste around us and the tendency to devote more and more resources to redistributing wealth instead of producing it, I will be surprised and faintly disbelieving, if the degree of efficiency of a modern economy turns out to exceed 50% (1976: 23-4).

Now, if resources are so inefficiently used in a *modern* economy, the situation is bound to be much worse in a *traditional* economy, and there seems every reason to investigate the concept of economic efficiency in the context of the Nisga'a Treaty.

4.4 ECONOMIC ANTHROPOLOGY

Though unconventional, the present quest seems quite legitimate from the viewpoint of economic anthropology, a subject much neglected in an academic world where complex systems are frequently scaled down to so-called reduced-form models. The subject of economic anthropology has, however, never been proved irrelevant to the study of economic issues in the real world. This cannot very well be done without completely substituting mathematical modelling for human motivation and social behaviour, something that not many – if any – economists are prepared to do without serious misgivings. The general case for economic anthropology in a study like the present one, has been succinctly put by Manning Nash in his entry on the subject in the *International Encyclopedia of the Social Sciences* (Sills, 1968: 4, 364):

The value system of a society defines and grades the ends actors seek. The ends sought in the economic sphere must be consonant with, or complementary to, goals in other spheres. Economic activity derives its meaning from the norms of the society, and people engage in economic activity for reward often extrinsic to the economy itself ... The economy is not so structurally differentiated that one set of values holds there and other sets hold in other contexts. In the language of social science, the economy is

“embedded” in other social systems and does not exhibit an ethic counterposed to the regnant value system.

Expressed differently, economic anthropology studies the real or total man, *homo totus*, in contrast with the fictitious economic man, *homo economicus*, (see 4.5.3. below).

How may one relate the basic principles of economic efficiency (welfare economics) to anthropological reality, in contrast with a mathematical model not to be found in the real world? The matter is considered in what follows below.

4.5 OBJECTIVE FUNCTIONS

4.5.1 Scarcity and Choice

Economists have never been entirely satisfied with any definition of their subject and no short definition can convey the whole subject as it has evolved. As Lionel Robbins (1952: 4-11) has pointed out in his *Essay on the Nature and Significance of Economic Science*, the subject matter of economics should not be restricted to the properties of material welfare alone. According to his celebrated definition, economics should study the relationship between multiple ends and scarce means that have alternative uses, and thus emphasize the importance of choices in economics.

In the field of economic anthropology the following five definitions of economics have been proffered (Burling, 1964: 802):

- (1) the study of material means to man’s existence,
- (2) the study of production, distribution and consumption of goods and services,
- (3) the study of things that economists study in our culture,
- (4) the study of systems of exchange (however organized), and
- (5) the study of the allocation of scarce means to alternative ends.

The first four definitions all have their problems – from too ambiguous to too ethnocentric. The fifth definition is however the core of Lionel Robbins’s approach, and therefore familiar to economists and anthropologists alike.

For example, in an article in the *American Anthropologist*, Robbins Burling (citing Lionel Robbins) agrees that economists regularly deal with many aspects of life. For example, wages may be paid to people who perform material tasks and prices apply to material goods; but wages and prices are just as firmly assigned also to nonmaterial (e.g. artistic or religious) matters. As Burling explains, individuals must repeatedly choose between material and nonmaterial ends:

The exchange of ceremonial jewellery, the inheritance of crests, or in our own society, the possession of copyrights, are usually considered pretty unambiguously to be economic phenomena, even though they are hardly a part of subsistence activities on the “material side of life” (1964: 804).

Burling is therefore in agreement with Robbins's definition of economics as "the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses". There would be no economic problem if unlimited means were available to achieve some goal. Similarly, we do not have to make a choice if something has no alternative use. Typically, however, an individual must choose between scarce means and apply them to alternative, variously valued, ends.

Neither ends nor means need necessarily be measured in monetary terms, and neither has to be a material object. Economics, so defined, has no necessary connection to the use of money or material objects. Rather, economics focuses on a particular *aspect* of behaviour and not on the *kinds* of behaviour. There are no economic motives, only motives relevant to the economic sphere, where relative scarcity prevails.

The economic aspect of behaviour relates to choice. The allocation of scarce means, including time or energy (not just money), are present in many forms of behaviour and all individuals and groups have their economic aspects. Traditional (also called "primitive") society is no different from any other society, except that both ends and means may be distinctive in such a society. Economization, or the calculation of choices, is not missing even in societies where money and prices expressed in money do not exist. As Burling (1964: 811) writes in the *American Anthropologist*:

It is possible to look upon a society as a collection of choice-making individuals, whose very action involves conscious or unconscious selections among alternative means to alternative ends... It is only the relationship between ends and means, the way in which a man manipulates his technical resources to achieve his goals, that is economic.

4.5.2 The Principle of Maximization

Economic behaviour is behaviour with a specific end in mind: it is behaviour aimed at the maximization of an objective. In the aggregate, economic behaviour becomes economic activity. In his "Maximization Theories and the Study of Economic Anthropology", Burling thus states that "the notion that human behaviour is somehow oriented toward a maximization of some desired end has appeared in a great range of social science theory. Maximization is, of course, a fundamental concept in economics, for a central axiom of that discipline is that human wants are unlimited, but that we constantly strive to maximize our satisfaction" (p 813). (Maximization may also be described as optimization.)

The principle of maximization is simple, but the question of what is being maximized -- the maximand -- is complex. People constantly choose between monetary and non-monetary goals. To say that individuals strive to maximize their satisfaction is to say little more than that human behaviour is goal-oriented. However, the theory of maximization is a *sine qua non* because any discussion of purposive or goal-oriented behaviour, or any analysis of choice, implies a maximization theory. The assumption that our wants are unlimited is a useful axiom, which can be said to lie at the foundation of human action. It can also be used to explain much of human

behaviour. In the same way, it is reasonable to accept the principle that the means of achieving ends (or desires) are limited, so that human beings manipulate their available means to satisfy (or meet) as many of their wants as well as possible. There are thus fundamentally economic concepts involved in looking at society as a system of exchange, and interpreting human behaviour as an attempt to maximize satisfaction.

This economic view of society represents one model for studying a particular society. The inhabitants of that society are engaged in maximizing satisfaction. If economics deals with an aspect and not a type of behaviour, the focus will be on individuals caught in the web of their society in trying to maximize their satisfactions. Economic analysis becomes an investigation of an individual's actual behaviour in situations of choice. "Interpreted in this way and stripped of the connotation of money profit, these basic postulates of economics may be worth incorporating into a more general theory than that of market analysis" (Burling, 1964: 817).

4.5.3 Unitary (purely economic) Objective Function

The concepts of "self-interest" and "economic man" have been closely related terms in the development of economic science. In fact, there has been a tacit assumption that these concepts represent two sides of the same proverbial coin. However, a problem arises when one considers that the meaning of words changes over time. In order to interpret these concepts as they were intended to be understood, it is important to look at the words in their "classical" sense.

Adam Smith introduced the term self-interest specifically into economics. Prior to this, the term had been used in the social sciences in general. The concept appears to have originated with Thomas Hobbes (*Leviathan*) who, in 1651, expressed the idea that "each individual is motivated by the urge to pursue his own private ends, to the exclusion of the interests of society" (Truu, 1992: 102). However, self-interest is not an example of a primitive urge in a civilized society. Rather, it becomes conditioned motivation. As M. L. Truu writes in his essay on "Self-Interest and Economic Man" (1992: 103): "...in a civilized society, man's self-interest is not based on a fully independent utility function, but rests on at least some measure of interdependence between individual utility functions."

In *The Theory of Moral Sentiments*, Adam Smith had said that self-interest is tempered by "enlightened benevolence". In his *Wealth of Nations*, Smith went on to argue that though every individual intends only his own gain, he is led by an "invisible hand" to promote an end which was actually not part of his own intention, namely the public interest. Because of the division of labour, where each individual has different working skills, the individual is naturally inclined to pursue work where he or she enjoys an advantage over others. This is, in effect, self-interest. At the same time, this division of labour serves to raise the economic output of society. The division of labour, therefore, emerges as a functional link between private and public interest. "[The] principle of self-interest is a necessary condition for social optimisation as well as a powerful instrument of growth in economic knowledge" (Truu, 1992: 104).

Although most economists are likely to agree that self-interest does not mean the same thing to all people, outside of the field of economics, self-interest is often interpreted as selfishness or

greed, personified by the notorious concept of “economic man”. Economic man or *homo economicus* was born in John Stuart Mill’s 1836 essay *On The Definition of Political Economy and On the Method of Investigation Proper To It*. Mill describes economic man “solely as a being who desires to possess wealth”. This desire is linked with an aversion to labour, and it is therefore the purpose of economic man to reach a high level of consumption with a minimal effort. Economic man as such is however not a real human being. The term describes only one facet of human behaviour. The proposition that economic man has a unique desire of wealth is a logical, rather than material, truth. Thus, self-interest and economic man are *not* synonymous:

The contents enclosed within the boundaries of self-interest greatly exceed those that fall within economic man’s sphere of activity. Both Adam Smith’s self-interested individual and John Stuart Mill’s economic man pursue material wealth. But whereas the objective function of economic man contains nothing more, self-interest embraces elements of a number of interdependent utility functions. Self-interest thus includes several variables that are external to economic man (Truu, 1992: 102).

Both economic man and the individual looking after his or her own self-interest are striving for something, both are planning, both have an end in view, and both are trying by the means of the resources at their disposal to reach the given end and to get as much of it as possible. But whereas economic man simply tries to maximize income and wealth, the real or total person pursues self-interest, which includes both economic and non-economic (e.g. political and ethical) components or variables. These variables are often complementary. However, in certain situations, the maximand tries to strike a balance between economic and non-economic (e.g. religious or traditional) variables that may also be competitive in kind - and therefore no longer just complementary. Let us assume one “modern” and one “traditional” person. The modern person would view the above non-economic variables as negative externalities. From the traditional persons’ point of view however, a non-economic objective (voluntarily pursued) is a resource constraint - not an externality. (The issue is further discussed in the next section.)

4.5.4 Broader Economic Objective Function

Human betterment refers to an improvement in the totality of life, not just in life’s economic aspects. It would therefore include spiritual, cultural or political elements too. Human betterment moreover can be seen as a process that moves through time in which, in terms of some human valuation, the state of a system later in time is evaluated as better than the same system earlier in time. If a human system is evaluated as being better today than it was yesterday, then human betterment has taken place (Boulding, 1984: 1). In other words, this is the essence of what is called “economic development”.

Economic development is an evaluative social concept, that includes the growth in economic welfare, for which growth in per capita real national income is a necessary condition. However, national income refers only to the material aspects of society. It does therefore not take into consideration the political, spiritual, cultural or social elements of a society. However, it is often difficult to separate the economic aspects of life from these other aspects, particularly in terms of cause and effect.

It was pointed out above, that a broad economic objective function which measures human betterment is often also political in nature. Thus Lim Chong-Yah writes of Singapore (since self-government in 1959) that “society is built by man, not by natural resources. Ultimately, it is the quality of the people, particularly the quality of its leaders, that decides the tone and texture of that society” (1984: 126). This echoes the sentiments of Peter Bauer, in “Creating The Third World” (see section 4.1) when he says that the contemporary Third World is not short on natural resources and that poverty and riches depend on people, culture and political arrangements. Political stability in a society allows attention to be concentrated on solving problems, and a strong and stable government can play a decisive role in steering the course of its weal and woe. The growth of real income is important, as is the equitable sharing of the fruits of economic growth. “Normally, when per capital real income rises, one can assume that the majority, if not all, of the population will benefit directly or indirectly, unless the rise in income is concentrated in the hands of a minority and is not of a widespread nature” (Lim Chong-Yah, 1984: 114). In other words, “economic development” is a concept that extends far beyond a narrow “economic” view.

4.5.5 Dual Objective Function

In the book *Economic Anthropology*, Manning Nash writes, “economic anthropology is the analysis of economic life as a subsystem of society” (1968: 359). Small-scale society was the foundation on which the methods and theories of economic anthropology were built. These small-scale societies – often called traditional, primitive or peasant societies – present quantification problems to those studying them. Gathering the basic data of economic life in a small-scale non-monetary or partially monetized economy is often a test of methodological ingenuity. Nash goes on to state:

Recognition of the social necessity of bringing scarce means into relation with competing ends along some culturally determined axes of valuation makes the search for empirical patterns actually governing allocation in varying constituted societies the most fruitful line of analysis (1968: 360).

Traditional societies have pervasive differences from the “purely” monetized, market oriented or state-directed, industrialized society of the western world. In the historically peculiar western society, there are a complex of markets, firms, capital investment and property rules to facilitate exchange and accumulation. In so-called primitive societies, the most common systems of exchange are markets, redistribution, reciprocity and mobilization, and economic life is organized in terms of given social forms, rather than according to abstract concepts of maximization. However, this does not mean that one cannot study the economic characteristics of these small-scale societies. As Nash writes:

The arguments about the economic rationality of peasants and primitives – whether or not they respond to economic incentives, whether or not they maximize, whether or not they have habits of mind about advantage – have turned out to be sham encounters or semantic confusions. The real issue is not that of the presence or absence of economic rationality

in economic life, our own or other, it is a matter of discovering what patterns of rationality, of choice, of action, are appropriate to varying social and cultural arrangements (1968: 360).

In other words, one is here dealing with a dual objective function. The way in which the economic systems relate to the total social system is important. People generally engage in economic activity for reasons extrinsic to the economy itself. In traditional societies, the economy is not so structurally different that one set of values holds true there and another set in another context. “The functional interdependence of economy and society stems from the fact that the same persons are actors in the economic, kinship, political and religious spheres of that society” (Nash, 1968: 363). Certain traditional societies have had inherent levelling mechanisms for ensuring that accumulated resources were used for social ends. For example, in a rivalry of expenditure, like the potlatch of the Northwest Coast Indians in Canada, large amounts of valuable goods were destroyed or given away.

The traditional society displays a causal interaction between economy and society, which pivots on the provision of facilities and resources. A given variety and volume of goods and services are required for given forms of social structure. Any shifts in these facilities will result in shifts in the society. To maintain the society, change must not be allowed to disrupt values and norms. Change in the economic life of traditional societies often comes from the expansion and spread of western forms of economic activity. This can take place through the exchange of goods or by entry into a wage labour force. The introduction of a traditional society into the world economy can put pressure on traditional authority, generate conflict between generations or even depopulate a society. In extreme cases, the traditional social structure may even collapse. This is a prospect which is never either welcomed or feared by everyone.

4.6 ECONOMIC SYSTEMS

All forms of economic activity take place under conditions of relative scarcity, something that makes it necessary to choose between alternative courses of action. Relative scarcity exists because the ends (or goals) that people are trying to reach cannot fully be met by the means at their disposal. The limited means available to pursue a seemingly unlimited range of both individual and social goals, are the economy’s productive resources, conventionally summarized under the headings of land, labour and capital. The success, or failure, of economic activity is most directly assessed in terms of the two performance criteria introduced in 3.3:

- (1) the degree of efficiency with which available resources are allocated between alternative uses at any given moment in time, and
- (2) the rate of growth of the economy’s resource stock (its productive capacity) in the course of time.

Put briefly, efficiency and growth may thus be seen as the basic criteria that measure the performance of the economy. This applies to any economy, at any time, and anywhere in the world.

Relative scarcity is an aspect of everyday life irrespective of what kind of government or socio-economic order happens to be in place. But different societies have adopted different norms, customs and institutions to meet the problem of relative scarcity. In other words, people have devised different methods to pursue the objectives of economic efficiency and growth. An economic system, therefore, amounts to a distinctive method of resource management. Whereas the economy determines the problem to be addressed (relative scarcity), the economic system goes a step further and specifies the institutions, in particular, by means of which this is to be done. In effect, institutions amount to another set of inputs into the economy, just like the productive resources of land, labour and capital. Economic activity is constrained by (1) the productive resources at the disposal of a society, and (2) its institutions of resource management, that is, the economic system it has adopted. In turn, an economic system may be identified by means of the institutions that fulfil the following five crucial functions: decision taking, information, incentives, property rights and finance (Truu, 1997: 146).

The economic process in all societies is closely related to, and integrated with, the total social process. However, there are marked differences in the extent to which economies are embedded in the total web of social activities and institutions. At one extreme are the traditional economies that are completely enmeshed in institutions that are both economic and non-economic in nature. These economies were the first to appear historically and to an extent still persist today (as among North American Indians). They are characterized by the provision of needs directly, by reciprocity of economic relations, by redistribution and collective controls. Since neither the means nor ends in such communities are purely or even primarily economic in nature, economic processes are determined largely by factors that are not economic in nature (pursuit of dual or broad objective functions). At the other extreme are the modern (western) free enterprise economies. These economies tend to largely free themselves from the all-embracing grip of the social system. In *Economic Systems in World History*, Stephan Viljoen writes (1974: vii):

Three distinct methods can be distinguished by which economic processes can and have historically been coordinated: first, by subsistence, reciprocity and redistribution, and collective controls; secondly, by government administration; and finally, by the market mechanism. Three basically different types of economies can therefore be distinguished collective, centrally administered and market-oriented economies.

Within any economic system, there are some constraints which may also represent externalities to some people. An economic system is itself a constraint and optimization (or maximization) must occur within this constraint. Historically, the least efficient system has been the traditional system, and the most efficient has been a market economy. There may even be constraints within constraints. For example, a cultural objective is a constraint on Aboriginal people while to non-Aboriginal people, such cultural objectives are likely to represent an externality. (See section 4.7 below.)

4.6.1 Traditional Societies

Before the disintegration of Soviet-type socialism, it was conventional to distinguish between three kinds of economic systems: economies based on traditions, economies governed by

command or economies organized in a network of markets. The traditional society has been described in the following terms:

During the greater part of history, economic organisation followed long-standing tradition. The same basic patterns repeated themselves generation after generation... Although remnants of the traditional economy are still to be found in places today, this has always been an inefficient system geared to survival rather than progress (Truu & Contogiannis, 1996: 14).

The traditional society has in fact been long ignored by modern economists and the tripartite division above was effectively reduced to a set of one after the collapse of command socialism. For example, Marie Lavigne wrote in 1995: "There is no longer a systemic division. The market has won" (p xii).

The term traditional society has also been used in a different context: to denote the first stage in Rostow's historical Stages of Economic Growth model, first published in his book with the same title in 1960. Here too, the traditional society was given short shrift:

A traditional society is one whose structure is developed within limited production functions, based on pre-Newtonian science and technology, and on pre-Newtonian attitudes towards the physical world. Newton is here used as a symbol for that watershed in history when men came widely to believe that the external world was subject to a few knowable laws and was systematically capable of productive manipulation... But the central fact about the traditional society was that a ceiling existed on the level of attainable output per head. This ceiling resulted from the fact that the potentialities which flow from modern science and technology were either not available or not regularly and systematically applied... Family and clan connexions played a large role in social organization. The value system of these societies was generally geared to what might be called a long-run fatalism; that is, the assumption that the range of possibilities open to one's grandchildren would be just about what it had been for one's grandparents... Although central political rule – in one form or another – often existed in traditional societies, transcending the relatively self-sufficient regions, the center of gravity of political power generally lay in the regions, in the hands of those who owned or controlled the land (pp 4-5).

Societies in systemic transition today are in the second stage of growth in Rostow's model. These societies have already achieved the preconditions for growth. As Rostow has written "...it takes time to transform a traditional society in the ways necessary for it to exploit the fruits of modern science, to fend off diminishing returns, and thus to enjoy the blessings, and choices opened by the march of compound interest" (p 6). Furthermore, economic activity proceeds slowly in a society constrained by traditional methods, old social structure and values.

Elements of the traditional society are still today found in the dual objective functions of economic anthropology and are indeed relevant in the present context. Economic anthropology has developed co-terminously with development economics. Both are products of post-World

War II change in the international economy. Economic anthropology and development economics have a common interest or “central issue, namely, the analysis of inequality and poverty in the ex-colonial countries” (*The New Palgrave*, 1987, 2: 23). Anthropology has thus made a significant contribution to the theory of comparative economic systems and theories of development and change.

Kinship relationship and property rights in traditional cultures are often different from modern or Eurocentric systems. These are intricately related in traditional economies in ways that differ markedly from a capitalist economy. From the market perspective, such difference in land tenure assumes the form of inalienable land rights. Tribal land tenure is however not rigid and unchanging. Land, where it is in short supply, is fixed, but the social structure of the people who occupy it necessarily changes over the generations. Clan rights to land, then, are the subject of continuous negotiation and political manoeuvring and beyond the control of any individual who may like to assert private property rights. Much rethinking of Eurocentric economic theories may therefore be necessary in this area.

4.6.2 Capitalism and Democracy

Frank H. Knight, in the book *On the History and Method of Economics*, discusses the transition of a traditional society to a modern political economy, and writes:

Modern economics is an aspect of modern thought and of the individualistic or “liberal” outlook on life, of which “capitalism”, or the competitive system, or free business enterprise, is the expression on the economic side, as democracy is on the political side (1956: 6).

However, he goes on to say that history shows that capitalism is only a necessary condition for political freedom. It is clearly not a sufficient condition. Indeed, the relation between political and economic freedom is complex. As Lord Robbins states in the book *Politics and Economics*, “however much you may believe in liberty for its own sake, you are unlikely, unless you are mentally unbalanced, to recommend liberty if there is reason to believe that liberty must necessarily involve chaos” (1963: 8).

M.L. Truu has argued that there may be a Eurocentric bias in the view that democracy is a necessary condition of capitalism. Discussing the systemic transition in China and the post-socialist European countries, he states: “from the European perspective democratic governance and economic freedom are complementary, whereas the Chinese reform is a blend of economic liberalism and continued one party rule” (1999: 2585-6). Such an ethnocentric position regarding private property regimes may also be an argument in the criticism of the Nisga’a Final Agreement. Critics argue that the collective nature of Nisga’a property rights may present a constraint on their economic development. Gordon Gibson in his paper “A Principled Analysis of the Nisga’a Treaty” (1999) writes:

In part, Western history has been the development and diffusion of private property. This is not to exclude public property or enter into a debate on the proper balance between the

two, but the twentieth century has demonstrated clearly that those states with the greatest respect for private property tend to be those with the greatest prosperity and freedom...almost the entire material endowment of the Nisga'a people is to be owned and controlled by the Nisga'a government. Neither the treaty nor the ratification process gave individual Nisga'a the option of owning and controlling their share, or even part of their share, of the land and capital and other asset endowment established by the Treaty. This is a serious concern. Freedom is not only a good in itself; it is central to a functioning democracy. (Available: <http://www.fraserinstitute.ca/publications/pps/27/>)

Along with Lionel Robbins (above), few economists, albeit in favour of democracy-cum-capitalism, are likely to endorse absolute freedom or liberty without reservation. For example, in *A Theory of Economic History* (1969: 160), Sir John Hicks defended the principle of the national state, even subnational entities, in the following terms:

If there were no nations – if everyone could go where he liked, was just as acceptable wherever he went, and was willing to go wherever he wanted – the absorption of the whole human race into the ranks of the developed would be relatively simple... The attachment to one's own people, and to the dwelling-place of one's own people, has far too much that is good and lovely about it for one to wish it to disappear. The groups that have formed nations, and some of the groups within nations, are social units that have value; by putting them into a "melting pot" much is lost. When we examine our aspiration, it is for a development, an absorption, which is consistent with the maintenance of social identity.

In other words, objective functions are not "pure", maximization is not unconstrained.

4.7 EXTERNALITIES AND CONSTRAINTS

Harold Demsetz, in his classic article "Toward a Theory of Property Rights", describes externalities as an ambiguous concept that may include external costs and external benefits of pecuniary as well as non-pecuniary nature. No harmful or beneficial effects are external to the world. What converts a harmful or beneficial effect into an externality is that the cost of bringing the effect to bear on the decisions of one or more of the interacting parties is too high to make it worthwhile. Internalizing such effects refers to a process, usually a change in property rights, which causes these effects to be collectively borne by all interacting persons.

Externalities may occur in consumption or production, and may be either positive or negative; in the latter case they are known as diseconomies or negative externalities. The discussion here pertains to resource use and production (not consumption) and in this context the term externalities has been described as the "unpaid side-effects of one producer's output or inputs on other producers" (Bohm, 1987, 2: 261). Although positive externalities do occur in practice, negative externalities occur rather more frequently. In that event, the social costs of production exceed its private costs, that is, the price of a product does not cover its actual or full costs. Although the concept of externalities is still frequently used in economics, Peter Bohm asserts

that “external economies no longer have much of a role to play in economic analysis” and are “used by economists as a convenient catchall” (1987, 2: 263).

The way to eliminate an externality is to “internalize” it. A negative externality would then raise the production cost of the firm causing it, and thus reduce the output of the product in question. Likewise, an internalized positive externality would increase the revenue of the producer concerned, and thus increase the volume of output too.

In the case of a dual objective function, an externality in production may be more conveniently interpreted as a variable resource constraint. Assume that producer X has a unitary (purely economic) objective function, whereas producer Y has a dual one, which also contains a traditional (e.g. religious) component. If this causes Y to withhold resources (e.g. land) from productive use, then X may regard this as a negative externality that reduces the aggregate output of the economy below its potential level. However, as the elimination or reduction of the externality would serve to raise (not lower) output, it is probably more realistic to interpret the relationship between X and Y in terms of a variable resource constraint. In other words, when the traditional element in Y’s objective function increases (decreases), then the economic content of his own as well as X’s objective function would increase (decrease) too.

Economic performance, as measured by per capita output or the gross domestic product (GDP), is improved by the internalization of externalities. For example, when Indian collective property rights are converted into individual property rights by a treaty, then previously idle resources are likely to be drawn into production and the GDP rises.

4.8 PROPERTY RIGHTS AND ECONOMIC EFFICIENCY

Property is a basic aspect of human existence, and an instinct of appropriation is said to derive from “the natural supremacy of man over the physical objects which constitute the subject matter of property, [from] his ability to subject them to his control” (Katzarov, 1964: 3). Property has been crucial to the development of organized society since the earliest times and has been variously described as a sacred, unalienable or natural right. The essential economic significance of property rights is related to the use of productive resources, and thus emerges from the following, widely accepted, definition by Furubotn and Pejovich: “The prevailing system of property rights in the community can be described... as the set of economic and social relations defining the position of each individual with respect to the utilization of scarce resources” (1972: 1139).

This reference to scarce resources goes to the core of the universal economic problem of relative scarcity. Property rights are designed to answer the question of who is legally competent to decide on the employment or use of the economy’s material production factors (land and capital) in the attempted betterment of the scarcity problem. Property rights are an instrument of society. They derive import from the fact that they help people to form the expectations that they can reasonably hold in their dealings with others. These expectations find expression in the laws, customs and mores of a society.

Private property rights and decentralized decision-making interact as if they were custom-made for each other. The combination of these two institutions permits the large-scale mobilization of capital on the one hand, and its profitable investment on the other. One may take joint stock companies as an example. On their own, shareholders would have lacked the necessary expertise and cohesion to make efficient business decisions. The managers on their own would again have lacked sufficient funds for large-scale business operations. These two very different groups of people are, however, brought together in the typical capitalist firm, where management acts as the shareholders' agent. This mode of industrial organization therefore allows the firm to enjoy the "best of both worlds", which in turn promotes the optimal use of society's scarce resources. So long as private property rights can be bought and sold without restriction, the economic system will continue to perform the function of optimal resource allocation in a changing environment.

One particular source of economic inefficiency that causes resources to be less than optimally used, are externalities whose costs (or benefits) arise outside the market mechanism. For example, a chemical factory emits poisonous waste into a lake, thus partly destroying its fish resources. This is an external cost (or negative externality) to those who earn their living by fishing from the lake. If the property rights of both parties enjoy legal protection, they may try to assert these rights by going to court. On the other hand, to avoid the cost of litigation they may come to a market-like agreement to eliminate the externality. They could, for example, establish a jointly financed alternative waste disposal method. There would be the incentive to do so, if the projected cost of the waste disposal facility were less than the probable cost of litigation – for both parties. The externality would then be internalized, that is, included in the production costs and market prices of both products, thus resulting in a more efficient use of resources. Harold Demsetz who pioneered this approach, writes: "A primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities" and "property rights develop to internalize externalities when the gains from internalization become larger than the costs of internalization" (Demsetz, 1967: 164-166).

One of the main functions of a system of property rights is to guide incentives in order to achieve a greater internalization of externalities. Every cost and benefit associated with social interdependencies is a potential externality. If the main allocative function of property rights is the internalization of beneficial and harmful effects, then the emergence of property rights can be understood by their association with the emergence of new or different beneficial and harmful effects. The emergence of new property rights takes place in response to the desires of the interacting persons for adjustment to new benefit-cost possibilities. Or, put another way, property rights develop to internalize externalities when the gain of internalization becomes larger than the cost of internalization. Property rights arise when it becomes economic for those affected by externalities to internalize benefits and costs. Increased internalization results from changes in economic values that stem from development of new technology and opening of new markets since existing property rights may be poorly attuned to these changes. Changes in the land-based property rights of North American Indians, that had altered to take account of the economic effects of the fur trade, prompted Demsetz to write:

The principle that associates property right changes with the emergence of new and reevaluation of old harmful and beneficial effects suggest in this instance that the fur trade made it economic to encourage the husbanding of fur-bearing animals. Husbanding requires the ability to prevent poaching and this, in turn, suggests that socioeconomic changes in property in hunting land will take place (Demsetz, 1967: 352).

Another piece of corroborating evidence comes from the (Canadian) Northwest:

Among the Indians of the Northwest, highly developed private family rights to hunting lands had also emerged—rights that went so far as to include inheritance. Here we again find that forest animals predominate and that the West Coast was frequently visited by sailing schooners whose primary purpose was trading in furs (Demsetz, 1967: 353).

Demsetz goes on to discuss several idealized forms of ownership: communal, private and state. Communal ownership consists of property rights that can be exercised by all the members of the community, and the community can deny to the state or to individual citizens the right to interfere with any person's exercise of communally-owned rights. Private ownership implies that the community recognizes the right of the owner to exclude others from exercising the owner's private right. State ownership implies that the state may exclude anyone from the use of a right as long as the state follows accepted political procedures for determining who may use state-owned property.

There are several disadvantages apparent in a system of communal property. Communal ownership fails to concentrate the cost associated with any person's exercise of their communal rights on that person. The full costs of the activities of the owner of a communal property right are not borne directly by the owner. If a person seeks to maximize the value of his or her communal rights, he or she will tend to overhunt or overwork the land because some of the costs of doing so are borne by others. Communal property can thus result in great negative externalities.

The state, the courts, or leaders of the community can try to internalize the external costs resulting from communal property by permitting private parcels owned by small groups of person with similar interests (such as families). The resulting private ownership of land would internalize many of the external costs associated with communal ownership. This is apparent in the fact that now the owners, by virtue of their power to exclude others, can generally count on realizing the rewards associated with husbanding the game and increasing the fertility of their land. This concentration of benefits and costs on owners creates incentives to utilize resources more efficiently. Under the communal property system the maximization of the value of communal property rights will take place without regard to many costs, because the owners of a communal right cannot exclude others from enjoying the fruits of the owners' efforts and because negotiation costs are too high for all to agree jointly on optimal behaviours. The development of private rights permits the private owners to economize on the use of those resources from which they have the right to exclude others. Much internalization is accomplished this way.

Much of the property rights literature in economics tends to view well-defined private property rights as superior to communal or public property rights. Superiority, in this context, is defined in terms of efficiency. (A situation is said to be efficient if it is not possible to reallocate resources so that someone can be made better off without making someone else worse off.) Private ownership is seen as contributing to economic efficiency by providing an incentive for natural resources to be used as efficiently as possible. With common ownership, in contrast, there are incentives for individuals to exploit resources beyond the extent consistent with economic efficiency. Essentially it is argued that the absence of well-defined private property rights reduces the incentive for individuals to make the best use of resources to which they have access (Stephen, 1988: 12). This line of reasoning centres on the motivation of the individual. Economists assume that individuals are motivated to maximize utility (satisfaction or well-being). In other words, they generally assume that individuals are motivated by self-interest.

In *The Economics of the Law*, Frank H. Stephen (1988: 14-15) outlines three necessary conditions for the attainment of efficient property rights. These conditions are:

- Universality: all scarce resources should be owned by someone.
- Exclusivity: property rights should be exclusive rights.
- Transferability: it is necessary to ensure that resources will be transferred from low-valued uses to high-valued uses. Transferability is a *necessary* condition for attaining efficiency but it is not a *sufficient* condition. It does not guarantee efficiency since transferability would not be worth much if there were not also a right of exclusivity.

These three taken together ensure that the individual has the incentive to ensure that all resources are used efficiently, in their highest valued use, because that is where the individual receives the greatest reward. In reality, it is not possible to meet the property rights theorists' recommendation in full. In particular, it is not possible to allocate property rights universally; some resources by their very nature are communal.

4.9 PROPERTY RIGHT REGIMES

Property rights are a subset of a society's institutions – organized constraints that structure human interaction. Property right regimes define the nature of property rights, the bundles of entitlements regarding resource use which circumscribe owners' rights and duties in the use of a particular resource. Property rules consist of the regulations under which those entitlements are exercised (Hanna, Folke, and Maler, 1995: 15). Property right regimes exist in a variety of combinations and differ in the nature of ownership, the rights and duties of owners, the rules of use and the locus of control.

The regime types are ordered loosely along a spectrum of ownership types. Private property gives ownership to named individuals and guarantees those owners control of access and the right to a bundle of socially acceptable uses. Common property is owned by an identified group of people with the right to exclude non-owners. The group also has a duty to maintain the property through constraints placed on use. Such regimes are often used for common pool resources, which are difficult to divide. State property is owned by citizens of a political unit

who assign rule making authority to a public agency. The agency has the duty to ensure that rules promote social objectives. Citizens have the right to use the resource within the established rules. Open access property has no ownership assigned to it and is available to all.

The performance of property rights regimes may be assessed in any one or a combination of the following three dimensions: economic, social, and ecological. All of these dimensions are interconnected, interactive, and embedded in a system. One measure of performance is economic efficiency. A social performance measure could focus on the equity properties of the regime, reflecting social definitions of fairness in the distribution of benefits and costs. An ecologically based performance measure may focus on the extent to which stocks of natural capital are maintained.

Property right regimes do not exist as opposing types of regimes. Rather, types of property rights regimes are arrayed along a spectrum from open access to private property, with almost infinite variety in their components. Property right regimes are not in themselves a sufficient condition for resource sustainability but they are a necessary condition. If the assurance of future claims to resource benefits is absent, no incentive exists to limit current use.

4.10 FIRST AND SECOND BEST

One of the passages most often quoted in the literature on economic policy based on welfare economics, is the following one from a seminal paper by R.G Lipsey and K. Lancaster (1956: 11):

The general theorem for the second best optimum states that if there is introduced into a general equilibrium system a constraint which prevents the attainment of one of the Paretian conditions, the other Paretian conditions, although still obtainable, are, in general, no longer desirable.

The implication of this theorem was, that most of the simple and general guidelines for policy provided by welfare economics might not be relevant to real world economies. Until this article by Lipsey and Lancaster, the general wisdom had been that it was in fact desirable to apply a piecemeal policy in the pursuit of the Paretian conditions in a particular case, regardless of whether these conditions prevailed elsewhere or not.

In his *Studies in the Theory of Welfare Economics*, Melvin Warner Reder (1948: 35-6), identifies the so-called first best economic system as containing seven marginal conditions of maximum welfare. (These seven conditions can conveniently be reduced to the rule stating that price must be equal to marginal costs in perfectly competitive market conditions.) However, no economic system in reality can meet the literal requirements of these seven marginal conditions.

The implications of this fact of life is of decisive importance in any discussion of economic efficiency that relies on the principles of welfare economics. But does the Lipsey-Lancaster criticism really make piecemeal optimization unscientific and/or invalid?

On the whole, expert opinion does not support such an extreme position. For example, Graaff adopts the viewpoint in his influential book *Theoretical Welfare Economics* (1963: 5) that “we shall instead regard a person's choices, or general welfare, as determined by a large number of variables, some of which have traditionally interested economists and some of which have not.” Baumol departs from the Lipsey-Lancaster theorem that “Thou shalt not optimize piecemeal” on the ground that it would stultify all effective economic policy, adding:

I would propose, instead, that one should shun piecemeal ameliorative measures that have not been sanctioned by careful analysis and the liberal use of common sense. Many policies may plausibly be expected to yield improvements even though things elsewhere are not organized optimally [and that] the theorem does not require us to stand back helplessly and say that nothing can be done about any externalities problems until they are each and all conquered in one gigantic sweep (1965: 30).

As the first best (state of the world) does not and cannot exist, the second best approach in fact needs no apology but represents the epitome of purposive economic behaviour, namely constrained optimisation, that is, “the best of all *possible* worlds” (Bös & Seidl, 1986: 240). In small areas of applied welfare economics, second best reasoning has therefore been prevalent. The theory of an attainable second best would, for example, stress the crucial role of constraints serving to reconcile multiple objectives. British Columbia's first modern treaty, the Nisga'a agreement, is therefore an example of such second best optimization.

4.11 ECONOMIC EFFICIENCY (revisited)

Having concluded above that the principle of second best, or piecemeal optimization, is a legitimate guide to policy based on economic efficiency, a few related observations should be in order.

What has been called the “professionalisation” of economics by John Maloney, has resulted in a long-term loss of realism in economic analysis:

The battle to professionalise economics was primarily a battle between those who saw it as a discipline comparable to the natural sciences, and those who saw it as an adjunct to immediate social reform [resulting] in ... the victory of the former over the latter (Maloney, 1985: 232).

Maloney's conclusion is probably, strictly speaking, both premature and lopsided, but it is a fact that the professional study of complex systems in economic life has more often than not been reduced to models consisting of fairly tractable mathematical equations. In the process, the concept of economic efficiency – to which most of this chapter is addressed – has inevitably come to be expressed in mathematical terms. This may well have widespread quasi-scientific appeal, however, at a high cost of realism lost. Perhaps the main reason for this is that economic model-builders have come to populate their models with creatures of their own making. Christopher Torr (1988: 98) gives the following example:

... the model-builder's expectations ... are enshrined in his model (the relevant economic theory). The agents in the model are instructed to form their expectations with the aid of the economist's model. In equilibrium the expectations of the agents and the expectations of the model-builder will amount to the same thing.

It was stated above (in section 4.2) that there are fundamental economic and cultural differences between the Aboriginal and non-Aboriginal people of Canada. It would simply not be realistic to treat all of them as the homogenous population of a reduced form mathematical-type economic model. This does, however, not mean that the quest for economic efficiency must be aborted in the present case. Rather, it is necessary to relate economic analysis to anthropology rather than mathematics. It therefore means that the economic man of classical economics (*homo economicus*) (see 4.5.3 above) should be explicitly replaced by the flesh-and-blood man (*homo totus*) of the real world – as in economic anthropology.

4.12 ECONOMIC GROWTH (revisited)

Economic growth is the term describing an increase in the amount of goods and services at the disposal of the community as measured by GDP, real or national income regardless of the manner in which it is generated. The prerequisite for growth to qualify as economic development is that not only total but per capita growth should be positive. For true betterment, however, it needs to satisfy some additional conditions.

The explanation of economic betterment, at least in its initiation if not development, lies outside the sphere of impersonal economic forces and is to be found in the nature and nurture of human beings (Sadie, 1987: 608). Of five factors of production – entrepreneurship/management, labour, technology, capital and natural resources – it is only the last one whose dimensions are not directly determined by human action and the last exception is not an unconditional one.

The worst possible host for economic growth is the culture of poverty, which generates an almost inescapable vicious circle of unrelieved human misery.) This can be termed “low level stagnation” and occurs where the level of per capital income is at or close to subsistence requirements. In these situations, only a small percentage, if any, of the economy’s income is directed toward net investment. If economic growth is defined as rising per capita income, these economies are not necessarily growing and may need help in kick-starting the economy.

This chapter has addressed the issue of economic efficiency rather than economic growth, a process still far removed from Canada's Aboriginal population. However, for this population group to experience economic growth, development and betterment, it cannot be ruled out that the Treaty System – by improving economic efficiency – might come to represent the necessary trigger.

4.13 THE NISGA’A TREATY AND ECONOMIC OPPORTUNITIES

The following statement appears in the introduction of *Prospering Together, The Economic Impact of the Aboriginal Title Settlements in BC*:

About 3% of the people in British Columbia belong to a First Nation. But almost 100% are influenced in one way or another by what is and is not happening to First Nations' people. This is not only because we are all neighbours in this province, but also because we must share its land and resources. We must live together in a way that will allow all of us to prosper in the future (Kunin 1998: p x).

The Provincial government argues that treaties will provide certainty so that the economic development of the province can proceed. Uncertainty exist at present since there is no clear answer to the question of how Aboriginal rights affect third party interests, such as forest and mining companies in the province. Harry Slade and Paul Pearlman, in their article "Why Settle Aboriginal Land Rights", state that if First Nation's interests in the land and resources are not settled, either through treaties or through some other means, the Province's ability to draw on its natural resources may be impaired. They go on to say that treaties will produce a measure of certainty that does not now exist (Kunin, 1998: 72). Companies who have wanted to invest in British Columbia have been concerned about the economic uncertainty that surrounds the region as a result of unresolved land claims. Political instability is always bad for any area trying to attract investment or support a successful business community. For the communities of the Pacific Northwest, a ratified Nisga'a Treaty solves a big part of that problem and may afford long-term, economic opportunities for the Aboriginal and non-Aboriginal business people who live and work here.

Chief Joseph Gosnell, President of the Nisga'a Tribal Council has stated that one of the fundamental goals of the Nisga'a people is to negotiate their way into Canada. At one minute past midnight on May 10th, 2000, after more than a century of trying to negotiate a treaty, the new Nisga'a Lisims Government came into effect for the first time. The Nisga'a now consider themselves full and equal participants in the social, economic and political life of the province and of the country with all of the rights and responsibilities. In a speech to the Canadian Club, in Toronto, Canada, on May 15, 2000, Chief Gosnell called the treaty a turning point in the history of the Nisga'a people and went on to say:

...No longer wards of the state, no longer beggars in our own lands, we are now self-determining and self-actualizing. Today, no longer disenfranchised, we are free to make our own mistakes, savour our own victories, and stand on our own feet.

This is all made possible because of the Nisga'a Treaty, which was passed into Canadian law on April 13, 2000...

A triumph, I believe, which proves to the world that reasonable people can sit down and settle historical wrongs. Which proves that a modern society can correct the mistakes of the past. As Canadians, we should all be very proud.

Under the Treaty, the first in modern British Columbia history, we will collectively own about 2,000 square kilometres of land, far exceeding the postage-stamp reserves set aside

for us by colonial governments. We are now governing ourselves through our own institutions, but within the context of Canadian law.

Clause by clause, the Nisga'a Treaty emphasizes self-reliance, personal responsibility and modern education. It also encourages, for the first time, investment in Nisga'a lands and resources, and allows us to pursue meaningful employment from the resources of our own territory, for our own people.

To potential business partners, it provides much-needed economic certainty and gives us a fighting chance to establish legitimate economic independence – to prosper in common with our non-Aboriginal neighbours.

I don't have to remind this audience that economic certainty is crucial to the success of any business endeavour, especially in fluid economic times... (*Nisga'a Treaty News*. Available: <http://www.ntc.bc.ca/speeches/speeches.gosnell2.html>)

The period of observation following the treaty is not long enough to draw conclusions or make prediction, however, there is a plausible presumption of economic growth for the Nisga'a following the implementation of their treaty and assuming the Nisga'a join the BC economy. The Nisga'a must "plug into" the provincial economy since it is too small a group to achieve economies of scale on its own.

4.14 THE LIBERAL CRITIQUE

A learned and eloquent critic of the Nisga'a Treaty has been Gordon Gibson, Senior Fellow in Canadian Studies at the Fraser Institute in Vancouver. His critique has deep historical and constitutional roots, and essentially rests on classic liberal principles.

For example, the treaty is said to endow small government with great power, contain a bias towards collective rather than private property (albeit with exceptions) and be alien to the spirit of the market system on which the liberal Canadian economy is founded. In the journal *BC Studies* (1998/99: 63), Gibson recapitulates the contrast between the Nisga'a and the larger Canadian society by means of the following two equations:

Canada = open society + political rights based on residence
Nisga'a = closed society + political rights based on membership

Gibson's firmness of principle is by no means shared by all liberal intellectuals. Among economists, Douglass North (1990: 11) has, for example, made the point that whereas "neoclassical theory has been a major contribution to knowledge and works well in the analysis of markets in developed countries ... it does not explain the persistence ... of what appear to be inefficient forms of exchange." Moreover, it was noted in section 4.6.2 above that such eminent protagonists of economic freedom as Lionel Robbins and John Hicks were neither prepared to support liberty for its own sake nor censure the maintenance of social identity.

In a subsequent paper “A Principled Analysis of the Nisga'a Treaty” (<http://www.fraserinstitute.co/publications/pps/2//>), Gibson appears to go beyond the traditional frontiers of scientific liberal thought, in claiming that the Nisga'a Treaty runs counter to morality by subjecting future generations to an illiberal dispensation. Not only does this argument violate the methodological rule that the present should not be judged in terms of an unknowable future, but comes close to the psychological phenomenon known as “millennarianism”, the belief that a new age (millennium) will arrive if people follow certain injunctions. (In this case, the coming of the millennium is *prevented* by the *failure* to adopt the liberal rule everywhere.)

The policy of the Trudeau-Chrétien government to apply the liberal “solution” of assimilating the Indian population into Canadian society on equal terms, was discussed in some detail in Chapter 3 (sections 3.8.1 to 3.8.3). Here it is sufficient merely to recall that the attempt was overwhelmingly rejected by the Aboriginal peoples themselves.

4.15 CONCLUDING REMARKS

This chapter addressed the *economic implications* of the Canadian Treaty System, in particular, the Nisga'a Treaty of 2000 in British Columbia. (The Indian Treaty System in general was the subject matter of Chapter 3.) Canadian law stipulates that Aboriginal land title and the rights that go along with it exist whether or not there is a treaty. But without a treaty there is uncertainty about how and where those rights apply. The *Delgamuukw* judgement by the Supreme Court (December 1997) confirmed that Aboriginal title does exist in BC and that it is a right to the land itself. Where Aboriginal title exists in the province, it is a legal interest in the land and a burden on Crown title. The main economic significance of a treaty is that it extinguishes the Aboriginal title of the Aboriginal group signing the treaty and transfers the sole title to the land and resources to a provincial (or possibly federal) authority, in exchange for various economic benefits agreed upon in the treaty. (In the case of the Nisga'a, 92% of their traditional territory is no longer subject to the potential burden of Nisga'a Aboriginal title.)

In view of the pioneering nature of the present study, it may be prudent to consider two matters of principle before drawing any conclusions. First, should the present subject not be studied by Economic Anthropology rather than Economics Proper? The answer is that both disciplines are in fact directed at the same objective, encapsulated in Lionel Robbins's famous “scarcity” definition. The chief implication hereof is that rational behaviour is normally aimed at the optimization of a *multiple* objective function rather than a single one. “We cannot reckon with a standardized ‘economic man’ with a constant behaviour” (Zeuthen, 1957: 11). A lesser implication is that what is called the traditional society may have been written off prematurely as a viable (though evolving) example of an economic system.

The second of the above-mentioned questions of principle is: Which analytical technique(s) would be the most appropriate in assessing the economic consequences of the Treaty System? The choice here has fallen on welfare economics of the *second* – rather than the first– best kind, in other words, it is necessary to consider the probable effects of a treaty on *economic efficiency*. This involves a study of economic constraints and externalities, but above all the relation between property rights and the efficiency of resource use.

The conclusion then follows that the transfer of natural resources from the burden of Aboriginal title to absolute government ownership paves the way for optimal resource use. This is again positively related to an efficient property rights regime, whose main determinants are the ownership of resources on the one hand, and the conditions of resource use on the other. Therefore, efficient resource use is, for example, compatible with publicly owned resources that are leased to private enterprise, or a similar usufructuary arrangement. Two immediate benefits of a successful treaty are the greater certainty and end of costly litigation achieved by it. The practical upshot of this seems to be that the protagonists of the Canadian Treaty System do not have to shield behind “political correctness”, but are in fact “economically correct”. The ultimate objective of the Nisga’a should be to become an integral part of the British Columbian/Canadian economy. Cultural assimilation is not a necessary condition for this.

CHAPTER 5: INDIAN POLICIES AND APARTHEID

5.1 INTRODUCTION

In a speech at the South Africa Club in London on March 17, 1961, Dr. H. F. Verwoerd, frequently called the architect of the apartheid system in South Africa, presented the following rationale for separate development:

The essential condition (to a stable and prosperous country) is that racial domination will have to be removed. As long as domination of one race by another exists, there will be resistance and unrest. Consequently the solution should be sought by means of a policy which is calculated to eliminate domination in every form and in every respect (SAIS, *Progress Through Separate Development*: 16).

In Canada, apartheid is a bad word. It is a word to describe a system by which society is compartmentalized on racial grounds and a segment of the society – in South Africa, the majority – deliberately set apart, geographically, legally, economically. In his book *Without Surrender Without Consent*, Daniel Raunet (1996: 14) calls the history of the native people in Canada a story of apartheid. Living conditions on many Indian reserves in Canada have been compared to conditions in the Third World. Raunet and others argue that the *Indian Act* and the reserve system place Canada in a special category of state that has set apart certain groups of citizens by law on a purely genetic basis. Other examples include Israel and South Africa. In each there is – or was -- racial legislation restricting the activities of certain groups. In Canada, Indians are enclosed within well-defined boundaries, in a legal category by themselves. In Israel – a state where full citizenship is based on a notion of race and Jewish ancestry – the remaining Arabs are second-class citizens in many aspects of daily life: freedom of movement, political and professional organization, education, social services, housing and land rights. In South Africa, under apartheid, society was divided into four official ethnic categories – Black, White, Coloured and Asian – and the restrictions covered the same areas and more as in Israel (Raunet, 1996: 178).

Canada has always been proud of its progressive attitude and presents itself as a country tolerant of different cultures and enriched by the diversity of its peoples. It is not usually associated with the racist regimes of the world. And nothing can disturb the Canadian conscience more than equating virtuous Canada with evil South Africa (York, 1990: 240). Despite Canada's pride on its fairness and democracy, there are some obvious similarities between Canada's past, and present, policies towards Aboriginal people and South Africa's previous policies towards Blacks and other non-Whites. But is it fair to use the term apartheid for the situation of the indigenous peoples of Canada? Thomas Berger, a lawyer for the Nisga'a, did use this term in 1966 (Raunet, 1996: 167) when he said:

...the white community of BC adopted a policy of apartheid. This of course, has already been done in eastern Canada and on the Prairies, but the apartheid policy adopted in BC was of a particularly cruel and degrading kind. They began by taking the Indians' land

without any surrender and without their consent. Then they herded the Indian people on to Indian reserves. This was nothing more nor less than apartheid...

Clearly there are differences between the racial circumstances of Canada and South Africa but there are also some parallels. South African Blacks were prohibited from voting in national elections. Canadian Indians now have the right to vote but were prohibited from voting in federal elections until 1960. South African Blacks were segregated. Aboriginal people in Canada are not officially segregated but they are governed by a separate law, the *Indian Act*, which gives the federal government enormous power over any Indian living on a reserve. Historically, both Canadian Indians and South African Blacks were pushed aside as their land was taken over by Whites. The Blacks were shunted into designated areas known as homelands in South Africa and Indians into reserves in Canada. There is even evidence that the South African government had studied Canada's system of Indian administration in the ninetieth and early twentieth century. Some historians believe that South African officials may have used the Canadian reserve system as a model for the South African policy of territorial apartheid. These interpretations may be more accurate than many Canadians would like to think (York, 1990: 241).

5.2 APARTHEID IN CANADA

5.2.1 Were Reserves and the *Indian Act* Apartheid?

In 1987, Chief Louis Stevenson of the Peguis Indian Reserve adopted a controversial strategy to get the Department of Indian Affairs to respond to the band's needs. He invited Glenn Babb, the South African ambassador to Canada, to observe the appalling social conditions on Manitoba's largest Indian reserve. Babb had already criticized Canada for neglecting the problems of its indigenous people (York, 1990: 239). In a speech to Peguis residents, the ambassador pointed out the similarities between the circumstances of Indians in Canada and those of Blacks in South Africa. When Archbishop Desmond Tutu visited another Indian reserve in 1990, he again drew public attention to the similarities between the plight of Indian people in Canada and South African Blacks under apartheid (Boldt, 1993: 8).

In his book, *Surviving As Indians: The Challenge of Self-Government*, Menno Boldt asserts that the Canadian government condemnation of the South African government was based on the following five points:

- legally classifying people by race;
- segregating native peoples into homelands and urban ghettos;
- dispossessing native peoples of most of their lands;
- administering native peoples as a separate department of government; and
- denying native peoples the right to vote.

Boldt asks how this differs from the treatment native peoples have experienced in Canada. The *Indian Act* defined Indian status in essentially racial terms. Indians are, in general, segregated on reserves or they live in urban ghettos. Indians have been dispossessed of almost all their lands.

Indians are administered under a separate department (the Department of Indian Affairs and Northern Development). Although Indian people were given the federal franchise, the vote has not helped improve their situation.

Boldt further contends that the history of Indian administration in Canada is one of increasing control by government authorities over native people. Examples include:

- attempting to suppress “pagan rituals” and promote Christian religions by banning important cultural festivals such as the Potlatch;
- attempting to destroy traditional native structures of self-government, and to teach the elements of English-style good government, through imposition of elected band councils;
- diminishing the influence of natural parents and heightening role of the Christian churches by requiring children to leave their parents and attend government-sponsored residential schools where use of Indian languages and other aspects of “Indian-ness” were punished;
- controlling Aboriginals’ efforts to organize and pursue Aboriginal rights by initiating a “pass” system where Indians could not leave their reserve without permission of the government-appointed Indian Agent; and
- making it illegal to hire a lawyer to pursue any form of Aboriginal rights or land claim.

In fact, the very definition of who was an Indian and, hence, who also was not, was one of the elements put under government control in the first *Indian Act*. This question itself appears discriminatory. Paula Mallea, in her book *Aboriginal Law: Apartheid in Canada?* argues that indigenous people around the world have recognized the danger of permitting governments to categorize them by blood. It was in 1950 when South Africa adopted the *Population Registration Act* which classified people according to race, and took that country down a road which has only now been terminated with the lifting of statutory apartheid. In Canada, though, much still depends upon whether one is classified as Inuit, Metis, Status Indian or non-Status Indian. Mallea goes on to question the inherent symbolism of describing human beings as people with “no status” (1994: 6).

Until post-war reform, the *Indian Act* specified that the Indian was “not a normal person”. Barred from the polling stations, from the banks and from the bar, the Indian was comparable in status to a minor. These restrictions played a crucial role in keeping Native people at a low stage of economic development (Raunet, 1996: 169). After the post-war reform, some bands - like New Aiyansh band - were granted the status of an advanced stage of development under section 83 of the *Indian Act*. This allowed them to make bylaws and raise money, but every decision still had to be ultimately approved by the Department of Indian Affairs and could not be counter to official policies and regulations. As Raunet eloquently puts it (1996: 172):

The ultimate act of paternalism -- weighing how much pocket money a child has deserved -- is still at the core of the Canadian system. On the one hand, Indians are not required to pay income tax for their activities on the reserve; on the other, they are kept dependant for their collective needs on a regime of social assistance in which government determines the funds available and controls their general allocation.

But is it reasonable to compare the situation of an Indian, even on a reserve, with the plight of a Black worker in Soweto during the apartheid regime? After all, Indians do enjoy the same civil rights as other Canadians: they can move freely, settle outside reserves if they so wish, marry across ethnic boundaries, vote. Can this be compared to the Zulus or Xhosas who lived in urban areas such as Johannesburg but lost their South African citizenship when the White regime created Bantustans or homelands such as KwaZulu or Transkei. Raunet contends that the apparent equality granted to Indians does not amount to a difference in nature between the Canadian reserve system and other forms of apartheid. Rather, he states, they are simply evidence of the fact that the elimination of the native population is more advanced in North America than elsewhere and the only difference is one of numbers. In his opinion, Canadian apartheid can afford to be understanding, concerned, and open to reform, because it has almost succeeded and maybe, one day, the original inhabitants of the land will forget that they used to be Indians (Raunet, 1996: 179).

Because Aboriginal people have been granted certain democratic rights denied to Blacks in South Africa, the Canadian government has presented its treatment of Indians as more liberal and enlightened. But the parallels between the two countries' policies on native peoples are many and the consequences of these policies are equally real for Aboriginal people in Canada as they were for Blacks in South Africa because "the effects of oppression, injustice, and racism are equally pernicious whether they result from tyranny by the minority, as in South Africa, or from tyranny of the majority, as in Canada" (Boldt, 1993: 10).

Blacks in South Africa constituted a numeric majority that sought to achieve autonomy and justice through the democratic concept of "one person, one vote". The South African government rejected this and instead homelands were provided, with a limited form of self-government. Aboriginal people in Canada make up about 2.8% of the total Canadian population and, although they were given the vote, they cannot achieve self-determination through "one person, one vote". Aboriginal people are instead actually looking for homelands, with adequate resources, and some form of self-government. Blacks in South Africa were offered so-called self-government in their homelands, but this is not what they were after. In both cases, the preferred means to achieve self-determination had been effectively blocked by the respective power establishments. The tyranny of the minority rendered South African injustice and racism offensively conspicuous; the tyranny of the majority allows Canada to dress its injustice in the guise of a venerated democratic principle – "one person, one vote" – rule by the majority (Boldt, 1993: 9).

Aboriginal people in Canada have been under the yoke of the *Indian Act* for a long time and now would like to take control of their own destinies. Self-determination (also called self-government) combined with an adequate land and resource base, is seen as the means of emancipation. Some Canadians have argued that Aboriginal self-government would entail the creation of sovereign states or establish a new level of government but the term actually has a more practical meaning for most Aboriginal people. It begins with the freedom to regain control of individual elements of their community: their schools, courts, health system, and child welfare system. These are institutions that affect people most directly. By asserting their right to make

their own decisions in such vital areas, Indian bands are liberating themselves from a state of dependence and government control (York, 1990: 26).

While the tactics of Canada and South Africa were opposite, the motives of both governments may have been the same. It may be justified to say that both were protecting existing constitutional power arrangements and determined to use their powers to forestall any significant shift in political arrangements. However, South Africa did eventually and fundamentally change in 1994 when democratic elections were held and the African National Congress effectively took power. In contrast, the principle of majority rule has made it possible for the Canadian government and the majority Canadian population to disregard the rights of Aboriginal people in the past as well as their desire for self-determination. This situation continues today and is evident in British Columbia where opponents of the Nisga'a Treaty wanted a province-wide referendum to decide whether or not the treaty should be ratified. Such a referendum would be a blatant example of the tyranny of the majority.

5.2.2 Does The Nisga'a Treaty Create A Race-Based Homeland?

British Columbia's treaty process has been advanced as a possible solution to many of the problems besetting the Aboriginal people in the province. However, opponents of this process argue that the treaties in the rest of Canada have not, in general, resulted in better living conditions for Aboriginal people. Public funding in support of programs and services for native people (Appendix A) have not improved their economic and social conditions. The current system, critics argue, is based on collective rather than individual ownership, has discouraged self-reliance and places power and money in the native leadership's hands rather than in the hands of individual natives. Furthermore, it has been a system that has treated native people differently in law from other Canadians. These critics go on to say that Canadian policy, particularly the *Indian Act*, has isolated Aboriginal people from mainstream Canadian society, has allowed federal laws based on race to supersede many provincial laws of general application, and isolated reserve communities from the provincial society to which they are adjacent. Critics of the Nisga'a Treaty say the treaty will repeat this policy, incorporate some of the undesirable provisions of the *Indian Act* into the treaty and raise the barriers caused by separate legal regimes. (Available: <http://www.fraserinstitute.ca/publications/pps/16/>)

In his book *Our Home or Native Land?* Melvin Smith asked how Canada as a nation could proudly point to their efforts in opposition to apartheid in South Africa when Canada was well on the way to establishing that system itself through native self-governments based on the ill-founded concept of inherent right? Smith goes on to say: "Racism anywhere and everywhere and under all circumstances is wrong. It is anathema to all democratic principles that we as a nation hold dear" (1995: 250). Smith quotes Gordon Gibson, the former leader of the Liberal Party of BC, who in an article in the *Globe and Mail* on June 1, 1992 had written on the inherent Aboriginal right to self-government:

The simple, unvarnished fact is that we are proposing to add to our Constitution more discrimination on the basis of race. We are proposing to treat natives... differently from

other races. The noun for that kind of behaviour is racism, the adjective is racist, and it is always and everywhere wrong.

In another article entitled “Time to do away with apartheid” which appeared in the *Vancouver Sun* on May 3rd, 1994, Gordon Gibson argued that while South Africa had taken steps to shut down its massive, failed system of apartheid, Canada was expanding its smaller, but equally failed, apartheid system relating to natives.

On February 17 1999, Member of Parliament Ted White wrote in the *North Shore News* that a public referendum should be held on the Nisga’a Treaty, at least for the basic components of the treaty. He argued that such a referendum would not be a vote on minority rights, and criticized the Nisga’a Treaty for conferring additional, special rights based solely on race, and said that the treaty itself was racially offensive. Using the Nisga’a template, he went on, would set up “50 or more apartheid-like governments in BC” (Available: <http://www.canadianalliance.ca/white-t/170299.html>). Paul Tennant, however, disagrees. He maintains that British Columbians critical of settling native land claims believe that the provincial majority has the right to impose its views on ethnic minorities. Tennant argues that these critics want a special status for British Columbia where the province can “pick and choose” among the rulings of the country’s highest court and whereby the majority can dictate or deny Aboriginal rights (2000, 147). He goes on to say:

Many of the critics assume that we live a populist republic in which there is no higher political God than current majority sentiment expressed on an issue-by-issue basis: locally or province wide. Nor do the critics wish to promote reconciliation, instead they wish to impose solutions...

These issues require a look at the democratic process and how minority rights are dealt with in a multicultural society such as Canada.

5.3 MAJORITY RULE – A LOOK AT DEMOCRACY

Government by consent does not mean that the government should only do what everyone approves of since that would be impossible. What government by consent does mean, is that the running of the country is carried out in a way that makes all sections of the population feel that the government is concerned with their welfare. This implies that the government takes the opinions and sentiments of all citizens into consideration and is genuinely trying to solve problems, including problems of conflicting views and interests, while considering the interests of all.

The citizens of a country will feel comfortable with a government elected by universal suffrage if there is enough homogeneity to be conscious of a community of interests. In this case, those who have been outvoted may feel that the issues on which they have lost are subservient to the national unity. Furthermore, since there is no major rift separating the minority from the majority, the former may hope to win over those who outvoted them. H. A. Fagan, in the book *Co-existence in South Africa*, wrote that it is the danger of bloc-voting which rules out universal

suffrage in a country where political issues are dominated by unbridgeable differences between groups, whether those differences are based on religion, as they were for many centuries in several European countries, or on race and colour as in South Africa. (1963: 29)

In a liberal society, minorities often require special protection if the promise of liberal equality is to be achieved. If this protection is not provided, popular rule can become mob rule. Even where there is universal suffrage – “one person one vote” – minorities can be outvoted and unable to stop the will of the majority. Where there are deep differences between certain groups, whether based on language, colour, religion, aspirations or ideology, a particular minority group’s only hope of having their needs met may lie in making their voices heard. (Fagan, 1963: 47) The vote does not help them.

Canada sees itself as a multicultural society able to accommodate different population groups. Aboriginal people are a minority in the larger Canadian society but they are not just any minority of disadvantaged Canadians. They have rights because they were members of functioning societies which existed in Canada when the ancestors of non-Aboriginal Canadians came to North America. The disposition of their rights is not something that non-Aboriginal Canadians can decide entirely on their own (Taylor, 1998/99: 40). But how can the culture and rights of Aboriginal people be protected in Canadian society? Supporters of the treaty process in British Columbia argue that, through treaties, Aboriginal groups will maintain their cultural identities while participating within the larger society. Opponents argue that treaties will create separate, race-based enclaves within the country. Those who oppose the Nisga’a treaty and its self-government provisions often assume that all Canadians are homogeneous in their rights and deny the existence of Aboriginal rights. There is also an assumption that all Canadians together have the right to decide how to determine the shape of Aboriginal self-rule. And since the vast majority of Canadians are non-Aboriginals, they would in fact define the shape, whatever the Aboriginals feel. This is the kind of thinking that underlies the demand for a referendum on the Nisga’a treaty. But the fact remains, Canada cannot ignore Aboriginal rights, which are a part of the Canadian Constitution. Furthermore, the nature of Aboriginal rights does not permit the majority to determine the content of these rights unilaterally.

The Canadian parliamentary system of government is supposed to function in a democratic and equitable manner. By its very nature, however, it will do things that are offensive to minorities and, indeed, things to which minorities would never agree if they were given the chance of exercising power themselves (Raunet, 1996: 85). Those in a minority culture are virtually guaranteed to react cohesively and end up with the minority or losing side more often than most members of society. Furthermore, many members of this minority culture will have strong feelings about these issues (Elkins, 1995: 203). There are many suggestions on how to deal with the dangers inherent in majority rule. These may include a veto or entrenched rights, such as Aboriginal rights protected in the Canadian Constitution which the majority cannot violate. Majority rule is a tool to be used only under certain conditions. The choice should not be all or nothing – always or never majority rule. For a “democracy is of little comfort to those who suffer injustices but who, though they have the vote, cannot muster a majority to make it effective” (Fagan, 1963: 66).

Canada is a political creation and not a sociological entity. Confederation was, in many ways, an attempt to find means of securing local ways of life against simple majority rule, while not giving up the benefits of wider union. In pluralistic democracies, minorities are asked to trust the majority. Dominant groups, however, have no essential need to share power, so the presence of a federal set-up to share it may be required. The dominant group must come to the bargaining table accepting it has an obligation to reach equitable power sharing arrangement.

Any discussion of Aboriginal people and rights in Canada must first consider the many issues involved in the concepts of majority rule or “one-man-one-vote”. Since Aboriginal people are, and certain to remain, a distinct minority within Canada, majority rule must not become the tyranny of the majority. Constitutionally protected Aboriginal rights or Treaty rights are one way of trying to ensure that the interests important to Aboriginal people are taken seriously within the Canadian society. As Charles Taylor put it in his paper “On the Nisga’a Treaty” (1998/99: 40):

The non-Aboriginal majority might now have the power to ignore Aboriginal demands to negotiate a deal simply by asserting a brutal right of conquest. That is certainly how a lot of Europeans operated in the Western Hemisphere. But Canadians decided in 1982 not to operate this way. . . . The basis of Canadian society has got to be a social contract that everyone can freely and willingly accept.

5.4 ASSIMILATION VERSUS SEGREGATION

The beginning of the modern system of administration for Indian people in Canada is considered to be 1830, when Aboriginal settlement on reserve land was started under government guardianship. One of the goals of the administration was the assimilation of Aboriginal groups into communities. (In contrast to South Africa’s policy of separate development or “grand apartheid”, Canada’s policy was assimilation not segregation. In 1913, Duncan Campbell Scott – superintendent of Indian Affairs – had stated that the objective was to absorb every single Indian in Canada into the body politic. This view of assimilation dominated federal Indian policies for most of the 1900s (Gosnell, 1998/99: 8). Raunet uses even stronger terms in his discussion of the *Indian Act* and enfranchisement (1996: 173): “Indian status is a handicap that can be overcome only by assimilation, a denial of one’s nature. No Indian, no problem.” Canadian Indian policy over most of the last 125 or more years has been consistently assimilationist in its objectives. Despite being encouraged to become self-sufficient, Indians were, in fact, effectively prevented from being so in economic, political, and administrative spheres. The goal of these policies may have been to bring Aboriginal people into Canadian society, but it did so by setting them apart and denying them a role in the country’s institutional systems.

The *White Paper* of 1969 seemed, however, to offer a completely new look in Indian policy. The focus of *White Paper* was essentially to get rid of Indian as any sort of special ethnic or racial category: within a few years, there would be no *Indian Act*, no Department of Indian Affairs, and no vestiges of special status beyond those individual rights that were accorded to all Canadian citizens. Because the social and economic state of Aboriginal people had been a

blemish on Canada's record, Prime Minister Trudeau invited them, in 1969, to join the North American melting pot. Most Natives declined. Aboriginal people viewed what Trudeau proposed as leading to the disappearance of their cultures and identities. When given the choice between nothing (assimilation) and almost nothing (reserve system), Indians decided on the retention of the *Indian Act* and whatever small protection it offered them as a group. Daniel Raunet argues that there was an inherent false premise in Trudeau's *White Paper* and that the *Indian Act* was not the cause of discrimination; rather, it embodied the legal expression of the theft of the land and resources without which Native societies have no future. The *White Paper* policies, he argues, would have pushed Indians from one ghetto into another, for without the economic means for their development, native people would have remained what they already were – non-participants in the Canadian dream, with the additional handicap of having lost their identity (Raunet, 1996: 177).

The *White Paper* was very much a reflection of Trudeau's western-liberal perspective of the "just society", in which it was believed that no group should receive the special status that would be implied by recognition of their collective rights; justice was best achieved through each person being accorded and guaranteed his or her individual rights. According to this view, Indians were the victims of discrimination pure and simple—if only their individual rights were guaranteed, then they would soon move to full participation in a grand egalitarian society. Tennant (1990) is among many those who report that reaction to the *White Paper* by Indians was relatively quick, and uniformly negative. But there was an inspirational element too. The *White Paper* is also identified by many as the catalyst which brought First Nations citizens and leaders together, and showed their power as a collective entity. The problem with the *White Paper* and the policies it proposed is that some individuals, particularly members of distinctive minorities, are concerned as much with their cultural survival as with their individual survival. It is fine for members of cultural majorities to argue that we are all equal when their numbers allow them to control the social institutions, thereby creating at least a potential tyranny of the majority. Cultural minorities seek more than the right of their individual members to equality and participation within the larger society. They also seek distinct group survival. Because economic and social forces, as well as state policies, tend to promote assimilation, the leaders of cultural minorities often look to the state for support to ensure that their collectivities can survive and prosper.

The choices among future policy alternatives would benefit from consideration of past relations between Canada's indigenous peoples and the colonial and federal governments. Indeed, proposals which do not consider the past in their formulation and implementation may be doomed to repeat it. The record of the Canadian government to date is not an encouraging one. Whether we look back to the efforts in the nineteenth century to squeeze natives out of their lands, or to the efforts to ignore Aboriginal rights in the hope they would go away, or to the assimilative policies of divide and conquer embodied in the *Indian Act*, or the Trudeau-Chrétien *White Paper* of 1969 which attempted to unilaterally extinguish Aboriginal identity, or to the residential schools where Indians were taught to be ashamed of their identity and history, or to contemporary statements that attempt to continue the fiction that Aboriginal rights somehow exist only at the whim of the federal government, the history of Aboriginal-Government relations is not a source of national pride. Each new generation of politicians seems interested in creating

a new relationship with Aboriginal peoples, but then continues the assimilative and paternalistic policies and practices of the one before.

The relations between native people and others in the province of British Columbia – indeed, in all of Canada – have to be put on a different and better footing. The Nisga’a Treaty is an attempt to redress a deplorable record and its attendant social problems without interfering unduly with the lives and opportunities of the many other peoples – the vast majority of British Columbians – who have been the inadvertent beneficiaries of colonialism. This treaty may well provide for a balance between individual and group rights in a liberal democracy (*BC Studies*, 1998/99: 3). As Nisga’a leader Joe Gosnell (1998/99: 9) says, “the treaty represents an understanding between distinct cultures and shows respect for each other’s way of life”. Although the treaty has flaws, when it is compared to how other nations have come to grips with their colonial past, the Nisga’a Treaty may well be a model of compromise and moderation.

In Canada, both federal and provincial legislation has tried to assimilate Aboriginal people, often by denying them access to legal and political institutions. Indians saw this assimilation into White society as an end to their survival as a distinct people. It is true that Canada’s policy of attempting to assimilate Aboriginal people into the mainstream or White culture has been severely criticized by Aboriginal and non-Aboriginal people alike. It is also true that these assimilation policies, the reserve system, the *Indian Act*, the Nisga’a Treaty (and other future treaties) are not, effectively speaking, apartheid. Tom Flanagan, in his book *First Nations Second Thoughts*, defends Canada’s past Indian policies of assimilation when he asserts (2000: 47) that:

It is noteworthy that the newcomers [to Canada] wanted and expected the Aboriginal to assimilate into their civilization. One can debate the morality and practicality of assimilation, but it certainly was the opposite of belief in racial inferiority, for it assumed that the Aboriginals, despite obvious racial differences, could adopt all of the practices of civilization – as indeed they have.

5.5 SOUTH AFRICA – GRAND AND PETTY APARTHEID

In his article “Apartheid and Separate Development” in the *Standard Encyclopaedia of Southern Africa* (1970, 1: 474-5), Ellison Kahn wrote the following:

Apartheid in theory and practice did not issue from the National Party in 1948 full-grown... Its genesis goes back to early days of contact between White and non-White.

The author considers the importation of slaves in 1658, six years after the Dutch East India Company had founded a victualling station at the Cape, to be the first cause of racial discrimination in South Africa.

The terms “apartheid” and “separate development” are not synonymous. In time, the former came to be known as “petty apartheid” and the latter as “grand apartheid”. In his autobiography, the last President of the “old” South Africa, F.W. de Klerk (1998: 30), described the two

phenomena as “the horizontal differentiation of white supremacy” and “the vertical differentiation of separate development”, respectively. Petty apartheid legislation was by no means confined to the Black (or African) people and in fact predates the founding of the Union of South Africa in 1910. For example, in 1896 parliamentary franchise was taken away from the Indians in the then British colony of Natal.

However, after the National Party acceded to power in 1948, what had been *ad hoc* discriminatory legislation became deliberate and systematic government policy. At first racial discrimination could still be seen as “petty apartheid” or discrimination for its own sake, ranging from large issues like separate “group areas” and prohibition of “mixed marriages”, to ridiculous trivialities like segregated bathing beaches and park benches. Above all, the policy of apartheid effectively reserved parliamentary voting rights for Whites only.

Emphasis began to shift from petty to grand apartheid (territorial segregation or separate development) about 1950 when Dr. H.F. Verwoerd became Minister of what was then called Native (later Bantu, i.e. Black or African) Affairs. Alex Hepple (1967: 114), a one-time Labour Party member in the South African parliament, comments:

...Verwoerd dressed his views in pretences of altruism. He replaced the crude profession of apartheid with more defensible philosophy of separate development, in which he envisaged a number of ethnic African homelands, gradually evolving into independent States, which would eventually link up with South Africa in a confederation of self-governing units.

The policy of territorial segregation came to be specifically related to the various Black (then called Bantu) population groups in South Africa, whose designated homelands covered some 13% of South Africa’s land surface. The other non-White population groups (Coloured and Indian) remained subject to petty apartheid, as did Blacks living in the so-called White areas. The latter were however theoretically entitled to “full citizen rights” in their respective historical homelands, with which they may have had certain ethnic ties but which many had never seen. It should, however, be noted that as grand apartheid grew in importance, there was no let-up in petty apartheid. In fact, as F.W. de Klerk (1998: 39) has written:

Dr Verwoerd was particularly rigorous when it came to the enforcement of social segregation (or what became known as petty apartheid) as opposed to the vision for a commonwealth of southern African states (which became known as grand apartheid).

The policy of territorial segregation did however not originate with Verwoerd, who was Prime Minister between 1958 and 1966, when he was murdered by a madman. It had in fact been conceived by General J.B.M. Hertzog in 1912, when he was Minister of Native Affairs in the first cabinet of the Union of South Africa. Albeit unknowingly at the time, grand apartheid was thus launched by the *Natives Land Act No. 27* of 1913, passed when Hertzog himself had already left the cabinet. Hertzog (who was to become Prime Minister during 1924-39) believed that full political rights could not be withheld from the Blacks indefinitely. “If, however, such rights had to be given in the white man’s country the time would come when the latter would be swamped

politically and thereafter it would only be a question of time until white civilisation would disappear completely” (Pirow, 1957: 195).

The Black Peril was indeed widely feared not only by South African Whites but many Coloured and Indian people too. In reply to the question whether he saw any possibility of surviving in an integrated society, P.W. Botha (Prime Minister 1978-84, State President 1984-89) replied: “No, no. Nowhere in Africa did it work” (Starcke, 1978: 58). Only after the country’s first democratic election of April 1994 did this fear dissipate.

5.6 FROM APARTHEID TO SEPARATE DEVELOPMENT

There is enough literature on racial discrimination in South Africa (by any name) to fill a major library – and more. The purpose here is not to attempt a miniature précis of this vast topic. Rather, it is attempted to briefly point out some features of the South African system that would enable one to answer the question: is the Canadian Treaty System an example of apartheid too, as some observers have claimed (see 5.1 to 5.3 above).

5.6.1 The Fall from Grace

The South African government’s race policy served to make the country an international outcast. From a historical perspective, its fall from grace was great indeed. After the First World War, the country’s international standing was so high that the League of Nations in 1920 entrusted the administration of the former German colony South-West Africa (today Namibia) to the Union of South Africa. Ironically, the Union government was asked to rule the mandated territory as an integral part of the Union itself – apartheid and all. (If nothing else, non-White people had no meaningful franchise at the time.) Even after the Second World War, South Africa’s reputation remained high, as Professor Hobart Houghton (1967: 17) has indicated:

The country’s international prestige was high and tens of thousands of allied soldiers and sailors, who had called at Cape Town and Durban and had been warmly welcomed and entertained, were the best publicity any country could desire. Economic prospects were excellent and capital and immigrants were pouring in.

All this was to change completely. At first, the focus of the anti-South Africa movement was the United Nations Organization (founded in 1945), but in time the rejection became worldwide. It may be noted that the opening move against South Africa was made before the National Party’s electoral victory in 1948, in the form of a complaint by the government of India, in December 1946, about the treatment of ethnic Indians in South Africa – an example of petty rather than grand apartheid.

In due course, however, political discontent and unrest by South Africa’s Black population came to dominate the scene both nationally and internationally. A watershed occurred in March 1960, when a protest against the so-called pass laws at Sharpeville on 21 March 1960, caused the police to open fire against the demonstrators, leaving 69 victims dead. The government then declared the African National Congress (today the governing party in South Africa) illegal,

ignoring the underlying grievances which had caused the tragedy to begin with. In time, international economic sanctions were put on South Africa, which may have reduced the country's annual growth rate by about 1.5% (De Klerk, 1998: 70) – a tremendously high cost.

5.6.2 The Government Position

By the time of the Sharpeville tragedy, separate development (or grand apartheid) had already become the main thrust of the government's race policies.

Dr. Verwoerd himself, presented his argument for separate development in a speech at the South Africa Club in London on March 17, 1961. In this speech he stated that the non-Whites and Whites in South Africa had encountered each other in vacant, not native, land (in effect *terra nullius*) and that the development and prosperity of the country was wholly the result of the initiatives, investment, hard work and administrative capacity of White people (SAIS, *Progress Through Separate Development*: 7-11).

In turn, Dr. Hilgard Muller, the South Africa Foreign Minister (1964-77), set forth two possible choices for South Africa to follow. The first option was to establish a constitutional, political, economic and social relationship between the White and non-White population groups – with the White people in a position of effective control over all the other national groups. This alternative was not incompatible with 19th century practice. The second choice was a type of co-existence that seemed to be in agreement with the worldwide trend towards the elimination of domination of one nation by another and self-determination for smaller groupings possessing a national and cultural identity. South Africa chose the second option, which later became the policy of separate development. In defending this policy, White leaders said that each of the population groups would control and govern themselves. They would co-operate as in a commonwealth, in an economic association and South Africa would proceed to secure peace, prosperity and justice for all by means of political independence coupled with economic interdependence (SAIS, *Progress Through Separate Development*: 25).

In a similar vein, Mr. J. G. P. Jooste, Secretary of Foreign Affairs (1956-66), argued that the White South Africans of European descent were a nation of Africa, with roots and traditions deeply embedded in the soil of that continent. These roots were said to be indestructible and the White South Africans claimed for themselves all the inalienable rights of an autonomous and separate nation. He went on to say that this nation of European stock had a responsibility for promoting the welfare and progress for all of those who lived under the sovereignty of their government. Therefore, in claiming for themselves a distinctive destiny, they were not denying to the emerging Black nations the right to achieve distinctive destinies of their own – each in their own homeland with their own culture, heritage, language and destiny (SAIS, *Progress Through Separate Development*: 48-49). The proposed solution was separate but full development of the Black or Bantu people in separate homelands, to be located on their traditional territories.

5.7 BANTUSTANS AND POLITICAL ARITHMETIC

The defence of separate development by government spokesmen was however a voice in the wilderness. It was effectively silenced by overwhelming condemnation of the system both at home and (particularly) abroad. Such criticism would easily represent the greater part of the literature in the hypothetical apartheid library posited at the beginning of 5.6 above, but it is not part of the present quest. This remains to find an answer to the question whether or not Canada has maintained a system of apartheid in its past Indian policies or if, in fact, the Nisga'a Treaty is establishing an apartheid-like homeland.

5.7.1 The Tomlinson Commission

In December 1950, a commission of inquiry was appointed under the chairmanship of Professor F.R. Tomlinson, to investigate “the socio-economic development of the Bantu territories in the Republic of South Africa, the future of the Bantu inside and outside their traditional homelands, and the methods to be employed for their development and for sound co-existence with the White population” (SESA, 10, 1974: 521).

The Report of the Tomlinson Commission was published in October 1954 and came to represent the blueprint of the South African government’s grand apartheid policy. To quote from the official *Summary of the Report* (1955: 208):

The programme submitted by the Commission, comprises regional development as well as the development of ethnic groups into independent entities which can manage their own social, economic and political administration within a broader political nexus. At the same time, it includes the elements of a policy of upliftment of the less privileged portions of a heterogeneous population.

It was recommended that the 260 dispersed territories existing at the time, be consolidated into a limited number of homelands (in the event, ten), which would eventually have governments of their own and, together with South Africa, become a Southern African confederation or commonwealth. The Commission also recommended extensive industrialisation of the homelands, something that did not initially find favour with the government, as it would introduce “white” capital into “black” states. However, the government later approved the establishment of so-called border industries, situated just outside the homeland territories in South Africa proper. In any event, the policy of separate development now entered a new phase, which was to dominate the political scene in South Africa until the completely new dispensation that was inaugurated in April 1994.

Chart III: South Africa’s Black Homelands, in the pocket attached to the back inside cover of the dissertation, shows that these territories formed a horseshoe-shaped area that follows the general contours of South Africa’s north-eastern, eastern and south-eastern borders. The ten homelands came to be officially divided into two categories, four so-called independent states and six so-called self-governing areas. These are shown in brown and blue colour, respectively,

in Chart III. The population figures for the various homelands and South Africa are given in Table 5.1. To simplify nomenclature, the ten homelands, taken together, are henceforth referred to as *Bantustans*. Although the name sometimes had a derogatory connotation, it is a striking expression in its own right and used in a neutral sense here.

5.7.2 Political Arithmetic

According to the census of October 1996, South Africa had a total population of 40 584 000 people, with the four main population groups showing the following percentage distribution: Black 77%, Coloured 9%, Indian 3%, White 11%. (The first post-1994 census therefore retained the same ethnic classification as the population censuses held in the “old” South Africa.) The most obvious point to be noted here, is that the Blacks in South Africa are by far the largest group in the national population, whereas Indians in Canada represent only 2.8% of the total Canadian population of 28 528 125⁴ people enumerated in the 1991 population census. Indians in Canada and South Africa are of course ethnically quite different. (People from the Indian subcontinent are known as *East Indians* in Canada.)

As the Bantustans ceased to exist with the coming of the “new” South Africa, comparable population figures for them are no longer available. Even in the “old” South Africa such data were not routinely published, seeing that four Bantustans were considered to be independent countries by the South African government, namely, Transkei (1976), Bophuthatswana (1977), Venda (1979) and Ciskei (1981). (The dates in parentheses are the dates of notional independence.) Table 5.1 below gives the *de facto* population of South Africa and the various Bantustans for 1985, as published by the *Development Bank of Southern Africa*.

Table 5.1 South Africa and Bantustans, *de facto* population 1985

South Africa	27 722 000	Gazankulu	607 000
Transkei	2 933 000	KaNdwane	464 000
Bophuthatswana	1 741 000	KwaNdebele	294 000
Venda	460 000	KwaZulu	4 462 000
Ciskei	750 000	Lebowa	2 222 000
		Qwaqwa	226 000
Total	33 606 000	Total	8 275 000

The figures for the six Bantustans on the right are included in the figure for South Africa on the left hand side of the table. The total population figure for all the Bantustans (left and right) is equal to 14 159 000 people (5 884 000 + 8 275 000), which is 51% of the enumerated South African population (27 722 000). The often quoted figures that 10% of income tax payers in South Africa pay 70% of the total tax, give one at least an inkling of the immense burden that the Bantustans came to be on South African taxpayers. In the early stages of the Bantustan policy,

⁴ There are different ways to define the Aboriginal population including Registered/Treaty Indians or Band/First Nation members or those who identified with one or more Aboriginal groups. Data may also include those who did not identify with an Aboriginal group but who reported Aboriginal ethnic origin/ancestry. Some information is also taken from 1996 statistics.

Verwoerd expected that a “reverse flow” of urban Blacks from the rest of South Africa to the Bantustans would one day take place. Several Black people were deported to the Bantustans, but no voluntary “reverse flow” ever materialized. In fact, Bantustan families increasingly came to depend on migrant remittances from the rest of South Africa (Giliomee & Schlemmer, 1985: 7).

5.7.3 Economic Analysis

Table 5.2 shows some key economic variables for South Africa’s four main metropolitan areas, the rest of the country and the Bantustans as a group. The main metropolitan areas are the following: Pretoria-Witwatersrand-Vaal triangle, Cape Peninsula, Durban-Pinetown, and Port Elizabeth-Uitenhage.

Table 5.2 Selected economic indicators, 1970-80

	Metropolitan SA	Rest of SA	Bantustans
Population distribution (%)			
1970	29.6	38.2	32.2
1980	29.1	34.1	36.8
Income per capita (1975 rand)			
1970	2 041	800	75
1980	1 988	1 145	102
Average annual growth rate 1970-80 (%)			
GDP	2.6	5.4	7.7
Population	2.9	1.6	4.2
Real income per capita	-0.3	3.8	3.5

(Adapted from ML Truu (1983) “Regional Economic Development in South Africa”, *Studies in Economics and Econometrics*, special edition, p. 27.)

The figures in Table 5.2 give an overview of the Bantustans’ rather unusual economic situation in the overall South African context during the period 1970-80, when the policy of grand apartheid was vigorously pursued.

On the face of it, the Bantustans experienced some rapid growth in terms of both their population and gross geographic product (GDP), as a result of which real income per capita rose at the impressive average annual rate of 3.5% during 1970-80. This was only fractionally below the rate for the rest of South Africa *outside* the main metropolitan areas, where the corresponding rate actually fell slightly. However, both the observed population and economic growth in the Bantustans were largely illusory, disguising forced repatriation and huge income transfers which enriched local politicians, public officials and so-called Uhuru hoppers⁵, but achieved little else. Although metropolitan real income per capita remained more or less constant (at about R2 000) during 1970-80, it was still very high in comparison to the average Bantustan figure, which was

⁵ Shady foreign businessmen who preyed on newly independent African states.

only 3.7 and 5.1 per cent of the metropolitan figures for 1970 and 1980, respectively. The rest of South Africa too, remained economically very attractive to potential Bantustan migrants.

The well-known South African economist J.L. Sadie (1960: 302) perceived the Sisyphean nature of trying to develop the Bantustans “from above” already at an early stage, when he wrote in the (UK) *Economic Journal*: “Providing the capital without the entrepreneurial initiative and the managerial abilities to direct its economic exploitation will only lead to the waste of such capital.” Hindsight and appropriate data have largely confirmed this early warning as well as the interpretation of Table 5.2 above. For example, Terence Moll (1991: 290) wrote of the apartheid experiment: “The aggregate evidence ... appears to support the liberal critique of apartheid, implying that the findings by various researchers that the apartheid system hampered efficient resource allocation and prevented firms from making full use of black workers should be taken seriously.”

Given the explicitly political motivation of the Bantustan policy, it is fitting to conclude this discussion by referring to ex-President F.W. de Klerk’s views on the subject:

Throughout my presidency, the self-governing territories and the independent states caused the government endless difficulties and frustrations. The best administered states were KwaZulu, Bophuthatswana and QwaQwa, a small Sotho homeland bordering Lesotho. The rest were at differing stages of financial and administrative disintegration – despite our genuine efforts over the decades to train and support competent public servants and administrators. Most of them had bloated, overpaid and ineffective civil services... Also, as their demise approached, many of the homeland governments and public services accelerated their efforts to strip the remaining resources from their states by granting themselves across-the-board promotions and handsome pensions. The rest of South Africa would have to pay a heavy bill for these depredations after the 1994 elections (1998: 268-9).

In the end, the Bantustan system disappeared as if it had never existed.

5.8 CONCLUDING REMARKS

While there are certain similarities between past Canadian Indian policies, Canada’s Indian reserves and the *Indian Act* and South African apartheid, Bantustans and separate development policies, these are mainly administrative similarities. There are, in fact, many differences between the policies of these two countries. The same argument used in support of Aboriginal rights and their protection under the Constitution – the fear of a tyranny of the majority - has also been advanced by the Whites of South Africa who felt that their cultural identity might vanish in the face of such a large Black majority in their country. While one can debate the morality or otherwise of assimilation policies, the underlying belief was the conviction that Indian people could (and would) integrate into the larger non-Aboriginal culture. This is, in effect, the opposite of apartheid. Although there were exceptions, it was illegal in South Africa, during apartheid, to change racial classification (Lipton, 1985: 15). In Canada, on the other hand, the goal was to change Indian people into enfranchised Canadians with all the inherent rights and privileges.

Aboriginal people, in Canada, on reserve or in treaty-settlement lands do not have to relinquish any of their rights as Canadian citizens, in contrast with Blacks in Transkei or other independent homelands. They are free to travel or work anywhere in the country. Nor does the Nisga'a treaty establish a race-based homeland. Although the majority of the people living on the settlement land are Nisga'a, it is the Nisga'a themselves who decide who is a Nisga'a person. (Furthermore, it may even be wrong to assume that all Nisga'a people are of the same race.) Treaty rights and Aboriginal rights are not given to a group because of their race. Rather, these rights are theirs because they are acknowledged to have been self-governing groups who resided in present-day Canada prior to the coming of European settlers.

Apartheid springs from a completely different source than ethnically based policies in Canada. In modern history, migration from Britain and other countries led to European settlement of many parts of the world where a native population was already living. Looking at the United States and the one-time British dominions Australia, New Zealand, Canada and South Africa, only in South Africa did the native people come to vastly outnumber the population of European origin. At one time, racial discrimination was common in all these "new" countries, but it became taboo as colonial empires were dismantled after the Second World War. It was then, in 1948, that a new government in South Africa took a fatefully wrong turning at the crossroads, by raising apartheid to official policy. As international pressure mounted, the policy of separate development was introduced in a vain attempt to undo a demographic reality that history had created. The Bantustans were thus designed to turn the rest of South Africa into a largely White country. It was a social experiment of breathtaking audacity, unknown in Canada or anywhere else.

If there is one clear conclusion from this comparison of Canada and South Africa, it is that the tyranny of the majority – be in a demographic majority such as in Canada or a parliamentary majority such as in apartheid-era South Africa – should not be responsible for conveying rights to other ethnic or cultural groups. Constitutional protection of the rights of minorities or of politically weak groups is required to ensure that these rights are not infringed. In addition, a strong constitution serves as protection against laws or agreements which discriminate between people on the basis of colour, ethnicity or religion.

CHAPTER 6: CONCLUSION

Treaty making is not a new practice in Canada. Historic Indian treaties have, in fact, resulted in the settling and development of much of the country. However, the Province of British Columbia has been a latecomer to the process of negotiating modern treaties, which it began only in the 1990s. A major goal of the treaty process is to achieve social stability and economic certainty by settling land claims through negotiation rather than litigation. The signing of the agreement with the Nisga'a nation in April 2000 represents the first modern treaty in British Columbia.

The economic significance of the treaty system may be briefly expressed. Although Aboriginal people in Canada live in a country that is economically highly developed, they are largely excluded from full participation in the national economy. Only by getting rid of the dependence on government support and becoming part of the Canadian mainstream economy and labour market, can Aboriginal people achieve economic independence. At the same time, the treaties also serve to draw previously idle resources into productive use in the modern sector of the Canadian economy. Treaty making is therefore an example of the compensation principle in welfare economics, where the gains from the policy exceed its costs, thus making society as a whole better off than before. The alternative of stimulating on-reserve economic development is a non-starter in a traditional society, as both Canadian and international – including South African – experience have shown.

To understand the current situation surrounding Aboriginal land claims in British Columbia, it is necessary to look at the Canadian government's past Indian policies, particularly the *Indian Act* and the *Statement of the Government of Canada on Indian Policy*, (the *White Paper* of 1969). The *Indian Act* allowed for federal government control over reserve lands and Indians living on reserves. Enfranchisement was a key provision of the *Act*. The *White Paper* represented an attempt by the government to assimilate Indian people into the larger Canadian society. It was soundly rejected by Aboriginal people and may have signalled a turning point in Indian policies. Aboriginal people have never abandoned their cultural identity despite a sustained government policy of assimilation.

Although there are (inevitable) administrative similarities between the *Indian Act* in Canada and the recent policy of separate development ("grand apartheid") in South Africa, the aim of the South African policy was diametrically the opposite of the Canadian one: segregation, not assimilation. Furthermore, given the great numerical preponderance of South Africa's Black population, the survival of their cultural identity was never in doubt. But this has not prevented critics of the Canadian treaty system from vilifying it by means of a conveniently derogatory analogy – namely apartheid. However, if anything, the treaty system serves to remove the paternalistic elements inherent in both the *Indian Act* and liberal-inspired counsels of assimilation. As Mr Justice Williamson (1999: 28) has pointed out: "The B.C. treaty process is voluntary." Thus, the *Indian Act* no longer applies to the Nisga'a now that they have a treaty. The Canada-South Africa comparison has, however, not been a waste of time and effort. It has clearly shown that in ethnic relations, optimal choice is not as simple and stark as either



Trudeau-Chrétien-type assimilation or Verwoerdian segregation. This conclusion is, admittedly, more instructive than utilitarian.

APPENDIX A- ABORIGINAL FUNDING

FEDERAL PROGRAMS DIRECTED TO ABORIGINAL PEOPLE, 1997-98 FISCAL YEAR, ABORIGINAL PROGRAM FUNDING

Department of Indian Affairs and Northern Development (DIAND)

Four departments (Department of Indian Affairs and Northern Development (DIAND), Health Canada, Canada Mortgage Housing Corporation (CMHC) and Human Resources Development Canada (HRDC)) are collectively responsible for 97% of total federal funding directed to Aboriginal people.

DIAND's expenditures represent 71% of all federal funding directed to Aboriginal people, although the focus of DIAND's funding is almost exclusively the Registered Indian population on reserves.

The administration of funding has largely been devolved to First Nations. In 1996/97, 82% of DIAND's funding was administered by First Nations and Inuit.

Funding by other departments is "status-blind," directed to the overall Aboriginal population both on and off reserves.

More than 80% of DIAND's Aboriginal programming expenditures are for basic services which are provided to other Canadians by provincial, municipal and territorial governments.

DIAND's EXPENDITURES (4.3 BILLION)

	(\$M)
Schools, Infrastructure, Housing (23%)	983
Elementary/Secondary Education (21%)	899
Social Assistance (16%)	671
Claims (9%)	367
Social Support Services (8%)	361
Indian Gov't Support (8%)	339
Post-Secondary Education (6%)	275
Administration/Regional Direction/Funding Services (3%)	122
Lands & Trust Services (2%)	92
Northern Affairs* (2%)	88
Economic Development (1%)	57
Self-Government (1%)	39

- reflects proportion of expenditures on the Aboriginal vs Non-Aboriginal population in the North.

TRENDS IN FEDERAL EXPENDITURES

Federal spending on Aboriginal programs will total about \$6.0 billion in 1997-1998 and involve 13 departments including Indian Affairs and Northern Development (DIAND).

Aboriginal programs represent 5.7% of total federal program spending.

FUNDING

Growth in DIAND's Aboriginal Program spending has been reduced from 11 percent in 1991-1992 to 2 percent in 1997-1998.

PRESSURES

Population growth: the Status Indian population is expected to grow at a rate of 2.3% on reserves and 2.4% off reserves, putting pressure on the funding of basic service programs (growth rate between 1997-2005).

Young population: 50% of the Status Indian population is under age 25, raising the priority of equipping young people for the future.

Closing the gap in basic services: addressing housing, health and safety issues (water and sewage treatment) is expensive and long-term.

Cost of providing services on reserves: cost is also influenced by geographic location (45 percent of reserves are rural, 19 percent are remote and special access) and acute levels of poverty.

Significant progress has been made but Aboriginal people still lag on virtually all socio-economic indicators.

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Canada



Treaty Negotiations in British Columbia

STATEMENTS OF INTENT TO NEGOTIATE TREATIES ACCEPTED BY THE
BRITISH COLUMBIA TREATY COMMISSION AS OF JUNE 1999
ADDITIONAL STATEMENTS OF INTENT MAY BE RECEIVED.

- | | |
|---|---|
| 1 Carcross/Tagish First Nation | 27 Namgis First Nation |
| 2 Cariboo Tribal Council | 28 Nazko Indian Band |
| 3 Carrier Sekani Tribal Council | 29 Nuu-chah-nulth Tribal Council |
| 4 Champagne and Aishihik First Nations | 30 Owekeno Nation |
| 5 Cheslatta Carrier Nation | 31 Pacheedaht Band |
| 6 Council of the Haida Nation | 32 Quatsino First Nation |
| 7 Da'naxda'xw First Nation | 33 Sechelt Indian Band |
| 8 Ditidaht First Nation | 34 Sliammon Indian Band |
| 9 Esketemc First Nation | 35 Snuneymuxw First Nation |
| 10 Gitanyow Hereditary Chiefs | 36 Squamish Nation |
| 11 Gitksan Hereditary Chiefs | 37 Sto:Lo Nation |
| 12 Gwa'Sala-'Nakwaxda'xw First Nation | 38 Taku River Tlingit First Nation |
| 13 Haisla Nation | 39 Te'Mexw Treaty Association |
| 14 Heiltsuk Nation | 40 Teslin Tlingit Council |
| 15 Hornalco Indian Band | 41 Tlatlasikwala First Nation |
| 16 Hul'qumi'num Treaty Group | 42 Ts'kw'aylaxw First Nation (Pavilion) |
| 17 In-SHUCK-ch'N'Quat'Qua | 43 Tsawwassen First Nation |
| 18 Kaska Dena Council | 44 Tsay Keh Dene Band |
| 19 Katzie Indian Band | 45 Tsimshian Nation |
| 20 Klahoose Indian Band | 46 Tsil'it Waututh Nation (Burrard) |
| 21 Ktunaxa/Kinbasket Tribal Council | 47 Westbank First Nation |
| 22 Kwakiutl First Nation | 48 Wet'suw'et'en Nation |
| 23 Kwakiutl Laich-Kwil-Tach Council of Chiefs | 49 Xaxli'p First Nation (Fountain) |
| 24 Lake Babine Nation | 50 Yale First Nation |
| 25 Lheidli T'enneh Nation | 51 Yekooche Nation |
| 26 Musqueam Nation | |

OTHER FIRST NATIONS INVOLVED
IN TREATY NEGOTIATIONS
A Nisga'a Tribal Council

Approximate Boundaries of
Traditional Territories



Produced under the Information Sharing Protocol
by the Federal Treaty Negotiation Office, Indian and
Northern Affairs Canada, and the Information Provision
Branch, British Columbia Ministry of Aboriginal Affairs.

LOWER MAINLAND DETAIL



Scale 1:7 000 000
0 50 100 150 200 km

The lines on this map represent the approximate boundaries of traditional territories described in First Nation Statements of Intent to negotiate treaties which have been submitted to, and accepted by the B.C. Treaty Commission. They are illustrative only and may be updated in the future. Publication of this map does not imply that the First Nations, the Province of British Columbia, or the Government of Canada have agreed to the boundaries shown.

