

**Native Policy Making
in North America:**

**The Unresolved Conflict between
Economic Desires and Political Idealism**

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March, 1991

A thesis submitted to the Faculty of Graduate Studies and
Research in partial fulfillment of the requirements for the
degree of Master of Arts

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ABSTRACT

The thesis explores the practical, moral and intellectual forces shaping native policy making in North America. It is argued that white society is struggling with an unresolved dialectic between its economic desires and its political idealism and that this conflict is expressed in native policy making as a simultaneous affirmation and denial of aboriginal rights. This theme is traced comparatively through Canadian and American native policy making histories from 1763 to 1990, focusing on three major policy areas: Indian dispossession, Indian political incorporation and Indian economic integration.

RÉSUMÉ

Cette thèse a pour but d'explorer les influences morales, pratiques et intellectuelles qui ont façonné les diverses politiques concernant les Amérindiens. Selon l'argument central de cette thèse, la société blanche est aux prises avec une situation où ses priorités économiques s'opposent à son idéalisme politique. De plus, cette thèse soulignera le fait que cette contradiction s'exprime, au niveau de la formulation des politiques à l'égard des Amérindiens, par une affirmation et un déni simultanés des droits autochtones. Ce thème est abordé par le biais d'une étude comparative des politiques canadiennes et américaines vis à vis des Amérindiens entre 1763 et 1990. Cette étude portera une attention particulière à trois domaines de la politique touchant les autochtones: leur dépossession, leur incorporation politique et leur intégration économique.

ACKNOWLEDGEMENTS

I would like to take this opportunity to acknowledge the assistance I have received from the Department of Political Science at McGill University, in particular the support, guidance and patience of my thesis supervisor Professor Hudson Meadwell. Also at McGill I thank the staff at McLennan library, my fellow graduate students, the Post Graduate Student's Society and the Centre for Developing Area Studies. At Trent University I thank Professor John Milloy of the Native Studies Program and the staff at Bata library. I also gratefully acknowledge the generous support of a number of good friends - Beverly Wiseman for sharing her home and for her continued friendship, my computer Guru James Britton for his time and expertise, Ilona Lame-Wille for the rides to Trent and Sami Massoud and Remi Roy for the translations. I thank Marnina Gonick, Katherine Gombay, Tricia Roach, Maria Alberto, Allan Bartley, Jayne Martin, Robert Waikins, Allen Dusault, Michael Connor, Jeff Diamond, Molly Colin, Rebecca Kingston, Gerd Schoenwalder, Amelia Kalant, Michael Smith and Cleobelle Wiseman for the various forms of support I have received from them all. I appreciate the cooperation and advice of Phil Ross of the Department of Indian Affairs in Ottawa, Karen Issacs and Pat Braccupe of the Assembly of First Nations, Daniel Francis, Colin Scott and David Howse. Finally I would like to thank my family, my father Sandy McPherson, Mardi, Jim, Michael and Liza Wood for their patient support. I dedicate this thesis to my mother, Florence (Pansy) McPherson.

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PREFACE

This thesis is not about Indians. It is about Indian policy and the society that created it. The thesis is not intended as a proper comparative analysis of Canadian and American native policies either. Such a study would be very difficult at this time because of the relative imbalance of secondary historical resource materials available on the two cases. The Americans, it seems, have demonstrated a greater interest not only in the historical development of Indian policy in the United States, (Prucha 1984, Horsman 1967, Utley 1984; Brown 1976; McNickle 1973; Deloria 1974, 1985, Philp 1986, Weeks 1988, Hoxie 1984, 1988; O'Brien 1989; Satz 1975; Washburn 1975; Wise and Deloria 1971, Nichols 1981), but are much further ahead of Canadians in the assessment of the broader social context of American native policy making in general (Berkhofer 1979; Cornell 1988; Pearce 1965; Joe 1986; Dippie 1982; Sheehan 1980, 1973; Horsman 1981; Martin 1987; Barsh and Henderson 1980; Bolt 1987, Gross 1989; Rogin 1975; Williams 1980; Wilkinson 1987). While the field is opening up in Canada (Clark 1990; Carter 1990; Miller 1989; Crossley 1987; Weaver 1981; Asch 1984; Fisher and Coates 1988; Little Bear, Boldt and Long 1984; Boldt and Long 1988, 1985; Getty and Lusier 1983; Monkman 1981; Patterson 1972; Frideres 1983; Watkins 1977; Kymlicka 1989; Schwartz 1986), a great deal of work remains to be done before the level of Indian policy analysis in Canada could be considered to be on par with the progress made in the United States. For this reason, I rely heavily on American sources as a general guideline for the discussion of both cases.

Comparative study of Canadian and American native policy is even less developed. No comprehensive historical comparison exists. With the exception of Chamberlain (1975), most comparative treatments tend to focus on specific policy sectors such as health or education, or are limited geographically to certain regions or to specific time periods (Samek 1987;

Kienetz 1986, Gough 1982; Frideres 1981; Guillemin 1978). One important exception is the field of Indian law (Mickenberg 1971; Niedermeier 1981). Variations in the legal status of Indians and of the Indian/government relationships in the two countries are the product of different historical circumstances, and not an indication of any fundamental divergence of views between the two governments. In this thesis I hope to show that the assumptions upon which laws and policies were based remained the same in both countries, and that, at this point in the development of comparative native policy analysis in North America, more is to be learned by focusing on these underlying commonalities than on deviations of policy practices.

Relations between indigenous peoples of North America and the white governments have been defined and understood in legal terms since the days of Columbus. European law formed the basis from which Whites carefully legitimated their authority over Indians. Practical questions associated with colonial expansion and national integration, and moral questions associated with political idealism prompted each government to create legal frameworks that defined how one group was to relate to the other. Indian policy in North America had two primary purposes: the facilitation of European expansion and the minimization of white guilt over the dispossession of the Indian nations. 'Indian sovereignty' therefore was a practical, not a conceptual problem. After more than 200 years of policy making, neither government has managed to interpret a satisfactory relationship between the two societies. Each has consistently failed to go beyond the limited, abstract and self-serving legal categorizations established two centuries ago. The purpose of this thesis is to attempt a broader conceptualization of the relationship between aboriginal peoples and the American and Canadian governments and societies, from which a more relevant comparative analysis can eventually be conducted.

"We go to them Janus-faced. One of our hands holds the rifle and the other the peace-pipe, and we blaze away with both instruments at the same time. The chief consequence is a great smoke - and there it ends."

(From the Army Navy Journal VI 1868)

CHAPTER ONE

INTELLECTUAL FOUNDATIONS OF NORTH AMERICAN NATIVE POLICY

According to Robert F. Berkhofer, policy making in general is a matter of the relationship between what policy makers want on the one hand, and what they think they can get on the other.(1) What native policy makers in North America wanted is straightforward, they wanted the Indians' land and resources. How they thought they could get it is a more complicated question. In this chapter, I will examine the real and perceived constraints on Indian policy making that White policy makers imposed on themselves.

These constraints occurred on three levels. First, Indians posed a practical problem to White expansion. Because of British dependency on Indian military and economic cooperation, policy makers had to carefully devise a diplomatic policy that satisfied the concerns of Indian nations at the time. Secondly, the policy had to be justified. Expansion required that the Indians be dispossessed of their lands, but the policy could not openly violate the democratic principles of liberty and equality upon which the new nations were founded and which legitimated the new governments in the eyes of its own citizens, as well as its critics in Europe. Thirdly, the Indians' presence posed something of a psychological dilemma for the Whites. The indigenous population in North America had to not only be incorporated in a physical sense into the expanding European political economy, they also had to be incorporated intellectually into existing and expanding European explanations for the world and the universe around them.

This perhaps is the greatest constraint on Indian policy making because it is the most basic to White society's self perceptions and the most difficult to discern. Each level will be discussed in turn.

In analysing the response of the American government to increased Indian militancy in the 1960's and early 1970's, Stephen Cornell has identified a three part response strategy that involves: 1) the suppression of the most radical Indian leadership, 2) a public display of symbolic reform of native policy that appeared to incorporate Indians into the policy making process; and 3) a less public but more substantive reform of Indian policy, in a manner that effectively strengthened the dominant system.(2) Cornell's analysis suggests that American native policy is somewhat schizophrenic in that two dimensions of Indian policy are simultaneously in effect — a symbolic dimension and a substantive dimension. Symbolic policies address the practical and moral concerns of policy makers by giving the impression the government is responding to Indian demands in a democratic and just manner, while in actuality a different policy agenda is in operation on a different policy making level. On this level, the substantive policy making level, real objectives are being pursued, objectives that are likely to be in contradiction with the stated intention of the symbolic policy. The stage is thereby set for the ultimate confusion of policy ends and means.

The practice of making symbolic concessions in Indian policy as a means to a more substantive policy objective originated in a policy making context in which Europeans were dependent upon the good will and cooperation of Indian nations. In the 18th century,

good relations with the Indians was the key to expansion in North America. The French and the British both relied on the Indians as economic partners in the fur trade and as military allies in their wars against each other. For the Europeans, access and control of the fur trade meant access to the fur-rich regions not yet under their control. Trade relations with the Indians therefore were both the objective and means of expansion of European influence and opportunity in North America (3) But even more critical to European interests was the participation of Indian nations as military allies. The Indians quite often held the military balance of power and proved skillful at exploiting European anxieties to their own advantage. (4) The British and French each competed for Indian allegiance while the successful consolidation of the United States came to depend upon Indian neutrality (5)

In the long history of North American native policy making, this era represents the only time that native labour was essential to the dominant economy and the pattern of incorporation this dependency resulted in, gave the Indian nations genuine power. The fur trade was not imposed upon the Indians. They participated in it willingly and defended it militarily because it was in their immediate economic interest to do so. But even as the economic importance of the fur trade declined in the early 19th century, the British found it judicious to maintain the trade as a political means to gain access to the Western regions and of sustaining friendly relations with the powerful Iroquois, who otherwise would have turned their allegiance to the French. (6)

The British needed to more effectively manage relations between settlers and Indians. As the New England colonies expanded in the 1740's and 1750's, little regard had been demonstrated for the indigenous inhabitants. The Whites frequently defrauded them in trade and stole their lands outright. After the fall of New France in 1760 the British seized the opportunity to consolidate their imperial position in North America by establishing regulations for the management of Indian affairs and structuring formal, constitutional relations with the Indian nations (7) The British were aware that their decentralized Indian policy was weak in comparison to the strong centrally coordinated administration of Indian affairs that had given the French a major advantage in competition for Indian support.(8) With the French still a threat, the British set out to ensure native cooperation and peaceful relations between settlers and the Indians. The British needed to establish a coherent and comprehensive lands policy that permitted maintenance of the fur trade and protected commercial interests, but which also regulated expansion of settlement and the peaceful acquisition of Indian lands.

None of these priorities could have been met without adequate recognition of Indian land rights. Through the *Royal Proclamation of 1763*, the British adopted a policy aimed at minimizing contact between Indians and Whites in order to reduce conflicts. It was a comprehensive document that ultimately established the general principles of British and later American and Canadian Indian policy. It provided the first constitution for the newly acquired colony of Canada, and it set forth rules of behaviour for British subjects toward Indians. The Royal Proclamation began the official segregation of Indian nations by designating the area outside Upper and Lower Canada, lands already granted to the

Hudson's Bay Company, to be exclusive Indian 'hunting grounds'.(9) The bulk of this territory lay within the confines of what eventually became the United States and southern Ontario. Within this territory, white settlement and trade were regulated and only agents of the Crown were permitted to purchase Indian land.(10)

The Royal Proclamation policy developed as a response to the security needs of the expanding British empire. It specifically designated what came to be understood as official 'Indian country' — lands not yet ceded by treaty to the British Crown. It required that these lands be reserved for the exclusive use of Indians; it reserved for the Crown the sole right to purchase Indian lands; and it established a procedure for land purchase, formalizing treaty making as official policy. It read:

"And whereas it is just and reasonable, and essential to our Interests, 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."(11)

A few decades later the Americans also concluded that successful expansion required a centrally coordinated lands policy. *The Northwest Ordinance*, passed by the Continental Congress in 1787, made similar guarantees in much the same tone:

"..the utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."(12)

The Americans found it necessary to go even further than the British and backed up the Ordinance and the treaties with a series of Trade and Intercourse acts that more specifically regulated relations between Indians and settlers.(13) For the British and the Americans, the alternative to the recognition of aboriginal rights would have been war with the Indian nations, and neither government was prepared to sustain a drawn-out Indian war.(14)

Early Indian policy as it was originally formulated in the British territories and in the newly created United States was the product of competitions Europeans maintained among themselves — power struggles that included rivalries between the British, French, and Americans, as well as emergent and assertive state governments. Recognitions of Indian rights contained in official pronouncements and legislation, have been described as being nothing more than 'prudent and pragmatic' responses to the vulnerable conditions in which British and American policy makers found themselves at the time.(15) The policy was not motivated by the belief in the actual existence of Indian rights. Despite promises of 'just and reasonable' treatment of the Indians and guaran-

tees to observe the 'utmost good faith' and 'to carry out laws founded on justice and humanity', a sense of justice was neither the motivating force behind the policy pronouncements nor the goal of native policy.(16) Rather, 'justice' was used as a means to the achievement of the goal of colonial expansion because expansion required native cooperation.

White commitment to the notion of aboriginal rights, as articulated in the late 18th century, was at best ambiguous. Moreover, the actual objective of the policies—the facilitation of the orderly and peaceful dispossession of the Indians — necessarily conflicted with the justice rhetoric embodied in the policy. Whites viewed the policy as 'just' because it established what they considered to be a fair procedure for the liquidation of Indian land rights; rights they had been compelled by circumstances to recognize in the first place. To the Indians, the policy was 'just' to the extent that it recognized the existence of, if not all, then at least some aboriginal rights in European law.(17)

The notion of Indian rights has been described as a 'myth', but it is a 'myth' that led to the establishment of and gave substance to institutions and legal recognitions that gave force to the political aspirations of aboriginal people.(18) Lacking a genuine respect for 'Indian rights', each government failed to establish effective mechanisms for their protection. Their standing in law, however, still limited each governments' ability to depart from the policy. Despite the intentions of the original policy makers, the inherent logic of the symbolic promises contained in the policy has been elevated over the years to form the most fundamental principle of both Canadian and American Indian

Policy. (19) The original gesture may have been symbolic, but the law still implied those rights in some way existed and each government inherited the responsibility of protecting them. The original policy was established to protect Indians from intrusions by non-Indian individuals but the governments themselves were bound by the same laws. Any deviation required an adequate and legally defensible rationale. While 'Indian rights' remains with us as a legally defensible concept, neither government adequately understands or respects it.

As the political climate changed over the years and both Canadians and Americans became more receptive to the idea of minority rights and came to view themselves as pluralistic societies, Indian aspirations gained new force as Indian leaders skillfully exploited the limited political options open to them. The recognition of aboriginal rights has become an end in itself as Indians have used the old policies entrenched into law two centuries ago, to assert their demands on the dominant political system, force new interpretations of old promises and win new guarantees from government. (20) Treaties have remained legally binding and provide the primary means through which Indians are able to force the government to respect their rights. Reserved Indian land did not become the temporary cultural training grounds originally envisioned by white administrators. They became instead Indian homelands and places of indigenous cultural survival. Local Band councils in Canada and Tribal courts in the United States, originally established as devices of assimilation, evolved instead into well organized institutions recognized as legitimate representatives of Indian separate status.

The notion of justice, as expressed through official recognition of Indian rights, also addressed the moral concerns of Indian policy makers. The creation of 'just' rationalizations for the expropriation of Indian lands were as important to successful expansion in North America as the appeasement of militarily powerful Indian nations. Expansion of the American republic across the continent was a very self-conscious process. The seemingly endless North American landscape added a quality of viability to Enlightenment ideas of social and political equality and freedom that colonists had imported with them from Europe. The creation of 'America' represented the realization of Enlightenment principles of liberal idealism that until then had only been philosophized about in Europe. In the newly independent United States, theory became practice and the United States became an experiment in the history of the rights of man, which its own leaders watched as anxiously as those overseas.(21) But expansion required the dispossession of the Indians, an action which fundamentally violated the very principles the new Republic represented and fervently championed.

Indian military strength and economic and political savvy posed practical challenges to the Europeans, but their presence also challenged Euro-American, and eventually Euro-Canadian perceptions of themselves as liberal democracies, based on a relatively equal distribution of private property. These self-perceptions were tied directly to nature, which was seen to be inseparable from the Indians. Derived from Locke, the highest expression of civilized man was the action of taking something from nature, and convert-

ing it with one's labours into a part of oneself—into private property.(22) The individual farmer epitomized the highest expression of civilization, placing agrarianism at the core of early North American social and political thought.

In the United States, Jefferson extended his emphasis beyond Lockean notions of individual property rights and emphasized instead its social functions.(23) A broad distribution of wealth insured social equality and political independence — the foundations of Republicanism. "Agrarianism..saw in a nation of farmers a nation of economically independent, politically autonomous, morally virtuous citizens. Land became the basis of prosperity as well as morality, social equality, and democratic government. Access to land and its more or less equal distribution, was therefore crucial to the preservation of the body politic...For political, social as well as economic reasons, growing populations made expansion imperative. Only increasing quantities of readily available land could assure the maintenance of democratic institutions and the equality of economic opportunity."(24) The implication for Indians was clear.

Victorian Canadians also believed that a life of virtue was dependent upon an agrarian base. Whites considered Indians to be indolent and improvident, and believed their hunting lifestyle to be an example of an irresponsible and reckless waste of natural resources. Despite the vast acreages at their disposal, Indians lacked any notion of private property and therefore lacked the very basis of civilization. 'The Indian had to be taught to make his living from the soil. No other occupation could so assuredly dispossess the Indian of his nomadic habits and the uncertainties of the chase, and fix upon

him the values of a permanent abode and the security of a margin of surplus. Agriculture would teach an appreciation of private property and impart a will to own and master nature." (25)

Agrarian based social theory was framed in biblical references that associated those who laboured in the earth with God's chosen people.(26) Agrarian idealism was the belief that men have a natural right to the land by occupation and labour whereby they achieve status and dignity by expressing that right and becoming freehold farmers. The Bible proved that man's purpose on earth was to reclaim and resurrect the wilderness, of which Indians were seen as an integral part: "Be fruitful and multiply, and replenish the earth and subdue it: and have dominion over the fish of the sea; and over the fowl of the air, and over every living thing that moveth upon the earth."(27) Political philosophy promoted the commercialization and appropriation of land on behalf of social equality and political freedom. Agrarian social theory brought together economics and political philosophy.

Rather than becoming a moderating force that protected the Indians from the exterminationist impulses of those frustrated with their presence, Republicanism made it imperative that Indians be dispossessed honourably, according to certain standards of morality (28) "The native American, understood as an Indian, represented an affront to the cherished values of the vast majority of white Americans, whether those values were crass or idealistic according to their own standards. Therefore principles of morality as well as expediency dictated, nay demanded, the 'Americanization' of the In-

dian and his lands, either through transforming the Native American into an approved white American model or by placing white Americans upon former Indian lands. Either method substituted an 'American' for an 'Indian', and eliminated the latter in favor of the former, on the territory claimed by the US under international law."⁽²⁹⁾ With justifications that promised the land would be put to a higher purpose, as ordered by God, the Indians could be dispossessed without white society violating its cherished democratic and moral self image. A policy of dispossession satisfied both American economic goals and facilitated the realization of political ideals at the same time. Republicanism provided both the objective and the justification for American expansion. The only limitation it imposed was that the policy be carried out in an honourable, that is to say, Republican manner.

Agrarian social theory provided an effective rationale for the dispossession of the Indians but white North Americans remained uneasy about their actions. Indian populations were not dying off as quickly as anticipated, nor were they assimilating by casual association with white society. Prompted by a growing humanitarian movement in Britain and North America, both governments moved to support programs of Indian civilization through assimilation.

The assimilation program provides a unique opportunity to examine the Euro-Canadian and Euro-American self-image and the influence of these images on policy making. At the core of these perceptions, one expert suggests, is the idea of the savage or wild man that derived from early European mythology. Hayden White argues that

the idea of wildness or savagery, along with other ideas such as 'madness' or 'heresy' develops as a means of self-authentication of one's own culture. The concept of 'savagery' serves to confirm the value of its dialectical antithesis — 'civilization', — just as the idea of 'madness' gives meaning to the idea of 'sanity'.(30) But as these ancient myths were neutralized by the process of European exploration their component concepts did not necessarily disappear along with them. Instead certain associated beliefs were internalized and now are understood as simple prejudices. "(T)he dissolution by scientific knowledge of the ignorance which led earlier men to locate their imagined wild men in specific times and places does not necessarily touch the levels of psychic anxiety where such images have their origins."(31)

The notion of the 'wild man' was associated with the idea of wilderness — the desert, forest, jungle and mountains — those parts of the physical world that had not yet been domesticated or marked out for domestication in any significant way. As explorations and colonization gradually brought these wildernesses under control, the idea of the wild man was progressively despatialized and the myths underwent a process of psychic interiorization. The result has been modern cultural anthropology's conceptualization of the idea of wildness as the repressed content of both civilized and primitive humanity. The wildman therefore no longer exists somewhere out there in some faraway place where it can be contained by physical action. Instead he is thought to be lurking within every man, clamoring for release to be denied only at the cost of itself.(32) The idea of the savage derived from this primal myth in European culture and preceded the European's experience in the New World. His presence, therefore, was an-

anticipated. The idea of the savage enabled Europeans to make sense out of America, to reach an accommodation between the new continent and a "venerable abstraction basic to European beliefs."(33)

The Europeans had to work out an accommodation for the two forces of civilization and savagery — a way for them to relate to one another. This was achieved by making the destinies of the 'savage' and the 'civilized' the same. This solution was embodied in the idea of progress. It was through the progress of culture that man realized his essential and absolute moral character, as culture evolved from simple to complex — from savagism, through barbarism, to civilization. The westward expansion of Europeans across the North American continent was the extension of the inevitable progression of civilization's advance. The Indian was a remnant of an earlier savage way of life, a life that Europeans had managed to surpass. To study the Indians was to study the past. To civilize them was to triumph over the past. To kill them was to kill the past. History was the key to understanding the present, and the history of American civilization was conceived of as progressing in three directions — from past to present, from east to west, from lower to higher.(34)

Michael Rogin extends this analysis by explaining the difficulties Americans had in integrating the idea of the Indian into their emerging national identity. Despite the belief in their inevitable demise, Indians remained a threat to white civilization because Whites also mourned the Indians' passing. The Indians were a constant reminder of what Whites had left behind to join the liberal Republic. The Indians were dangerous be-

cause they represented an alternative to liberalism. Indian culture seemed to contradict the general requirements of a liberal society. Liberalism required men to be independent from each other, their culture and their community. Whites could not perceive anything that resembled a work ethic among Indians. They were perceived as violent, improvident, wild and in harmony with nature. Liberal society was based on hard work, private property and the triumph over nature. "At the core of liberalism lay the belief that such human connections to each other and to the land were dreams only, subjects of nostalgia or sentimentalization, but impossible in the existing adult world. Indian societies, suggesting otherwise, posed a severe threat to liberal identity. The only safe Indians were dead, sanitized, or totally dependent upon white benevolence."(35)

The displacement of Indian society by white society represented the inevitable maturation of all human society. But the Indian also became the symbol of what was lost in this inevitable process of growing up. If Indians were children, then the Whites were parents. They not only replaced Indians on the land, but they assumed parental responsibility as the Indians' guardian. All Indian behaviour was understood as either the innocent actions of essentially good children or as the punishable misadventures of bad children. Both for the good of the Indians and the Whites, the Indians' tie to nature had to be broken literally by uprooting them from their land, figuratively by civilizing them, or, if necessary, by killing them. (36)

Since Indians were not liberal men, Whites could not interact with them as fellow free men. Political authority over them therefore was derived from a sense of paternalism. But the child in the Indian had to be destroyed and Rogin suggests that the conflict inherent in the destruction of a child by its parent, parallels the inherent conflict a liberal society feels when eliminating a race of people. Rogin goes on to explain that the result is the failure to achieve a psychological integration and a failure by Whites to accept responsibility for their actions. The result is schizophrenic policy. The evidence is a persistent tendency in both Canada and the United States to formulate Indian policy on two levels, a symbolic level that alleviates white society's internal conflicts, and a substantive level that actually gets the job of economic expansion done. Liberal society, Rogin contends, and the men who carried out its Indian policy neither disintegrated nor maturely accepted responsibility for their actions.(37) Instead, they anticipated the Indians' disappearance, physically removed them or attempted to culturally transform them, all the time carefully maintaining a body of symbolic policy that pretended to respect Indian rights.

Rogin does not suggest that his analysis explains the motivation for White expansion, but that it forms the cultural myth that developed as white society struggled to come to terms with the contradictions inherent in the expansion — the destruction of a race of people which liberal society demanded be protected.(38) He points out that arguments of pragmatists, which depend on simple causes relating to the needs of expansion, do not adequately address the disturbing questions surrounding Indian dispossession

White imagery of Indians as savages satisfied the nagging but unasked questions that left a gap between white idealism and white desires, when Indians got in the way of achieving both. Throughout the history of contact, Europeans have described Native Americans negatively, in terms of the extent to which they are different from Whites and not positively, from within a framework relevant to Native American life and experience. Whether describing physical appearance, character, manners, morality, economy, housing, sexual habits, government or religion, Whites overwhelmingly measured the Indians as a general category against those beliefs, values and institutions they most cherished in themselves at the time.(39) The Indian was a constant reminder to Europeans of what they themselves once were, and might be again if they were not civilized Christians. "The Indian became important in the English mind, not for what he was in and of himself, but rather for what he showed civilized men they were not and must not be."(40) The Europeans concluded that contemporary, modern primitives resembled European society before the rise of Christian civilization. The missing history of human society was therefore open to conjecture, based on the theory that all peoples shared a common origin from which societies could be ranked according to the level of progress achieved.(41) The theory permitted the simultaneous commitment to human equality, based on a belief in monogenesis, on the part of a society whose attitudes and policy reflected the reality of social inequality.

The Europeans established themselves as the reference point from which they described and evaluated the Indians. The extent to which the Indians were good was the extent to which they were similar to the Europeans, or as the Europeans idealized themselves to

be. The extent to which the Indians were bad, was the extent to which they were unlike the Europeans. These were convenient categorizations because they corresponded with the roles aboriginal peoples played in the expansion of European interests in the New World. An Indian who assisted the Europeans was noble, an Indian who hindered European progress was ignoble. Practical matters therefore dictated which image would triumph. The Indians "...were noble as well as ignoble, depending on English needs and circumstances."(42)

In the ignoble savage Europeans perceived a violent, undisciplined, repulsive, untrustworthy and bloodthirsty creature, a servant of the devil, a threat to English interests in the new World and the welfare of mankind in general. "Although never stated explicitly, the language of savagism disclosed that doubts about the Indian's right to membership in the human family lurked in the imagination of many Englishmen. Images of the Indian as beast drew on legends of monsters, wildmen and quasihuman creatures that had long been a part of the European tradition. Thus ignoble savagism incorporated the American native within the bounds of European sensibility and offered Englishmen a plausible explanation for the resistance that Indians presented to colonization "(43) Ignoble savagism explained Indian violence and justified white violence.

Noble savages on the other hand, were an elaboration of the 'golden age' of mankind, a time of innocence and contentment that has never been recovered (44) They are described as friendly, courteous, hospitable, handsome, strong, modest, calm, dignified,

brave. The image derives from the western European intellectual tradition known as primitivism — the belief that other, simpler societies were somehow happier than one's own. The image helped Europeans to recover that portion of the primitive self which civilization had corrupted. In the process of recovering their lost innocence, the Europeans revealed the faults of their own civilization. Any ambivalence Europeans felt over the worth and value of their own society was revealed therefore in their perception of the Indians. That Indians lacked certain or all aspects of white civilization could be viewed as bad or good depending upon the observer's feelings about his own society and the use to which the image was to be put.(45) Metaphors of Indians as children, 'sons of the forest', 'children of nature', correspond to noble savage imagery. Indians as savages were seen as children because of their unrestrained, impulsive lifestyle and because they remained unseparated from nature. Indians were at home in nature and enjoyed a primitive, preconscious, precivilized innocence. Connected to mother earth, they enjoyed, without restriction, the bounty of nature. They lived in a world of plenty, protected and nurtured by nature. Their world was paradise, Eden.(46)

The Indians' bliss could not be sustained against the advance of the superior, more progressive white society. But the Indian was unwilling to give up his paradise. Noble savages therefore could be justifiably destroyed along with ignoble savages. The passing of the ignoble savage was to be applauded as the inevitable result of the advance white society. The passing of the noble savage, however was to be mourned. The noble savage's passing paralleled White society's own lost innocence and forgotten connection to nature.

Europeans brought to America a fully developed world view, devoid of any study of actual 'primitives'. The noble and ignoble savage theoretically embodied all that good men should be and bad men were. What the Indians actually were was a less significant issue.(47) Comparison between Indians and Europeans was the basis of description, and comparison confirmed the fundamental assumptions that prompted the study in the first place.(48) The tendency of Whites to describe Indian life in terms of its lack of white ways rather than from within a framework relevant to Indian culture and experience produced two prevailing stereotypes. The Indian as counter-image to the European self-image meant Indians were, by definition, the antithesis of civilization. The two categories were mutually incompatible. In order for an Indian to become civilized he had to first cease to be an Indian.

This perception led to a second feature of White imagery of native Americans, a curious timelessness in defining the Indian proper.(49) Despite centuries of contact and change in the lives of Native Americans, Whites still picture 'real' Indians as they existed before contact. Whites often perceive Indians as having no continuous history, and the death of whole populations of Indians through disease and warfare verified these initial formulations in the white imagination. Indians who remained alive and who resisted adoption of civilization appeared to accept white vices instead of virtues and so became those 'imperfect creatures' — the degraded reservation Indians. "Living neither as an assimilated White nor an Indian of the classic image, and therefore neither noble nor wildly savage but always scorned, the degraded Indian exhibited the vices of both societies in the opinion of White observers."(50) Change in Indian culture was not perceived as cul-

tural adaptation to an increasingly dominating white society. Change among Indians was perceived as either a progression up or a regression down the line connecting savagery and civilization.

Discovery of North America gave new force to Enlightenment ideas of progress.

America was where mankind was free to improve far beyond the level possible in the constrained European environment.(51) But to the Europeans, the conquest of the wilderness also required conquest of the Indians. As the antithesis of civilization, Indians were living confirmation of the very idea of progress, and as such, their future was fatally compromised.(52) Eighteenth century Scottish writers constructed a sociology of progress which explained both social stability and social growth. The Scots held that man's progress was slow, but certain, and that God's word was slowly being revealed as society evolved. Human institutions and customs developed unilinearly and upwards, towards the better and the more Godly. Contact with primitive peoples, Indians, provided evidence that supported these ideas of progress.(53)

Scottish method and theory permitted a major synthesis of concerns and questions the Americans faced when trying to comprehend the Indian and his own society.(54)

"Eighteenth and nineteenth-century Americans, trying to establish a prosperous and new society out of a revolution, generally found that Scottish common-sense empiricism and..the Scottish idea of progress fitted into their own new-found need for order and stability of growth...As Americans read them, the Scots made rationalism, freedom, and individualism safe, even conservative. They made possible the interpretation of a

revolution as a phase of social evolution. They assured progress and gave it a rationale...(The Scots) had succeeded in making common sense out of Locke, revolution, Christianity, and progress." They also succeeded in making sense out of 'savagism' .(55)

At the root of the idea of universal human progress was the assumption of the transformative power of the environment. The material for man's improvement was provided by nature. "Human will became less important than the unfolding development of nature's self-realization...The same cosmic verities, easily discernible, reassuring, and intrinsically progressive, characterized all of creation. An extension of this principle of inclusion brought the human being into close relationship with his physical surroundings and opened him to environmental influence."(56) Forced to concentrate on mere survival in the harsh North American environment, environmentalism explained why Indians had not progressed and Europeans had. Differences among men were explained by the theory of environmentalism, and not by any inherent difference related to separate creation.

Environmentalism, in conjunction with the Indian's innate potential for improvement produced the theoretical basis for a program of assimilation.(57) Whites believed Indians could be transformed through the manipulation of their physical environment and set out on a program based on these beliefs. At first, Whites were so confident in their own cultural superiority that they believed by simple association with a superior culture, Indians would assimilate all the good qualities Euro-American and Euro-Canadian society had to offer. Indians, it was assumed, would assimilate even faster

with the direct involvement of white missionaries. The policy of reserving specific lands for specific native groups, where the missionaries could come together to undertake the task of transforming individual Indians was also nicely compatible with the broader expansionist goals of Canada and the United States. By concentrating Indian nations onto reserves and reservations, and assigning individual allotments of land to separate Indian families, excess lands could be redistributed to Whites. Communal systems of land tenure were expected to disappear as Indians traded their traditional economic pursuits for those more familiar to white society.(58)

More than anything, what Indian policy makers wanted was the removal of the Indians to make way for the expansion of the white race across the North American continent.

As already discussed, the nature of that expansion was constrained by the Europeans' perception of themselves as a liberal society. As long as there remained sufficient land, the tribes could be removed physically in a westward direction until White demand for land reached the point that required their confinement onto reserves and reservations.

This development coincided with the decline in white dependency on Indian military alliance and the rise of humanitarian groups, generally Christian missionaries who had been calling for assimilation for years. As the military basis for Indian/White relations faded, a humanitarian assimilationist motive filled the policy gap. The drive to assimilate the Indians took on new force and policy shifted from an emphasis on conciliation to a policy that aimed at cultural elimination of the Indian nations.

White imagery of native Americans facilitated the realization of White desires and idealism by creating an accommodating image of the Indian in the white imagination. First of all the imagery of the Indian as fundamentally deficient meant that his elimination was essentially correct, if regrettable. In fact Whites considered their efforts to Christianize the Indians and 'civilize' them according to their own superior self image to be a rather noble endeavour. Furthermore, because they believed the process was inevitable Whites were ultimately relieved of responsibility for their actions.

But the imagery also constrained policy. It prohibited Europeans from perceiving anything worthwhile in Indian culture, except the lamentable loss of the noble savage's primitive innocence. The general opinion that Indians were inferior provided policy makers with a ready explanation for the Indians' failure to accept white assimilation policy. The Indians' failure to assimilate was understood as being the result of his inherent savagism, his violent resistance was the result of his inherently violent nature. The imagery anticipated Indian reluctance to accept white policy. Policy makers only looked to the Indians themselves for explanations for policy failure and not to the misguided policy itself. At the same time, white imagery inhibited policy makers from perceiving Indian culture and culture change as it actually occurred.

The imagery was reinforced by a general perception of the Indians as a vanishing race. This perception was accurate to the extent that disease and warfare took their toll, but the Indian was also disappearing in the white imagination. An inevitable natural law was seen to be in operation. The Indian's destiny was that of the wilderness, he was ex-

pected to recede as civilization advanced. Frederick Jackson Turner's influential interpretation of American history placed the closing of the American frontier in 1890, the year of the last serious military conflict between Indians and the US Cavalry. Turner did not mention this coincidence. He regarded Indians as fixtures of a wilderness that civilized man must conquer and transform. Just like the mountains, forests and plains, the Indian formed a barrier to the march of Anglo-Saxon advance.(59)

As the antithesis to civilization, it was imperative that the Indians disappear. The dual imagery allowed for three possible options for the Indian's demise. As a threat to civilization, the ignoble savage could be justifiably destroyed. The noble savage on the other hand, either assumed the vices of white society and regressed into ignobility, or assumed the virtues of white society and became civilized. Whites perceived any change as one dimensional, either towards or away from a civilized ideal standardized by white society itself.

Policies of assimilation were based on the assumption that Indian culture has no inherent value of its own. The deficient Indian image, that has been in existence since the diaries of Columbus, justifies policies that force the Indians to change. But as long as Whites see the problems of Indians as being the result of the Indian's own character, they will not look at Indian policy itself as the source of the 'Indian problem'. Instead policy makers will look to new ways to transform the Indians into something compatible with their own self-image, seeking new methods for the old goal. The imagery determines the policy problem, justifies the policy and provides a rationale when policy

fails — all at the same time. Because white society has destroyed many of the foundations upon which early Indian societies were built, it is assumed Indians have no choice but to adopt Euro-Canadian or Euro-American values, lifestyles and identities. The white imagination, therefore, finds it difficult to accept any policy premised on some sort of mutually beneficial coexistence that encompasses the notion that Indian can remain Indian.

FOOTNOTES CHAPTER ONE

- (1) Robert F. Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Alfred A. Knopf, 1979), pp. 114.
- (2) Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (New York: Oxford University Press, 1988), Chapter 12.
- (3) *Ibid.*, pp. 17.
- (4) *Ibid.*, pp. 26.
- (5) Thomas Elliot Norton, *Fur Trade in Colonial New York 1686-1776* (Madison: University of Wisconsin Press, 1974), pp. 72.
- (6) Stephen Cornell, *The Return of the Native*, *op.cit.*, pp. 14-17.
- (7) John S. Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change", in Ian Getty and Antione Lussier, *As Long As the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (Vancouver: University of British Columbia Press, 1981), pp. 56.
- (8) Jack Stagg, *Anglo-Indian Relations in North America to 1763 and An Analysis of the Royal Proclamation of 7 October 1763* (Ottawa: Department of Indian Affairs and Northern Development, 1981).
- (9) Jeanne Guillemin, "The Politics of National Integration: A Comparison of United States and Canadian Indian Administrations", *Social Problems* 25:3(1978), pp. 320.
- (10) Robert J. Surtees, *Canadian Indian Policy: A Critical Bibliography* (Bloomington: Indiana University Press, 1982), pp. 22.
- (11) Michael Asch, *Home and Native Land: Aboriginal Rights and the Canadian Constitution* (Toronto: Methuen, 1984), pp. 112. The Royal Proclamation did not apply to the Maritime colonies or Quebec - where the need to obtain land was not as pressing, or the Indians as numerous. See George F.G. Stanley in Ian Getty and Antoine Lussier, *As Long As the Sun Shines and Water Flows*, *op.cit.*, pp. 8. See also John Crossley, *The Making of Canadian Indian Policy to 1946*, Phd dissertation, University of Toronto, 1987.
- (12) From J.E. Chamberlain, *The Harrowing of Eden: White Attitudes Toward North American Natives* (Toronto: Fitzhenry and Whiteside Ltd., 1975), pp. 155.
- (13) Francis Paul Prucha, *American Indian Policy in the Formative Years* (Cambridge: Harvard University Press, 1971), pp. 147.

- (14) Reginald Horsman, *Expansion and American Indian Policy 1783- 1812* (East Lansing: Michigan State University Press, 1967), pp. 171; J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), pp. 163.
- (15) John Crossley, *The Making of Canadian Indian Policy to 1946*, op. cit., pp. 117.
- (16) Ibid., pp. 118.
- (17) Ibid., pp. 112.
- (18) Douglas Sanders, *Aboriginal Self-Government in the United States* (Kingston: Institute of Intergovernmental Relations, 1985), pp. 2.
- (19) John Crossley, *The Making of Canadian Indian Policy to 1946*, op. cit., pp. 117; Francis Paul Prucha, *American Indian Policy in the Formative Years*, op. cit., pp. 45.
- (20) John Crossley, *The Making of Canadian Indian Policy*, op. cit., pp. 118.
- (21) Robert Berkhofer, *The White Man's Indian*, op. cit., pp. 136.
- (22) Roy Harvey Pearce, *The Savages of America: A Study of the Indians and the Idea of Civilization* (Baltimore: Johns Hopkins Press, 1965), pp. 68.
- (23) Stephen Cornell, *The Return of the Native*, op. cit., pp. 37.
- (24) Ibid.
- (25) Sarah Carter, *Lost Harvests: Prairie Indian Reservation Farmers and Government Policy* (Montreal: McGill-Queen's Press, 1990), pp. 18.
- (26) Roy Harvey Pearce, *The Savages of America*, op. cit., pp. 67.
- (27) Sarah Carter, *Lost Harvests: Prairie Indian Reservation Farmers and Government Policy*, op. cit., pp. 16.
- (28) Robert F. Berkhofer, *The White Man's Indian*, op. cit., pp. 136.
- (29) Ibid.
- (30) Hayden White, "The Forms of Wildness: Archaeology of an Idea", in Edward Dudley and Maximillian E. Novak, *The Wild Man Within: An Image in Western Thought from the Renaissance to Romanticism* (Pittsburgh: University of Pittsburgh Press, 1972), pp. 4-5.
- (31) Ibid., pp. 6.
- (32) Ibid., pp. 7.

- (33) Bernard Sheehan, *Savagism and Civility: Indians and Englishmen in Colonial Virginia* (Cambridge: Cambridge University Press, 1980), pp. 3.
- (34) Roy Harvey Pearce, *The Savages of America*, op. cit., pp. 49.
- (35) Michael Rogin, "Liberal Society and the Indian Question", *Politics and Society* 1:3(1971), pp. 270.
- (36) Ibid., pp. 274.
- (37) Ibid , pp. 275.
- (38) Ibid., 276.
- (39) Robert F. Berkhofer, *The White Man's Indian*, op. cit., pp. 29.
- (40) Roy Harvey Pearce, *The Savages of America*, op. cit., pp. 5.
- (41) Robert F. Berkhofer, *The White Man's Indian*, op. cit., pp. 47.
- (42) Thomas D. Matijasic, "Reflected Values: Sixteenth-Century European's View the Indians of North America", *American Indian Culture and Research Journal* 13:1(1989), pp. 32.
- (43) Bernard Sheehan, *Savagism and Civility*, op. cit., pp. 5.
- (44) Brian Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown: Wesleyan University Press, 1974), pp. 18.
- (45) Robert F. Berkhofer, *The White Man's Indian*, op. cit., pp. 28.
- (46) Rogin has analysed the language of Indian policy and has determined that familial language enters almost every discussion of the Indian question. Rogin goes on to elaborate the resemblance of the metaphors of family language in reference to Indians to psychoanalytic descriptions of fantasies of the oral stage of infant bliss. Civilized Whites, on the other hand, represent the more progressive anal stage of societal development. White society's resentment towards Indians is represented as the 'rage of an anal society against its own fantasies of oral bliss'. See Michael Rogin, "Liberal Society and the Indian Question", *Politics and Society* 1:3(1971).
- (47) Roy Harvey Pearce, *The Savages of America*, op. cit., pp. 136.
- (48) Robert F. Berkhofer, *The White Man's Indian*, op. cit., pp. 47.
- (49) Ibid., pp. 28.
- (50) Ibid., pp. 30.

- (51) Reginald Horsman, *Race and Manifest Destiny* (Cambridge: Harvard University Press, 1981), pp. 84.
- (52) Brian Dippie, *The Vanishing American*, op. cit., pp. 29.
- (53) Roy Harvey Pearce, *The Savages of America*, op. cit., pp. 83.
- (54) Ibid., pp. 88-89.
- (55) Ibid., pp. 89.
- (56) Bernard W. Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (Williamsburg: University of North Carolina Press, 1973), pp. 8.
- (57) Brian Dippie, *The Vanishing American*, op. cit., pp. 98
- (58) John Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy", in Ian Getty and Antoine Lussier (Editors), *As Long as the Sun Shines and Water Flows*, op. cit., pp. 45.
- (59) Robert M. Utley, *The Indian Frontier in the American West* (Albuquerque: University of New Mexico Press, 1984), pp. 260.

CHAPTER TWO DISPOSSESSION

In chapter one, I discussed the general constraints on Indian policy making in North America. In this chapter I will look at the process of Indian dispossession, as it was shaped by these constraints.

Indian dispossession could be described as a progressive process. In the 19th century accepted interpretations of International law were reinterpreted and Europeans concluded that, 'ultimate title of the land' rested with the dominant sovereign, subject only to occupancy rights of the aboriginal inhabitants. Through treaties, each government then determined that Indian occupancy rights were valid only on specifically reserved tracts of lands, to which Indian nations were removed, often by extreme force.(1) Once settled upon reserves and reservations, Indian nations were subjected to further erosion of their land base through a systematic attack on Indian land tenure systems with policies that forced individualized land ownership on Indian communities.

Aboriginal land rights, as they currently stand under Canadian and American law, evolved as a by-product of European competitions for territorial control in North America. As discussed in chapter one, this was the case with recognitions made in the *Royal Proclamation of 1763*, and a century later aboriginal land rights were still being determined in the context of intra-European land disputes, this time between the federal governments and state/provincial governments.

In the years following the discovery of the Americas in the 16th and 17th centuries, Europeans devised a means of managing their competing interests in the New World. According to the principles they created, an act of discovery gave title to the government by whose authority the discovery was made. This title was asserted against other Europeans not Indian nations. The Indians in North America were deemed to be a 'discovered' people and the assumptions underlying the use of the term had important implications for aboriginal peoples as the American and Canadian legal systems subsequently evolved.(2) As a 'discovered' people, the Indians were not 'discoverers' themselves and therefore possessed no prior title based on a continuous and peaceful display of sovereignty. They were legally incapable of defeating the emerging claim advanced by European discoverers by any means other than warfare. Under the law, legitimate competition for land in North America was to be between Europeans, and not between Europeans and Indians. Lacking the political and territorial elements central to the European concept of sovereignty, the Indians were not considered contenders in the fight for the land they had occupied since time immemorial.(3)

More specific determinations of what constituted aboriginal title and the political rights that flow from that title began in the United States in the early 19th century, when Chief Justice John Marshall of the American Supreme Court was asked to inquire, indirectly by way of a land dispute between two white men, into the theory of aboriginal rights. The effects of his decisions on Indian policy in the United States continue to this day. The case, the first of three known collectively as the Marshall trilogy, arose from a dispute over the ownership of land sold directly to Johnson, a white man, by the Illinois In-

dians. The land was subsequently surrendered by treaty to the American government and resold to another white man, McIntosh. In this case and subsequent cases which will be discussed in the following chapter, Marshall's purpose went far beyond the settlement of a dispute over ownership of a single piece of land.

In *Johnson v. McIntosh*, Marshall established the central legal characteristics of aboriginal title in North America — a limited right of alienability on the part of the Indian nations and a vulnerability to the unilateral extinguishment of their land rights. The real question that was asked in Johnson, and in the Canadian counterpart, *St. Catherines Milling and Lumber Company v. The Queen* (1889), was the settlement of competing European claims for Indian land. Marshall made the initial determination in *Johnson*, and Lord Watson's description of Indian title in *St. Catherines Milling* is closely analogous. Both expressly relied on the *Royal Proclamation of 1763*.(4)

In both cases, native control over the land was challenged indirectly by two white defendants, according to European notions of individual property rights. In overcrowded and resource finite Europe, ideas of property rights evolved as a means to regulate resource acquisition. The amount of skill and labour expended in making land habitable and productive was an important indicator of the existence of property rights. But the abundance of resources in North America confused the application of individual property rights here. Instead of using the concepts of scarcity and labour as guides with which to better understand native property relations, skill and labour were used as tests to determine whether the Indians held any concept of property at all.(5)

Marshall established the principle that an exclusive relationship existed between discoverer and discovered and that that relationship gave the former, in this case the American government and in the *St. Catherine's Milling* case the Canadian government, the exclusive right to acquire lands from the later. 'Absolute ultimate title' was deemed to rest with the central governments and private citizens and state/provincial governments were to respect this right. Cases on both sides of the border determined that ultimate title was vested in Europeans, subject only to the Indians' right to occupancy of the land.(6)

Indian title was not established as a basis for a separate or distinct system of land tenure. On one hand, the judgements guaranteed aboriginal right of occupancy, but this right existed only until the sovereigns properly conveyed title to themselves. The concept of aboriginal title, while recognized to exist, was also inherently limited by an incomplete power of alienation, a limitation that has formed the legal foundation for the progressive diminution of aboriginal rights under American and Canadian law. Marshall defined for the Indians "...little more than an aboriginal right to choose whether or not to participate in the extinguishment of their 'rights.' Participation involved acting out an exclusive relationship with a 'discoverer' in accordance with a principle devised between discoverers. Non-participation meant exposure to the threat of forced extinguishment in accordance with the shifting political standards of a 'conqueror.'"(7)

Marshall's rationale contains two lines of reasoning. It confers land rights on aboriginal peoples and could be interpreted as a guarantee that they were to retain title, unmolested until a proper conveyance of title to the federal government took place. A second approach could indicate that no such guarantee existed. Because Marshall's judgements and policy practices implied an inherently restricted power of Indian tribes to alienate their lands, Indians were vulnerable to unilateral extinguishment of land rights. Marshall noted that the 'discovery' principle gave an exclusive right to extinguish the Indian title of occupancy either by purchase or conquest; and gave also a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise.(8) Similar language was used in *St. Catherine's Milling* — which also referred to the Royal Proclamation. This decision held that Indians enjoyed "a personal and usufructuary right, dependent upon the good will of the sovereign."(9)

Marshall justified his theory on the basis of the perceived nature of Indians as warlike and savage. He reasoned that absolute respect for Indian property rights would have required the country remain an 'inhospitable wilderness.' The Indians' character therefore necessitated and justified a restricted Indian title. Aboriginal title existed but Whites, self appointed to judge such matters, unilaterally determined the parameters within which Indian rights would be respected.(10)

It follows then that Marshall also established the notion that Indian nations were subservient to the federal government. Indian interest in the land was so vulnerable to governmental interference that the concept of aboriginal title has been described as a

'benign fiction', or a 'myth', that often gave way to the political realities of the times.

These cases established a power relationship that implied federal responsibility over Indian affairs and the notion that the basis of the relationship between the Indian nations and the white governments was that of guardian and ward.(11) By containing the entire question of aboriginal land rights within the context of their own land acquisition policy, Europeans were able to liberate Indians of their lands in a manner that by their own self-serving standards was honourable. Indian rights were not respected in an absolute sense, only in relation to the legal standards Whites set for themselves.

Having provided themselves with solid legal title to the land, the white governments were free to implement a more rigorous lands acquisition policy. All policies, beginning with the *Royal Proclamation in 1763* and the Trade and Intercourse Acts in the United States in the late 18th century, were intended as a means of keeping the two races apart.(12) But the policies failed to safeguard Indian interests, and on both sides of the border White demand for Indian lands intensified as European immigration increased at a steady rate. It was believed that only by relocating Indians beyond contact with Whites could the slow process of education, civilization and Christianization take place, under the direct tutelage of protestant missionaries.

The Americans were less effective than the Canadians at protecting Indians in the process. Even the American Supreme Court seemed powerless against the expansionist force, as the American government found it unwise to stand up militarily to covetous state governments. A more specific designation of 'Indian Country' was necessary. The

concept of 'Indian Country' was first introduced in the Royal Proclamation. It referred to a vast area of land which had yet to be ceded to the government, where Indians would reside and begin the slow process of assimilation. Influential humanitarian groups fully supported the idea of separating the Indians, as they believed it would provide the necessary time and environment for the Christianization and civilization process.(13)

Since the early years of the Republic, the Americans had been busy trying to convince eastern Indian nations to move westward. The lands west of the Mississippi River, known as the 'Great American Desert', were considered uninhabitable by enough Whites, that the removal program received sufficient public and congressional support.(14) However, fewer Whites were willing to go so far as to authorize a permanent Indian state or territory. After the American acquisition of the Louisiana territory in 1802, a massive relocation of eastern tribes was considered a viable option. Removals by treaty had begun in the United States by 1817 and until the 1850's treaty making in the United States was primarily concerned with moving eastern tribes west.(15) But it is the forced removal of the southeastern tribes that best illustrates the policy inputs that came together for the removal program.

In 1830 the United States Congress passed the Removal Bill, which authorized the forced relocation of any tribe that refused to sign removal treaties or go west willingly. The move was in response to a situation that had been brewing in the state of Georgia since 1802, when the state ceded its Western land claims in return for a federal govern-

ment promise to extinguish Indian title to lands within the state. Accusing the federal government of failing to keep up the bargain, the state took matters into its own hands. The Georgians specifically targeted the Cherokees, who, ironically, by white society's own standards could be considered already 'civilized'.

The Cherokee Indians had adopted a written form of the Cherokee language, the bulk of the Cherokee population was literate and a weekly Cherokee language newspaper, the Cherokee Phoenix, was in circulation by the late 1820's. They were agriculturalists, many of them fencing their plantations, making it their private property, according to accepted definitions of natural law.(16) But the action that most concerned the Georgians and prompted legislative retaliation was the Cherokees' efforts to retain their lands by adopting a written constitution in 1827, modeled on the American constitution, which asserted they were a sovereign and independent nation with complete jurisdiction over their own territory. Motivated by the discovery of gold in Cherokee territory and by the expansion of the cotton kingdom, Georgians were determined to have Cherokee land.(17) The state government tried to force the Cherokees west by unilaterally annulling Cherokee law, and extending state law over them in their own territory. Cherokees were prohibited from mining gold on their own land and from convening their own councils. Finally, Cherokee land was surveyed and prepared for distribution to Whites.

'Civilization' had not automatically led to incorporation, as the Cherokees proved, nor did those Indians who accepted some aspects of white culture necessarily acquire all of the white man's 'virtues.' The Cherokees proved that it could not be left to the Indians to determine how they would adapt to White domination.(18) Despite Marshall's affirmation of federal jurisdiction over Indians and Indian lands in the *Johnson* case, and a Cherokee victory in *Worcester v. Georgia* in 1832 in which state jurisdiction over Indian nations was denied, the state got its way.(19) The election of Andrew Jackson in 1829 had secured the Cherokees' fate. Unlike earlier presidents, Jackson had openly disparaged the notion of treating Indians as nations. He recognized this policy had grown out of weakness and special circumstances and that it was not based on any rights clearly acknowledged by the American government to be possessed by the Indians.(20) Unfortunately for the Cherokees the executive branch of the government was not obligated, or interpreted no obligation, to uphold Marshall's rulings.(21)

When it became obvious that the Supreme Court decision in *Worcester* would not be respected, a small group of Cherokees began to negotiate a treaty. It was ratified by the U.S. Senate despite a majority 15,000 signature petition protesting it.(22) In the summer of 1838, federal troops imprisoned over 17,000 Cherokees in preparation for the forced westward trek.(23) Over 4,000 died in the forced relocation, generally due to the failure of the government to ensure safe conduct at the hands of ruthless and incompetent contractors.(24) The Georgia militia was dispatched to oversee federal troops. Eleven stockades served as concentration camps. Reluctant Cherokees suffered floggings and summary executions. One observer remarked: "During the herding Whites came in pell

mell to loot or bargain for the household furnishings and livestock the Cherokee must leave behind...Some soldiers...saw no reason to interfere when a Cherokee protested that he was being swindled. It wasn't cheating when you cheated a Cherokee, who had no right to be where he was, had gotten what he had by holding back Georgia from her lawful rights, and had disregarded repeated orders to get ready to move."(25) Through the trauma of removal, American intellectual ideals and social theory confronted the hard economic reality of frontier priorities. The Georgians, among others, did not want a government policy that permitted Indians to remain on their lands. They wanted Indians expelled, not transformed.(26)

Francis Prucha reminds us that there were few alternatives to forced removal, none of which were feasible at the time.(27) Extermination of the Indians was morally impossible, and too expensive. Indians did not appear to be cooperating with a program of rapid assimilation, and those who did adapt quickly did not necessarily do so in an appropriate manner. A program of protection of Indians on their lands was not possible because the federal government was not about to take up arms against its own state governments — at least not for the sake of the Indians. Since the government could neither ensure adequate protection nor quick assimilation, it seemed reasonable and necessary to move the Indians to some area out of the way of federal-state jurisdictional disputes and white encroachment. Once removed, the government would be free to exercise sufficient control so as to ensure the Indians' safety and secure their interests. As the government conceived this responsibility however, it was through a program of Christian education and an outright attack on Indian tribalism.

Despite the ready rationales and apparent absence of alternatives, the forced removal program still left Americans uneasy about their conduct. The new American Republic had been founded upon principles of respect for the rights of man and this was fortified with a built-in system of checks on government power. But in the case of the Indian removals, the application of a carefully instituted process of democracy had resulted in a flagrant injustice.(28) Americans had to learn to come to terms with the fact that America did not begin in primal innocence. "America began with acts of force and fraud."(29) Americans needed a way to reconcile the elimination and forced relocation of the Indians with their liberal self-image. More than anything, they needed a justification for their actions towards the Indians. This, as discussed in the preceding chapter, was provided by ignoble savage imagery and ideas of progress. "The right to dispossess the Indians to which the Jackson party appealed was almost a part of the American atmosphere, so universally had it been accepted and promoted — now openly and with apostolic vigor, now subconsciously under the guise of protecting and preserving the Indians. It was a question of civilization versus the savage state, and no one was ready to preach that savagism should be perpetuated."(30)

The Americans convinced themselves that they had offered the Indians a reasonable choice: move West and participate in a slow and benevolent program of civilization or come under Georgian law and have civilization forced upon them. The Removal Bill of 1830 made no mention of coercion to force Indians to relocate. On the surface it seemed a humane and benevolent policy, providing for a 'permanent' guarantee of possession of the new lands, promises of compensation for improvements left behind and aid and

assistance for the emigrants. But force was inevitable. Removal served the interests of all, except the interests of the Indians. It liberated eastern lands for white expansion and it satisfied the humanitarian concern for the Indians' welfare. White imagery not only justified removal but made it imperative as well. Between 1820 and 1844, 100,000 Indians were uprooted and transported west of the Mississippi River. Almost 40,000 died in the process. Half of them were removed after passage of the Removal Bill of 1830 authorized their forced relocation.(31) Under the removal program over 100 million acres of Indian homeland were yielded in return for 32 million acres of mostly western desert.(32)

Through the 1840's and 1850's white settlers moved across the plains in a steady stream on their way to Santa Fe, California and Oregon, destroying the sanctity of Indian Country and its viability as a permanent Indian homeland.(33) A rationalization similar to that used for removal was applied a few years later as the worst of the Indian wars began. Carefully rationalizing their 'just' war against the western tribes, President Grant established a 'Peace' Commission in 1867 that was sent out among the western tribes with the objective of inducing them to settle on reservations. The American Peace Policy included all of the major ideas later applied to Indian affairs: the end of the treaty system, a focus on individual Indians rather than the tribe or band, the placement of all tribes onto reservations, and asserted efforts to assimilate the Indians prior to granting them citizenship.(34) The policy was introduced as a way for the Americans to deal with Indian resistance to the reservation policy while maintaining their liberal integrity.

Inherent in the Peace Policy was another 'choice' for Indian nations — reservations or war. If war occurred, it was the Indians' preference, and Whites were relieved of the burden of responsibility for their own belligerence. The same theme was inherent in the treaty policy, the removal policy and the reservation policy. Indians could participate in the extinguishment of their rights, or they could have their rights taken away from them by force. Extermination may not have been the official policy but in actuality refusal to accept official policy did mean extermination. In Grant's words: "All Indians disposed to peace will find the new policy a peace policy...those who do not accept this policy will find the new administration ready for a sharp and severe war policy."(35)

The military conquest of the western tribes in the United States was a long drawn out process, but it was essentially complete by 1870, the year the Americans stopped treaty making.(36) A succession of Indian wars throughout the 1860's and early 1870's embarrassed the young nation eager to proclaim its material and moral progress as it neared its first centennial — interrupted by Sioux and Cheyenne war cries along the Little Big Horn. "In the southwestern desert, scattered bands of Apaches resisted well into the 1880's, but by 1891, with Wounded Knee serving as a pathetic closing act, America's Indian wars were over."(37) The buffalo were almost extinct and completion of the transcontinental railroad in 1869 had made possible the rapid deployment of troops, leaving the Indians with no alternative but to accept reservations.(38) To the undiscerning liberal American, the movement of the Indians onto reservations was the fulfillment of an inevitable historical process, a process in which the Americans did everything they could to offer the Indians not only a choice but an attractive alternative.

Canadians have a different historical relationship to the Indian nations. The Indians' reluctant acceptance of reserve life was less violent in Canada, where a policy of forced removal was not seriously considered. Compared to the United States, relations between Canadians and Indians was more cooperative up to and throughout most of the 19th century. The American war of independence was fought against Indians allied with the British.(39) But the general policy of moving Indians out of the way of White advance was as predominant in Canada as in the United States. Canadian native policy is often held up as superior to American policy because Canadians did not engage in major wars against the Indians. By the time massive immigration extended into western Canada, Canadian authorities had had plenty of time to observe the violent situation in the American West and worked to avoid similar events here. There were no major Indian wars in Canada because they were not necessary. It was not the idea of removing the Indians that was unique to the Americans, but the circumstances that led to the policy of forced removals. The Americans likely would have preferred a more peaceful transition but the demand for land was too great. Compelled by an expanding cotton empire, a greater Indian/white population density and the presence of a group of Indians better equipped to use America's own institutions to their own advantage, the Americans were forced to go to policy extremes that the Canadians were not. Canada's expansion westward was more gradual, allowing time for the formulation of treaties in advance of settlement.(40)

In the years between the American revolutionary war and the War of 1812, the British had used the Indian nations as a buffer zone between themselves and the Americans.(41) After the war, with the influx of loyalist settlers and European immigration, the end of the Montreal-based fur trade in 1821, and a general improvement in relations between the British and the Americans, the emphasis of British Indian policy changed from conciliation to removal just as it had in the United States.(42) In 1836 Sir Francis Bond Head obtained surrenders from Indian nations on Manitoulin Island and proposed that Indians from Southern Ontario be removed there. But lacking the same economic impetus as the Americans, the Canadian government never followed through on Bond Head's plan.(43) However, the rationale for the proposed policy was similar. Certain that Indians were vanishing anyway, Head argued for forced removals to the 'unattractive islands' on the basis of the superiority of agriculturalists to hunters.(44)

Canada's westward acquisition process was carried out "...like a gargantuan real-estate transaction."(45) Strict adherence to the Royal Proclamation policy however had more to do with fiscal restraint than a commitment to Indian land rights. The American laissez-faire approach was obviously more costly. There, small bands of settlers were allowed to invade Indian territory, the Indians would inevitably defend their land, precipitating a military response. Besides being destructive of life and hindering development, such a policy was beyond Canada's financial means. In the 1870's, when the United States was spending \$20 million a year on Indian wars, Canada's entire Indian Affairs budget was only \$19 million.(46) The young Canadian government realized it could not finance a railway across the prairies if all its resources were being spent on battling the Indians. In

1877 Prime Minister Mackenzie smugly defended Canada's 'benevolent' Indian policy:

"(t)he expenditure incurred by the Indian Treaties is undoubtedly large, but the Canadian policy is nevertheless the cheapest, ultimately, if we compare the results with those of other countries; and it is above all a humane, just and Christian policy."(47)

Above all, the pace of westward expansion in Canada was slower than in the United States. Canada signed its last formal treaty in the Yukon in 1923, but contemporary agreements such as the James Bay agreement (1978) and agreements currently under negotiation in the Northwest territories are a continuation of the same process begun over two centuries ago. Even after treaties were signed, the advance of white settlement was slower, which allowed time for the Indians to continue their usual economies for a longer period of time, before settlement interfered with these pursuits.

Once settled onto reserves in Canada and reservations in the United States, the onslaught continued; this time in an even more insidious form. Indian life on the reserves and reservations was dominated by white society's efforts to assimilate them. The military potency of the Indian nations had declined through the 19th century and 'Indian Country' had been shattered into several hundred little 'Indian Countries' scattered throughout the continent.(48) As Indians began to play a less direct role in the realization of White expansionist interests in North America, the growing humanitarian movement found it easier to gain influence and impose their priorities on Indian policy.(49) John Crossley puts the policy redefinition that occurred at this time into an illuminating historical context. He points out that the Spanish and French had each pur-

sued an assimilationist strategy at the beginning of their expansions in North America. Colonization and civilization therefore were pursued at the same time, and civilization was subordinated to the more pressing goal. The British on the other hand, did not originally set out to change the Indians. It wasn't until much later that the so called savage nature of the Indians came to be viewed as an impediment to white expansion, and civilization of the Indians then became a matter of practical importance.(50)

Assimilation policy developed from a congruence of sentiment and self interest. Convinced of their own cultural superiority, and motivated by a growing sense of humanitarian guilt, white society assumed responsibility for the 'inferior' Indians, at about the same time policy makers were searching for a way to reduce expenditures on Indian administration.(51) Assimilation as a theory was expressed as a program of directed culture change, based on ideas of progress and environmentalism. It was applied deliberately and systematically in an effort to change Indian culture.

The assimilation program was encouraged in the 19th century by an emerging school of cultural anthropologists, who were applying social scientific theories of evolutionism, comparative methods of analysis and conjectural history to the study of human institutions and customs of civilization. Anthropologists such as American Lewis Henry Morgan argued for the utilization of more and better authenticated data and applied them to the familiar assumptions of the uniformity of human mental characteristics and abilities. This social scientific approach allowed for the comparison of different peoples regardless of geography or history. Using European standards and the idea of progress

to measure the direction and amount of human development, the similarity of stages in the course of cultural evolution of all peoples could be identified. The same old cultural assumptions reappeared in their new, scientifically verified guise of cultural and social evolution. "In short, he and his fellow anthropologists of the period took over the 18th century conceptual or logical relationships of a classificatory scheme embracing all coexisting and ancient peoples and made it into the sequential relationship of a time series through analogy to the transformation of organic growth."(52) Succumbing to the traditional imagery of the Indians as a dying race, Morgan argued for the necessity to salvage anthropological information on native Americans before it was too late. Pleading with his fellow white anthropologists, Morgan asked them to direct themselves to this important task, "...because the American continent presented the last and best opportunity to study on such a large scale peoples from the ethnical period of barbarism."(53) Reserves and reservations were where this process of cultural transformation was expected to take place. They were considered by white policy makers to be 'training grounds', places where the Indians' environment could be controlled by white missionaries and other instructors in white culture.(54) Reserves and reservations, the remains of Indian country, therefore, were intended to be only temporary institutions.

The key to Indian assimilation was detribalization and central to detribalization was the destruction of Indian systems of land tenure. To Canadian and American policy makers Indians had to be detribalized before they could be civilized, and they had to be civilized before they could join white society, and be trusted to assume the same political responsibilities as Whites. The Indians therefore had to stop perceiving of themselves as

Indians before this process could begin. In their effort to alter the Indians' self-image, the Canadians and Americans each sought to atomize Indian society. Indians were dealt with as individuals, and not as nations. Communal farming was discouraged and the family farm encouraged. "Tribal organization was clearly recognized as a defining feature of native identity; destroy it, the argument ran, and you would destroy the coherence of the native way of life and reduce native recidivism." (55)

The Canadians chose a characteristically cautious program for the individualization of Indian lands. Indians in Canada were to be civilized gradually until they had attained a level of civilization sufficient to win them full acceptance into Canadian society. It was a complicated process by which Indians would be seduced away from their traditional ways and come to accept the habits of civilized life, including all the political responsibilities and obligations that went with it (56) Known as 'enfranchisement', The *Gradual Civilization Act* of 1857 stipulated that by removing all legal distinctions between Indians and other Canadians, Indians would be slowly integrated into Canadian society. The legislation first defined who was an Indian, and then specified the procedure for removal of that status. The Act established that the rights and privileges of Canadian citizenship would not be bestowed upon Indian individuals until they could prove they could read and write either the French or English language, were free of debt, and of good moral character. If such criteria were met, the Indian and his family were then eligible to receive an allotment of 20 hectares of reserve land, were placed on one year of probation, and then as a final reward, were given the franchise. (57)

The *Gradual Civilization Act* was premised on the assumption that complete civilization of the Indians could be achieved only by inspiring a desire among Indians for private property.(58) To qualify for enfranchisement, the Indian had to show evidence of having abandoned the Indian way of life and have demonstrated a capacity to make his or her own living independent of the band.(59) In this process land was used differently in Canada than in the United States. In Canada land was the reward the Indian received for acquiring civilization. An 1869 enactment and the 1876 *Indian Act*, extended the assault on communal land holding by encouraging individual Indians to acquire 'location tickets' for their share of reserve lands. Under this program, an Indian who demonstrated that he lived as a Euro-Canadian would receive a 'ticket' for a plot of reserve land. After three years probation, he and his family would be enfranchised, and receive absolute title to the land.(60) As individual Indians were enfranchised, the logic ran, and took a part of the reserve with them when they left Indian society, the reserves would eventually disappear.

In addition, legislation against Indian cultural practices such as the potlatch and prairie dances were carried out in the name of protecting the Indians and of molding them to Euro-Canadian ways. A ban on polygamy was an attempt to protect Euro-Canadian notions of the family unit. Imposition of tracing of descent and identity through the father was based on the patrilineal assumptions of a patriarchal European society "All these attempts at cultural remodeling also illustrated how the first step on the path of protection seemed always to lead to depths of coercion."(61)

The American approach to individualization of Indian land was far less subtle. It was more severe, often brutal and compulsory. The 1887 *General Allotment Act*, or *Dawes Act*, authorized the American president to allot lands, when he or his agents deemed it appropriate. Indian reservations were divided into 160 acre allotments, one assigned to each family. Remaining, or 'surplus' lands were sold to white settlers. At first the lands were protected in a 25 year trust, but later the law was amended to allow Indians to lease or sell their allotments to non-Indians, upon receipt of permission from the office of Indian affairs.⁽⁶²⁾ Like the Removal policy, allotment appealed to both the humanitarians in the east and the 'overt self-interest' of land hungry westerners. The program simultaneously encouraged the civilizing process, protected Indian title on an individual basis and freed up Indian land the westerners coveted. "The homesteader would get the land, and the Indian the benefit of close association with an enlightened white population of trustworthy farmers."⁽⁶³⁾

In 1887 approximately 140 acres remained in Indian ownership. Over the next 45 years more than 90 million acres were transferred to Whites. The principal mechanism for reducing Indian land holdings were provisions permitting purchase of so called surplus lands. The lands that were first to go were most often the most valuable, agricultural lands in river valleys, rich grasslands on high plains, virgin forests in the Great Lakes region. What remained was desert or semidesert.⁽⁶⁴⁾ By 1909 two thirds of allotted lands had come under the ownership of Whites. The trusteeship period had ended and heirship divisions had left many of the plots too small for useful, individualized cultivation. "If the great expectation of the Allotment Act had been the complete separation of

Indians from the lands, then it came close to achieving that purpose. Throughout all the discussions, stress had been placed on the educational value of individualized ownership and the corollary value that would result from breaking up the solidarity of tribal existence. The Indians did not become farmers; neither did they assume the habits of White people. Tribal existence became more difficult, but it persisted "(65)

In Canada farm instructors were sent to reserves to teach by example and instruction. Indians recognized the government's push for individualized lots as part of an extensive strategy to extinguish Indian identity as well as the reserves. The Department of Indian Affairs insisted on a 'peasant farming' policy, which discouraged large scale communal farming, along with Indian initiative at the same time.(66) Conveniently, policy makers had a ready excuse for the failure of government agricultural programs in the prevailing notions about the nature of the Indians. Setbacks in Indian agriculture were attributed to the Indians' deficient character and traditions which, it was claimed, made the Indians unsuited to agriculture.(67) Canadian policy is often described as more protective of Indian lands than American policy, but it should be noted that that protection was not of Indian lands per se, but of Indians in the process of their dispossession.(68)

J. E. Chamberlain points out that the Canadians were in a better position to be more flexible in providing for the process of native transformation before individualization of land than the Americans. Canada had a comparably less complicated political structure, and, at the time the policy was formulated, was enjoying a fairly smooth transfer of

responsibility for Indian affairs from Britain. The United States, on the other hand, was in the midst of a civil war and did not introduce the allotment legislation for another two decades, when land was in even greater demand.(69) The Canadians had more options available to them, more time, more space and a more favourable political context within which to pursue a dual strategy of continuing to gradually separate the Indians from their lands and subject them to a controlled assimilation program. The Americans followed the more expeditious route of compulsory allotment of land in severalty. Still, both were pursuing programs of tribal destruction, the major difference was that the Canadians had the time, space and political flexibility to accept a gradual process.

The American decision to end treaty making in 1871 symbolized the end of the frontier, and the beginning of that government's objective of detribalizing native communities.

The reformers had criticized treaty making because it reinforced tribal identity and argued it should be stopped in favour of individualization of land titles.(70) The treaty process, by recognizing tribal autonomy, directly contradicted the goals of assimilation.

In 1871 the House, intent on initiating assimilation and jealous of Senate control of the treaty process, passed a law specifying that "hereafter, no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty."

The same law recognized that "...no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to 1871, shall be hereby invalidated or impaired."(71) Relations between government and the Indian nations were still to be regulated by 'agreements.'

Treaty making remained the basis of Indian policy in Canada. The practice was maintained because the colonization process was not as far along in Canada as it was in the United States. The Canadian frontier was yet to be conquered. In fact the Canadians reaffirmed their commitment to treaty making in 1870.(72) This was the decade of massive westward expansion, during which the Canadian government signed seven treaties with tribes in present day Manitoba, Saskatchewan, Alberta and southern regions of the Northwest Territories. Treaty making provided a means for the Canadian government to maintain control over the western tribes. The Canadians saw that the American system of placing whole tribes onto large reservations had made them too powerful, and forced Indian tribes to accept instead a scattered reserve system which effectively diminished their offensive strength.(73) Canada also maintained the treaty system as a means of affirming western Canadian title against competing claims of the United States.(74)

Whites rationalized the destruction of Indian systems of land tenure with an intricate set of beliefs that surrounded the concept of private property. Land in North America, especially the United States, according to Locke's theory of value, was perceived of as having almost no value because the Indians did not cultivate it.(75) The Indians did not cultivate the land, it was assumed, because they were still at a barbaric stage of social development. By allotting the lands to the Indians, the Whites were helping them along the road to civilization. As wandering savages, Indians had no sense of property, and therefore no laws or government and, it followed, no rights which a properly integrated people or organized government could claim.(76) White North Americans therefore,

had a duty to create rights for the savages. The Whites were to tutor the Indians in acquiring a sense of private property, the absence of which was the chief cause of their barbarism. If the Indians were to survive, it would be as civilized men, not as savages. Since 'savagism' and Indianness were inseparable, 'Indians' were to disappear as they became civilized.

The Indians' hunting life was the evidence of their 'savagism'. According to the Lockean principles that guided the development of American society, man achieved his highest humanity by taking something out of nature and converting it with his own labor into a part of himself, into his private property. Private property was his means to social maturity. Giving him stability, self respect and privacy, private property formed the basis for civilized society itself. By comparison, the Indians' savage hunting society seemed loose, immature, disordered and full of the false freedom of doing as one pleases. The theory made it possible to see how Indians could become truly rational animals, because all that an Indian would need to be on his way to civilization was, in the words of the American Secretary of War in 1789, "a love for exclusive property."⁽⁷⁷⁾ The Indians' precarious existence was seen not as being a result of constant warring with the Whites, but as an inherent feature of the savage life. Indians were weak because they were not farmers and all plans for civilizing Indians assumed they needed to be farmers. Indians were constantly advised to accept the white man's farming ways as a means to improve themselves. If the Indians failed to take the white man's advice it was due to their unredeemable savagism.

The Indians' lack of progress toward white civilization therefore was believed to be an effect of the communal nature of Indian society. It was considered foolish to attempt to encourage the Indians to adopt any system of government compatible with European society as long as they retained the custom of communal land holding.(78) Common property was a sign of the Indians' tie to nature, private property inspired individuals to appropriate the fruits of one's labours. In the white view, Indians lived in an undifferentiated relation to nature. Appropriating a part of nature to oneself through work underlay ideas of ownership and control of the self. Lacking private property Indians lacked a self they could call their own. They were in a state of dependence on nature, and therefore, were not self-sufficient.(79) To be civilized, the Indians had to be rescued from their communism. By teaching the Indians to appreciate private property, white society was also preparing them for political incorporation, as politically responsible private citizens.

Agriculture was seen to be the solution to the Indian problem. It was a means to a higher end and it required the division of tribal lands into individual holdings. The belief that individualized property ownership and civilization went hand in hand was expressed in the United States in the *Dawes Allotment Act of 1887* and in Canada in the Indian Enfranchisement Acts of the 1860's and 1870's. Justified by the idea of offering the Indians advancement and protection, allotment allowed Whites to enjoy their idealism and take Indian land at the same time.

Through to the end of the 19th century and well into the 20th century this theme was worked over by white North Americans who, concerned for the Indians' condition, tried to make sense of their feeling of pity and censure. Fortunately for them, sympathetic whites could take comfort in theories of the inherent malleability of human nature.(80)

FOOTNOTES CHAPTER TWO

- (1) In Canada the term used to refer to Indian reserved land is generally 'reserve'; in the United States 'reservation' is the preferred terminology.
- (2) Lynn Niedermeier, "Aboriginal Rights: Definition or Denial?", *Queens Law Journal* 6:2(1981) pp. 570. See also L.C. Green and Olive P. Dickason, *The Law of Nations and the New World* (Edmonton: University of Alberta Press, 1988).
- (3) Lynn Niedermeier, "Aboriginal Rights: Definition or Denial?", *op. cit.*, 571.
- (4) Neil H. Mickenberg, "Aboriginal Rights in Canada and the United States", *Osgood Hall Law Journal* 9(1971), pp. 145.
- (5) Niedermeier, *op. cit.*, pp. 573.
- (6) *Ibid.*
- (7) *Ibid.*, pp. 576.
- (8) *Ibid.*, pp. 574.
- (9) *Ibid.*, pp. 577.
- (10) Neil H. Mickenberg, "Aboriginal Rights in Canada and the United States", *op. cit.*, pp. 124.
- (11) Vine Deloria Jr. and Clifford M. Lytle, *American Indians, American Justice* (Austin: University of Texas Press, 1983), pp. 26-27.
- (12) Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians 1880-1920* (Lincoln: University of Nebraska Press, 1984), pp. 2.
- (13) Francis Paul Prucha, *American Indian Policy in the Formative Years* (Cambridge: Harvard University Press, 1962), pp. 225.
- (14) Wilcomb Washburn, *The Indian in America* (New York: Harper Row, Publishers, 1975), pp. 170; Francis Paul Prucha, *The Great Father: United States Government and the American Indians*, Vol. II (Lincoln: University of Nebraska Press, 1984), chapter 29.
- (15) Douglas Sanders, *Aboriginal Self-Government in the United States* (Kingston: Institute of Intergovernmental Relations, 1985), pp. 10
- (16) Mary E. Young "Indian Removal and Land Allotment. The Civilized Tribes and Jacksonian Justice", in Roger L. Nichols, *The American Indian Past and Present* (New York: John Wiley & Sons, 1971), pp. 110

- (17) Between 1791 and 1803 cotton exports jumped from 200,000 to 4 million pounds annually and continued to rise up to the 1830's. See D'Arcy McNickle, *Native American Tribalism: Indian Survivals and Renewals* (New York: Oxford University Press, 1973), pp. 69; and Christine Bolt, *American Indian Policy and American Reform* (London: Allen and Unwin, 1987), pp. 57.
- (18) Theda Perdue, "The Trail of Tears: Removal of the Southern Indians", in Philip Weeks (Editor), *The American Indian Experience: A Profile 1524 to the Present* (Arlington Heights: Forum Press, Inc., 1988), pp. 109.
- (19) In Worcester v. Georgia Chief Justice Marshall reaffirmed the subordinate status of tribal governments vis-a-vis the federal government, but affirmed tribal sovereignty vis-a-vis state governments. See Jessie Green and Susan Work, "Comment: Indian Sovereignty", *American Indian Law Review* 4:1(1976), pp. 313.
- (20) Francis Paul Prucha, *American Indian Policy in the Formative Years*, op. cit., pp. 234.
- (21) D'Arcy McNickle, *Native American Tribalism*, op. cit., pp. 55. The implications of the Cherokee cases both in terms of Indian tribal sovereignty and for comparative analysis, will be discussed in chapter three.
- (22) Theda Perdue, "The Trail of Tears: The Removal of the Southern Indians", in Philip Weeks, *The American Indian Experience*, op. cit., pp. 112
- (23) Dale Van Every, "Cherokee Removal", in Francis Paul Prucha, *The Indian in American History* (Hinsdale: The Dryden Press, 1971), pp. 30.
- (24) Francis Svensson, *The Ethnics in American Politics: American Indians* (Minneapolis: Burgess Publishing Co., 1973), pp. 20
- (25) W.H. Blumenthal, *The American Indians Dispossessed* (New York: Arno Press, 1975), pp. 82.
- (26) Reginald Horsman, "American Indian Policy and the Origins of Manifest Destiny", in Francis Paul Prucha, *The Indian in American History* (Hinsdale: The Dryden Press, 1971).
- (27) Francis Paul Prucha, *Indian Policy in the United States: Historical Essays* (Lincoln: University of Nebraska Press, 1981).
- (28) Dale Van Every, "Cherokee Removal", in Francis Paul Prucha, *The Indian in American History*, op. cit., pp. 33.
- (29) Michael Rogin, "Liberal Society and the Indian Question", *Politics and Society* 1.3(1971), pp. 271.
- (30) Francis Paul Prucha, *Indian Policy in the Formative Years*, op. cit., pp. 239.
- (31) Michael Rogin, "Liberal Society and the Indian Question", op. cit., pp. 271-72.

- (32) Robert M. Utley, *The Indian Frontier of the American West 1846-1890* (Albuquerque: University of New Mexico Press, 1984), pp. 37.
- (33) Wilcomb Washburn, *The Indian in America*, op. cit., 170.
- (34) Robert M. Utley, "The Celebrated Peace Policy of General Grant", in Roger L. Nichols, *The American Indian Past and Present*, op. cit., pp. 156.
- (35) Robert M. Utley, *The Indian Frontier of the American West, 1846-1890*, op. cit., pp. 129-30.
- (36) Canada has never officially denounced treaty making as an instrument of public policy. Treaty making was an important means of extending Canadian jurisdiction westward through the latter years of the 19th century. See D'Arcy McNickle, *Native American Tribalism: Indian Survivals and Renewals*, op. cit., pp. 57-60; 139- 141 and John E. Crossley, *The of Making Canadian Indian Policy to 1946*, Phd Dissertation, University of Toronto, 1987. Crossley argues that there are two dimensions to Canadian native policy, a colonization and a civilization dimension. According to this framework, Canada's colonization objective is as yet unfulfilled. An important part of the colonization process in Canadian history was treaty making with the Indian nations. Canada's last formal treaty was signed in 1923 with Indians in the Yukon, but more recent agreements, such as the James Bay Agreement, or current negotiations now underway with the Dene in the Northwest Territories, fulfill the same function in Canadian expansionism.
- (37) Brian W. Dippie, *The Vanishing American: White Attitudes and U S. Indian Policy* (Middletown: Wesleyan University Press, 1982), pp. 148. Wounded Knee was the last major conflict between Whites and Indians in the United States and is considered by many to be the symbolic end of Indian military resistance. Some denounce the actions of the Seventh Cavalry as revenge against the Sioux for their victory over Custer at the Little Big Horn. See Dee Brown, *Bury My Heart At Wounded Knee* (New York: Bantam Books, 1970) In 1889 a Paiute Indian named Wovoka, a prophet, brought a message to the Indians that their fortunes would be transformed. He introduced the Ghost Dance, which took on different meaning as different tribes adopted it. To the Sioux, the prophecy promised the annihilation of the Whites. Panic spread among the Whites, and the army was sent in to suppress the religious movement. The battle at Wounded Knee ensued, and over 200 Sioux were killed, along with about 60 soldiers. The Sioux leader, Yellow Bird had promised the Indians' Ghost Shirts would protect them from the White man's bullets, and the Indians stood unarmed before the American cavalymen. See Stephen Cornell, *The Return of the Native American Indian Political Resurgence* (New York: Oxford University Press, 1988), pp. 62-67. Eighty two years later, in 1973, Wounded Knee II occurred near the same site, on the Pine Ridge Reservation in South Dakota. See Bruce Johansen and Roberto Maestas, *Wasi'chu: The Continuing Indian Wars* (New York: Monthly Review Press, 1979).
- (38) Robert M. Utley, *The Indian Frontier of the American West 1846-1890*, op. cit., pp. 229.

- (39) J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989) One argument suggests that there was more violence in the United States because of the greater number of 'tribal level' Indians societies in the United States, and that a 'tribal level' society is more likely to resist conquest. Canada on the other hand, the argument suggests, has a higher proportion of 'peaceful band societies' as well as cooperative 'advanced chiefdoms'. See John A. Price, *Native Studies: American and Canadian Indians* (Toronto: McGraw-Hill Ryerson Ltd., 1978); and "Historical Theory and the Applied Anthropology of U.S and Canadian Indians", *Human Organization* 41:1(1982) pp. 43-53. Professor Price suggests that what he calls the 'evolutionary gap' between Indian and White societies is the most powerful determinant of Indian-White relationships, and refers to the heritage of 'relative primitiveness' in applied anthropology. This argument places the responsibility for Indian-White violence with the Indians. It does not clarify policy and confuses attempts at comparisons. Other appraisals of Indian-White contact in the Canadian and American West suggest that the less violent Canadian expansion had more to do with financial considerations, historic relations, population density and economics than national propensity for war, either on the part of the Indians or the Whites. Price also acknowledges that the population density in the United States was five times greater in the United States than in Canada, which obviously increased the incidence of contact and opportunity for violence.
- (40) Allan G. Harper, "Canada's Indian Administration: The Treaty System", *America Indigena* 7:2(1947), pp. 129.
- (41) Reginald Horsman, "British Indian Policy in the Northwest, 1807-1812", *The Mississippi Valley Historical Review* 45(1959), pp. 51-66.
- (42) The settler population increased in Canada from 95,000 in 1812 to 952,000 in 1821. See J.R. Miller, *Skyscrapers Hide the Heavens*, op. cit., pp. 99.
- (43) *Ibid.*, pp. 84.
- (44) L.F.S. Upton, "The Origins of Canadian Indian Policy", *Journal of Canadian Studies* 8:4(1973), pp. 58; E. Palmer Patterson II, *The Canadian Indian: A History to 1500* (Don Mills: Collier Macmillan Canada Ltd., 1972), pp. 87.
- (45) J.R. Miller, *Skyscrapers Hide the Heavens*, op. cit., pp. 154.
- (46) *Ibid.*, pp. 162.
- (47) *Ibid.*
- (48) E. Palmer Patterson, *The Canadian Indian: A History Since 1500*, op. cit., pp. 109.
- (49) John Crossley, *The Making of Canadian Indian Policy to 1946*, op. cit., pp. 146.
- (50) *Ibid.*, pp. 138.

- (51) L.F.S. Upton, "The Origins of Canadian Indian Policy", *Journal of Canadian Studies* 8:4(1973), pp. 51.
- (52) Robert F. Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Arno Press, 1975), pp. 52.
- (53) *Ibid.*, pp. 54.
- (54) John L. Tobias, "Indian Reserves in Western Canada: Indian Homelands or Devices for Assimilation", in D.A. Muise, *Approaches to Native History in Canada* (Ottawa: National Museum of Man Mercury Series, #25, 1977), pp. 89.
- (55) J.E. Chamberlain, *The Harrowing of Eden. White Attitudes towards North American Natives* (Toronto: Fitzhenry and Whiteside Ltd., 1975), pp. 37
- (56) *Ibid.*, pp. 51.
- (57) John L. Tobias, "Indian Reserves in Western Canada", *op. cit.*, pp. 89.
- (58) John S. Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change", in Ian Getty and Antoine Lussier, *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (Vancouver: University of British Columbia Press, 1983), pp. 58.
- (59) D.J. Allan, "Indian Land Problems in Canada", in T.F. McIlwraith and C.T. Loram, *The North American Indian Today* (Toronto: University of Toronto Press, 1943), pp. 194.
- (60) J.R. Miller, *Skyscrapers Hide the Heavens*, *op. cit.*, pp. 190.
- (61) *Ibid.*, pp. 195.
- (62) Leonard A. Carlson, *Indians, Bureaucrats and Land: The Dawes Act and the Decline of Indian Farming* (Westport: Greenwood Press, 1981), pp. 3.
- (63) Brian W. Dippie, *The Vanishing American*, *op. cit.*, pp. 163
- (64) Harold E. Fey and D'Arcy McNickle, *Indians and Other Americans* (New York: Harper and Brothers, Publishers, 1959), pp. 75.
- (65) *Ibid.*, pp. 78.
- (66) J.R. Miller, *Skyscrapers Hide the Heavens*, *op. cit.*, pp. 200.
- (67) Sarah Carter, *Lost Harvests: Prairie Indian Reservation Farmers and Government Policy* (Montreal: McGill-Queen's Press, 1990), chapter 6. Carter also argues that failed Indian agriculture was another means of acquiring Indian land. If Indians were seen as not using the land productively, the government was justified in expropriating it from them.

- (68) Christine Bolt, *American Indian Policy and American Reform*, op. cit., pp. 87. For example the Management of Indian Lands and Property Act, passed by the colonial government in 1860 dealt primarily with the procedures by which Indian lands could be surrendered. See J.R. Ponting and Roger Gibbins, *Out of Irrelevance: A Socio-Political Introduction to Indian Affairs in Canada* (Toronto: Butterworth and Company, 1980), pp. 6.
- (69) J.E. Chamberlain, *The Harrowing of Eden*, op. cit., pp. 36.
- (70) Francis Paul Prucha, *The Great Father: United States Government and American Indians*, Vol. 1, op. cit., pp. 525.
- (71) Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), pp. 71.
- (72) D'Arcy McNickle, *Native American Tribalism: Indian Survivals and Renewals*, op. cit., pp. 57.
- (73) *Ibid.*, pp. 58.
- (74) Gerald Friesen, *The Canadian Prairies: A History* (Toronto: University of Toronto Press, 1984), chapter 8.
- (75) Bertrand Russell, *History of Western Philosophy* (London: George Allen & Unwin (Publishers) Ltd., 1982), pp. 612.
- (76) Roy Harvey Pearce, *The Savages of America: A Study of the Indian and the Idea of Civilization* (Baltimore: Johns Hopkins Press, 1965), pp. 72.
- (77) *Ibid.*, pp. 68.
- (78) Ronald Satz, *American Indian Policy in the Jacksonian Era* (Lincoln: University of Nebraska Press, 1975), pp. 220.
- (79) Paul Rogin, "Liberal Society and the Indian Question", op. cit., pp. 280-81, with reference to C.B. Macpherson, *The Political Thought of Possessive Individualism* (Oxford: Oxford University Press, 1964), pp. 53-70; 137-42.
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CHAPTER THREE POLITICAL INCORPORATION

Indian policy in both Canada and the United is based on the long standing assumption that the corollary to the ownership of private property is a sense of civic responsibility. White policy makers assumed that as they fostered an appreciation of private property among Indian individuals, they would develop an appropriate political allegiance to the dominant society. In this chapter I will examine the process of political incorporation of indigenous peoples in Canada and the United States.

As far as white policy makers were concerned, there was only one political structure within which Indians were to fit, and that structure required Indians relinquish their own sense of themselves as political entities and join the dominant political system as individuals, indistinguishable from Whites. White policy makers agreed that Indians should be self-sufficient, but they insisted there was only one way to Indian self-sufficiency and that was for Indians to participate in the dominant political system on a basis equal with Whites. Indian communities were to be transformed into political units analogous to municipalities. Their form was to be standardized across the country, they were to be composed of elected councils that operated within a set of uniform rules and regulations consistent with the rules and regulations of the surrounding society. To White policy makers this meant Indian self-government.

The Canadians managed to entrench this system earlier than the Americans. By the time post-Confederation Indian policy was first amalgamated into the *Indian Act* of 1876, all the major elements were in place. A similar policy was not introduced in the United

States until the 1930's. By the late 19th century, both governments had unilaterally reduce the 'nation to nation' relationship existing between themselves and the Indian nations since early contact, to one legally recognized as 'guardian to ward'. But how they accomplished this differed. In Canada, the procedure was simpler as the government was successful in the early establishment of a fairly comprehensive authority over the Indian nations. In the United States, because of early decisions by Chief Justice Marshall of the American Supreme Court, this authority was not so clearly articulated, and political authority over Indian nations was asserted in a more piecemeal fashion.

Indian 'sovereignty' as it is understood in Canadian law refers to what political authority has been legislated to federally recognized band councils. In the United States Indian 'sovereignty' is more a matter of what is left after specific legislation or judicial interpretations have expressly removed certain Indian rights. In other words, under Canadian law, Indian political rights consist of a delegated political authority. In the United States, Indian political rights consist of residual political authority. In both countries, however, the legal relationship between Indian nations and the federal government remains that of a ward to its guardian.

Both governments sought to replace the economic, political and cultural losses Indian nations suffered as a result of the expansion of European society across the continent with political self-sufficiency, as they understood and defined the concept. Policies promoting self-sufficiency therefore took on a moral quality as they served to relieve

white society from the guilt and responsibility for its attack on Indian social institutions and the appropriation of their land. Indians were to be assisted in acquiring the cultural, political and economic skills they would need to compete in the dominant social system.

But the imposition of political institutions based on western legalistic traditions also evolved as a means to ensure the realization of white society's broader expansionist goals. Policies in both countries worked to install reserve/reservation based political structures and leadership that would enforce government policy, undermine traditional political leadership and serve as administrative vehicles for the application of the broader program. These local political structures were intended to be compatible with and substantially indistinguishable from the municipal type political structures of the surrounding community. Yet, it did not turn out the way the governments hoped or expected. The Indian governments did not readily incorporate into the dominant political structures as planned. Instead, these structures were used as a means of asserting Indian independence, and some very different ideas of Indian 'self-government'.

To the mid 1800's, Indian nations in what became Canada remained 'de facto' self-governing, but this status began to change as Canada gained independence.(1) Imperial efforts to enfranchise Indians and individualize their lands were firmly rejected by Indian leadership and by 1860, an organized opposition to the programs had emerged. Governments in Canada and Britain were petitioned and lobbied, children were removed from schools in protest, Indians refused to cooperate with census takers and land surveyors.(2) Many councils were willing to work with the white government to

bring education to the children and sought assistance with their adaptation to agriculture, but they refused to cooperate with any policy aimed at the destruction of Indian culture or the separation of Indian people from one another or the land.(3) "Civilization, which they might define as the revitalization of their traditional culture within an agricultural context, they would have; Assimilation, the total abandonment of their culture, they would not. The policy of civilization, particularly as it was now centered on enfranchisement, was destined to founder on the rocks of tribal nationalism."(4)

Faced with organized resistance to their assimilation program, government policy makers turned to the coercive power of the law to undercut traditional tribal authority. By removing traditional tribal leaders, it was believed they were removing the obstruction to reserve subdivision and enfranchisement. In the 1869 *Indian Act*, the Canadian government first established a mechanism to interfere with traditional leaders that at the same time promoted their own initiatives, all under the guise of local self-government.(5) Canadian policy aimed to eliminate indigenous political institutions, and replace them with western style, 'democratic', elective systems. Through the *Indian Act* of 1869 and its subsequent consolidations and amendments, the government empowered itself to regulate which Indians could and could not be elected tribal leaders. Consistent with the objective of gradually introducing the Indians to civic responsibility, the imposition of elective systems were intended to prepare Indians for municipal types of political institutions. It was hoped that the elected band councils would ultimately 'graduate' to the level where they could exercise the same powers as

municipal councils. The Canadian government took control away from uncooperative Indian leaders and at the same time established a political framework for the eventual incorporation of Indian nations.

Under the legislation, 'advanced' Indian bands could request the implementation of an elective system. Male band members over the age of 21 were permitted to elect a chief and councillors. However the time, place and manner of the election was up to the discretion of government officials. Moreover, elected Indian leaders could, 'at Her Majesty's pleasure', be removed from office before the end of term, and be prohibited from running for re-election if government agents deemed him 'dishonest, intemperate or immoral'. Indian acceptance of the provisions was slow, and after 1895 the elective system was 'applied' to all bands in eastern Canada, whether they requested the system or not.(6) Amendments to the Act steadily increased government control over the elected councils. For example, when in 1890, the elected council at Caughnawaga refused to attend council meetings in protest of the Department of Indian Affairs' disallowance of their decisions, the Act was amended to permit the Superintendent General to disqualify any councillor who refused to attend meetings (7)

These provisions were clearly intended to circumscribe the independent authority of uncooperative Indian chiefs.(8) Elected band governments were never intended as true tribal governments. They were to serve only as administrative structures for the implementation of the approved policies and regulations of the Canadian government, functioning as agents of the Canadian government in a colonial structure of indirect

rule. "In practice the Branch pretended to be generous with self-government when Indian councils acted consistently with Branch objectives, but it was very restrictive when they acted in conflict with Branch policies and goals." (9) In 1870, the Deputy Superintendent of Indian Affairs described the government's rationale: "(T)he Acts framed in the years 1868 and 1869, relating to Indian Affairs, were designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life. It was intended to afford facilities for electing, for a limited period, members of bands to manage, as a council, local matters... Thus establishing a responsible, for an irresponsible system, this provision, by law, was designed to pave the way to the establishment of simple municipal institutions." (10) The councils persisted in the communities, not because they were perceived by the Indians as responsive to their needs, but because they were the only link to the dominating system. (11)

When compared to American native policy, Canadian policy is often viewed as fairer. (12) But as with lands policy, the sense of fairness derives from the degree of respect the Canadian government afforded Indian nations in relation to the laws they created to control them in the first place. The Canadian government was able to more clearly assert its sovereignty over the Indian tribes in Canada and therefore was in a better position to implement its wishes and had greater latitude to give limited consideration to Indian culture. (13) Furthermore, Canadian policy makers enjoyed a relatively more autonomous policy making arena than the Americans did. John Crossley argues that the degree of political involvement in Indian policy making relates directly to the extent to which Indians are perceived as being a barrier to expansion. In Canada the

smaller Indian and white population densities and the more gradual land acquisition process in general meant Indians were considered less of a hinderance to colonial expansion than they were in the United States.(14)

Both the Americans and Canadians had relied on the supposed civilizing power of private property, but each had used the land differently as an instrument of change. The Canadians, less pressured to acquire vast quantities of Indian lands as quickly as the Americans, focused their early Indian policy on the maintenance of the Indians on their lands, until they were able to occupy the land in a manner acceptable to white society.(15) The Americans took a more laissez-faire approach. Through the 19th century, the Americans were concerned more with the regulation of trade and contact between Indians and Whites (16) It took almost 50 years for the Americans to express a similar connection between assimilation and the Indians' acceptance of civic responsibility. While both the Americans and Canadians believed an appreciation of private property would lead naturally to civic stability, the Canadians were more inclined to tutor the Indians in the adoption of accepted modes of political behaviour. The Americans, while closely monitoring the relationship in general, left the Indians to assume the desired political attributes on their own. In both countries, romantic or ignorant delusions about Indianness led to gross misinterpretations of Indian behaviour, and the meaning of land in Indian life and tradition.(17) Canadian policy was designed to permit Indians to remain on their lands, where the tribal structure could be manipulated so as to bring Indians around to the desired political structures. The Americans, initially, showed more faith in the civilizing power of private property.

The municipal political structures established by the Indian Acts were the means through which the Canadian government attempted to institute its assimilation program. While in the 1830's the American Supreme Court announced that some sort of tribal sovereignty existed and left the determination of the limitations of that 'sovereignty' to later courts, the Canadian *Indian Act* set out for Indian nations in Canada a clearly defined list of jurisdictions. For example Indian Act band councils were permitted to make bylaws for the care of public health, observance of order and decorum at council meetings and assemblies, the control and repression of intemperance and profligacy, cattle control, maintenance of roads, bridges, ditches and fences, the construction and maintenance of schools and council buildings and local dog pounds.(18) Any new rules and regulations the band councils made for themselves were subject to government approval.

The Americans were very impressed with the *Indian Act*, in particular its brevity, simplicity and straightforwardness. With over 4,000 separate statutory enactments, political authority over Indian nations south of the border was no more clearly asserted. The Canadian *Indian Act* was a systematic body of statute law enacted in support of a definite Indian policy. "That policy..is to lead (the Indians) to support themselves within the framework of the Canadian economy, to lead them to adopt Christianity, and to merge them ultimately into the dominant culture of Canada."(19) Secretary to the American Commissioner of Indian Affairs, Fredrick Abbott, studied the Canadian system in 1914. He observed that Canadian policy retained the old tribal machinery but altered its functions. "The form of the tribal government is..preserved as a means of easy

approach, from the Indian's own point of view, to the White man's ways, through avenues familiar to him, its functions gradually changing and increasing until the Indians, after several generations, unconsciously, by processes of evolution, may take on the characteristics of self-governing white communities and become part and parcel of the state."(20)

Abbott observed that tribal councils in the United States evolved in the opposite direction to those in Canada. While both the Americans and Canadians believed in the need to replace old tribal laws and political systems with replicas of their own, the Americans did not preserve the tribal structure as the Canadians had. The Canadians used the tribal organization as a vehicle for political incorporation. The Americans attacked the tribal structures directly, through administrative, legislative and judicial action. "We assumed that the best way to get rid of tribal customs and laws inconsistent with the White man's plan of government, was to demolish the machinery through which they had been exercised. And so, our government not only does not recognize 'chiefs,' but only in the case of treaty reservations and where the law requires, does it recognize business committees or Indian councils."(21) The idea in the United States was to bring Indians under state law by individualizing their lands through allotment, making them citizens of the state.(22)

In both countries Indian political incorporation was in essence the process of the transformation of independent Indian nations into wards of the government. Indian wardship in Canada came about by the application of a fairly coherent codified policy.

In the United States the wardship relationship evolved in a more ad hoc way. Local agents steadily assumed more and more authority over Indians until the most important decisions were left to the agents' discretion. The Americans believed Indians would assimilate once tribal relations were broken up and replaced with family units and the autonomy of the individual.(23) Kinship and other communal structures were dismantled and substituted with an individualistic political and economic philosophy and organization. The Dawes allotment policy, inaugurated in 1887, was the cornerstone of the federal plan. By distributing tribal lands to individual tribal members, granting American citizenship to allottees and making the United States the trustee, not, as was the case in Canada, of tribal lands but of individually held allotments, the *Dawes Act* set out to destroy the tribe as a territorial economic and political entity.(24)

The chiefs and elders were the main political targets. American policy makers hoped to transform Indian society by limiting the power of the chiefs, conceiving of them more as powerful authority figures rather than tribal spokesmen.(25) Instead of using the tribal organization as a structural means of assimilation, the Americans considered it necessary to dissolve the tribal entity and integrate individual Indians into mainstream society.(26) But the American approach to the political incorporation of Indian nations was no less comprehensive or systematic than the Canadian. As in Canada, the primary concern was to undermine the authority of uncooperative Indian leaders and entrench compliant ones, but the Americans came to rely instead on the courts and local Indian police forces, and on the supposed civilizing power of individualized land holding and decision making. Government agents used their control over food rations and the threat

of army troops to force their decisions against the will of tribal leaders.(27) Cooperative chiefs and headmen were arbitrarily elevated over traditional authority figures.(28) Parental authority was undermined as children were sent off to boarding schools. Committees were formed to act as intermediaries between the agents and the Indian community, and to function as 'representatives' of tribal interests.(29)

Some of the same functions delegated to band councils in Canada became the responsibility of Indian police forces in the United States. These police forces were established by the Indian agents independently of tribal authority and were therefore administered by Indians beholden and responsible to the Indian agents, and not Indian leaders.(30) The Indian police began with no legal jurisdiction over internal matters in Indian country, but this legal technicality was ignored and finally overcome in 1878 when the program received official funding.(31) By 1883 a Court of Indian Offenses had grown out of the Tribal police forces. The Courts were staffed by Indians, usually from the tribal police, selected by the local Indian agent. Tribal judges ruled on all questions referred to them by the agents. Customary law was ignored, or outlawed. The courts were used to stamp out 'certain of the old heathenish dances', eliminate plural marriages, weaken the influence of the medicine men, promote law and order, and teach the Indians to respect private property. Among other things, the police forces were charged with ending gambling and dancing, enforcing school attendance, and ending the influence of shamans and traditionalists. Clearly the Indian police forces and Tribal courts were intended as instruments of assimilation. Appointments went to Indians who had rejected the external manifestations of Indianness, such as long braids, and who had

selected allotments.(32) Commissioner of Indian Affairs in 1881, Hiram Price described the logic of the force: "It is a power entirely independent of the chiefs. It weakens, and will finally destroy, the power of tribes and bands. It fosters a spirit of personal responsibility."(33)

Unlike Canada, where Indians were made wards by a relatively simple series of legislative acts through which the Canadian government unilaterally asserted its exclusive jurisdiction, wardship in the United States came about through an elaborate series of Supreme Court decisions that attacked the concept of Indian sovereignty directly. Indian nations have challenged American notions of justice since the founding of the republic. No other nation has developed a more extensive body of jurisprudence devoted to its indigenous population, and most of what is called Indian law developed during this period of Indian detribalization.(34) "To native Americans the Supreme Court in the 19th century was not a neutral arbiter as much as it was an integral part of the legal justification for the loss of sovereignty, in the long decline from Indian independence to wardship."(35)

Three cases conducted in the late 19th century and early 20th century demonstrate how the Americans used the judicial system to entrench the same political control over the Indian nations that the Canadians asserted through the *Indian Act*. In 1883, in *Crow Dog v. Spotted Tail*, in which an Indian was accused of murdering another Indian on Indian land, tribal independence was upheld by the Supreme Courts' ruling that the federal government had no criminal jurisdiction over the tribes, because no legislation had been

passed to that effect. In reaction, the federal government passed the *Major Crimes Act* (1885), giving itself criminal jurisdiction over seven major crimes committed between Indians on Indian land.(36)

The Act was challenged within a year of its enactment, and the Supreme Court used the case, *US v. Kagama* to elaborate federal jurisdiction. Kagama, a Hupa Indian was accused of killing another Hupa on their California reservation. The Court ruled that Congress did have the power to enforce its laws within the reservation and could legally bring Kagama to trial. The Court defended its change in opinion on the grounds that Indians were in a condition of dependency. The Court had reinterpreted the government's treaty obligation to protect Indians from intrusions from Whites, to mean a responsibility to assimilate the Indians. "All the treaties that had been negotiated by the tribes in good faith ceased to function as protection against federal intrusion and became instead licenses for federal intervention."(37)

A third case reveals how far the government was willing to go in extending the guardianship principle. In protest over the allotment of his reservation, Lone Wolf, a Kiowa, charged the federal government with disposing of tribal property in violation of both the 1867 Treaty of Medicine Lodge and the Fifth Amendment to the Constitution, (which guarantees protection against individuals being deprived of private property without due process of law). In 1903 the Supreme Court ruled against Lone Wolf, arguing the tribes had overlooked their dependent status and the government's responsibility as their guardian. The Court argued that the government was constrained only

by those "...considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race." (38) The Court ignored the claim that the treaty had created property rights secured by the Fifth Amendment, justifying its position by arguing that admission of the constitutional claim would have meant admission that the authority of Congress could be limited "...in respect to the care and protection of the Indians ", depriving Congress, in any future emergency, of the authority to dispose and distribute tribal lands. Lone Wolf, like the Kagama case, was an example of judicial realpolitik. (39) Each showed the Indians they could not rely on Congress for any constitutional protections. Lone Wolf was a major step toward legal erosion of Indian political rights in the United States, in particular the right to hold land in common. (40)

By the early 20th century many Americans were ready to face the reality that the allotment policy had failed to assimilate Indians. The *General Allotment Act* had reduced Indian land holdings from 138 million acres to 48 million, 20 million of which were arid or semi-arid. By the 1930's, Indians held only 1/3 of the land base they did before allotment. (41) Some groups, such as the Chippewa of Minnesota and Winnebago of Wisconsin not only lost more than 80% of their lands, but allotments there were also subjected to 'checkerboarding', the alternation of Indian and non-native parcels of lands intended as a way to maximize the effect of allotment by increasing Indians' exposure to white society (42) Allotment not only failed to promote assimilation, it actually prevented it. Forty years of assimilation policies had crushed traditional communities but had seen

few Indians successfully or willingly adopt white cultural values. The allotment program was a far more effective means of getting lands away from Indian control than it was of assimilating the Indians.(43)

By the 1930's a new Indian reform movement was well underway, led by the American Indian Defense Association and John Collier, a dedicated and prolific Indian reformer who served as Franklin Roosevelt's Commissioner of Indian Affairs from 1933 to 1945. The new movement quickly eclipsed the traditional humanitarian reformers, challenging the basic premises of the long standing assimilation policy with an emphasis on notions of cultural pluralism and the rights of Indian groups to self-determination. The new reformers clearly recognized that the allotment program had not helped the Indians to compete as individuals in white society, and they inaugurated a new program that dealt with Indians as groups, much like the Canadians had been doing all along.

Collier was attracted to Native Americans precisely because they had rejected American culture.(44) His ideas about native Americans demonstrated his own rejection of the values of industrial society. Collier had discovered among the Pueblo Indians of New Mexico a sense of community and harmony of life that White America lacked. He saw in them a repudiation of the materialism, secularism and fragmentation of modern white industrial society. He idealized what he perceived as a simpler more beautiful way of life that emphasized human relationships with one another, with the spirit world and with nature. To Collier, "(t)he integrated life of the Pueblos stood as a reproach to atomized modern civilization; and their harmonious, democratic ways a vital lesson to

all White Americans...(T)he survival of this 'Red Atlantis' into the modern era offered a hope for the future of the world in spite of industrialism. He romanticized the heritage of these folk societies as part of his alienation from his own 'sick' times, and the Pueblos became his own personal countercultural utopia."(45)

Interestingly, Collier and others looked to Canada for a model of Indian policy reform.(46) Their appeal was supported by the Meriam Report (1928), a comprehensive survey of Indian living conditions which documented the extent to which the American approach had failed to induce Indian self-sufficiency, promoting instead poverty and massive land loss. Canadian policy was viewed as superior because it was more practical. By decentralizing its Indian administration to the local agencies and by using Indian councils as instruments of administration, the Canadian system was also considerably cheaper.(47) Comparisons also convinced the Canadians they were on the right track. Indian policy makers in the United States and Canada were under the impression that every aspect of Canadian policy was designed with the purpose of rendering the Indians independent of government support, and that this program would be ultimately successful.(48) The general perception was that Indians in Canada had been dealt with more justly, especially in terms of land, and in the willingness of the Canadian police forces to punish Whites committing crimes against them.(49) These perceptions contributed to Canada's complacency in terms of policy reform and several decades passed before Canadians came to terms with the fact that their own cherished policy was an abysmal failure. The Canadian counterpart to the Meriam report was not written until the 1960s.(50)

Here we touch on an important difference between Canadian and American native policy. While Canadians had concentrated on the practical application of their Indian policy, they had failed to develop any theoretical understanding of the relationship between Indians and the government. The Americans on the other hand, were forced to express a theoretical understanding of the Indian-government relationship in American law early in the nations history. The volumes of jurisprudence relating to the legal status of Indian nations that have evolved since are proof that Americans have been struggling to define the Indian-government relationship ever since.(51)

The institutionalization of practical structures for Indian political incorporation were delayed until the 1930's in the United States because of the theoretical recognitions of Indian sovereignty made by Chief Justice Marshall a century earlier. The Marshall decisions of the 1830's must be discussed at length in any study of American native policy, especially a comparative study, because the history of American Indian policy is related directly to the attempts of the American federal and state governments to overcome these initial formulations, and because they form the basis of the most fundamental difference between Canadian and American native policy today. Any suggestion that American Indian policy is some sort of desirable model for Canadian policy reform must take the evolution of American Indian law into consideration.

In defending themselves against the aggressive actions of the government of the state of Georgia in the 1820s, the Cherokee nation looked to the Supreme Court for protection. They argued they were a foreign nation under the American constitution and as such

Georgia's laws were inapplicable to them.(52) Justice Marshall asserted that the Indian 'states' were not foreign states, and he attempted to define the relationship between the Indian nations and the United States. "The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence...They acknowledge themselves in their treaties to be under the protection of the United States...They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and domination of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory...They may, more correctly, perhaps, be dominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will...They are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian."(53) Ruling the Cherokees were not a foreign state within the meaning of the US constitution, Marshall denied their motion for an injunction.

Legally, the *Cherokee Nation v. Georgia* case was about Cherokee sovereignty; politically, it involved a question much more troubling to Justice Marshall. A Supreme Court ruling in favour of the Cherokees would have prevented the removal program. Andrew Jackson, elected on a promise to move the Indians west, made clear his intention not to enforce any decision recognizing Cherokee sovereign rights.(54) Marshall was unwilling to risk such a serious confrontation between the executive and judicial branches of government, but he was equally unwilling to leave the Cherokees to the mercy of the states. By ruling that they could not sue as a foreign nation and by defining Indian na-

tions as domestic dependent nations, Marshall was able to avoid the direct confrontation between the executive and judicial branches he feared would damage the future of the Supreme Court, and at the same time, left open the possibility of the Cherokees receiving federal protection against individual states. Marshall's 'politically ingenious' alternative helped the Americans to satisfy both their economic desires and their political idealism, by legally making the Indian nations wards of the federal government (55) As such, the demand for Indian lands in the southern states could be met while the stage was set for the removal of the tribes, under the guise of benevolent protection.

A year later the Cherokees brought forth another test case that more specifically challenged the legality of Georgia's actions. Two white missionaries, sympathetic to the Cherokees, deliberately broke a state law prohibiting unlicensed white occupation of Indian lands. They were sentenced by a Georgia court to four years hard labour, and appealed their convictions to the Supreme Court, on the grounds that Georgian laws did not apply in Cherokee country. This time the Cherokees' lawyer argued that the American constitution granted the jurisdiction over intercourse with the Indians exclusively to the federal government, and the states therefore were unable to enforce laws that infringed on that special and exclusive federal-tribal relationship.(56) In this case, *Worcester v. Georgia*, Marshall decided in favour of the Cherokees, declaring Georgia's laws as an unconstitutional interference with treaties existing between the United States and the Cherokees. In writing his decision he elaborated on the domestic dependent nations rationale he introduced in *Cherokee Nation v. Georgia*.

Pointing to the treaties, Marshall outlined how, like Britain, the United States traditionally recognized a distinct Indian territory within which Indian nations exercised exclusive authority over their lands. Marshall's ruling in *Cherokee Nation v. Georgia* went against the Cherokees. In *Worcester v. Georgia*, Marshall's ruling was more favourable to the Indians. "The Cherokee nation...is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the consent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress." (57) *Cherokee Nation v. Georgia* settled the question of tribal sovereignty in a national sense, but at the same time it opened the controversy of what sovereignty a tribe actually possessed. (58) In *Worcester* the question of tribal sovereignty vis-a-vis a state government was proposed. Marshall reaffirmed subordinate tribal status vis-a-vis the federal government but referred again to the 'doctrine of the law of nations' whereby a weaker power does not surrender its rights to self-government by association with a stronger power and by taking its protection. (59) The relationship between the Cherokees and the United States, according to Marshall, was that of a nation claiming and receiving protection from a more powerful state, not that of individuals abandoning their national character by submitting themselves as subjects to the laws of the master. Protection, and the acceptance of protection did not imply the destruction of the protected. (60) Although in the role of protector, the United States ultimately came to accept the obligation to transform the Indians into Whites, whereby destroying them with 'kindness' rather than hostility.

When the *Worcester* case reached the Supreme Court in 1832 the question of Indian sovereignty had become embroiled in the emerging "states' rights" controversy.(61) Despite the Supreme Court's affirmation of Indian rights the decision went unenforced. Acting in the interest of political expediency, the only alternative Andrew Jackson offered the Indians was removal west. Pressured by South Carolina's threat to secede, he could not afford to alienate another southern state at the time. Jackson succeeded in isolating South Carolina by promising Indian removal to the other southern states.(62)

Through this series of Supreme Court decisions, known collectively as the Marshall trilogy, the Americans managed to successfully enjoy the realization of their economic desires without betraying their republican virtue.(63) Marshall's recognitions had a symbolic quality in that they satisfied qualms Americans felt about the treatment of the southeastern tribes. But in *Johnson v. McIntosh*, Marshall had proven he was quite capable of overriding the rights of Indian nations in order to meet the needs of expansionist Americans.(64)

Cherokee Nation and *Worcester* reflect a similar duality that appeared in the *Johnson* case. In *Cherokee Nation*, Marshall defined the relationship between the Indian tribes and the federal government and in the *Worcester* case he described the relationship between the tribes and the states, distinguishing two dimensions of the notion of tribal sovereignty under American law. "(The) tribes are under the protection of the federal government and in this condition lack sufficient sovereignty to claim political independence; tribes

possess, however, sufficient sovereignty to shield themselves from intrusions by the states and it is the federal government's responsibility to ensure that this sovereignty is preserved."(65)

It has been necessary to elaborate the Cherokee Nation cases because they form the theoretical underpinnings upon which federal responsibility for Indians is based. But the two fundamental ideas that emerge from these cases are contradictory in the extreme. Tribes are determined to be 'domestic dependent nations' but at the same time the relationship between the tribes and the federal government resembles that of a ward to a guardian. To add to the confusion, both the government and the tribes have tended to exploit either perspective depending on how it suited their needs at the time. All branches of government have at one time or another labeled Indians as both wards and independent nations.(66) In the end, the position that the tribes were 'sui juris', or 'subject, within themselves, to no law but the law of their own making' served as a matter of convenience rather than a matter of principle.(67)

The affirmative strain in Marshall's decisions were formulated, as with earlier policy, as a means to territorial expansion and consolidation of federal authority, and not in the belief in the inherent existence or value of Indian tribes as nations. Marshall proved in *Johnson* that the interests of expansion would override aboriginal rights. As with the Royal Proclamation, recognition of Indian rights was a means to another end. Later in the 20th century, Marshall's stipulations in *Worcester* would provide the legal base for

more positive judicial treatment of aboriginal rights but through most of the 19th century federal policy makers and the courts ignored the *Worcester* decision and emphasized instead Marshall's earlier limitations on Indian sovereignty.(68)

In the *Worcester* case, Indian rights were recognized theoretically, but, having no prevailing commitment to the rights they recognized, Americans ultimately violated them (69) Canada had no case comparable to *Worcester* that affirmed the concept of natural aboriginal rights. The leading case in Canada is *St. Catherine's Milling and Lumber Co. v. the Queen*, 1889.(70) Like *Johnson v. McIntosh*, *St. Catherine's Milling* settled only those claims being made between Whites for ownership of previously Indian held territory. In both cases non-native rights were the subject of adjudication in the context of extinguishment of aboriginal rights.(71)

Compared to the United States, Canadian law has elaborated very little in the way of a theory of aboriginal rights.(72) The *Constitution Act 1982* recognizes and affirms 'existing' aboriginal and treaty rights, but neither the government nor aboriginal peoples are able to say precisely what these existing rights entail. The Royal Proclamation is still considered the primary legal source of recognition of Indian rights and legal questions about Indian rights often concern the applicability of the Proclamation in certain cases, whether or not it constitutes the sole source of Indian rights, or whether or not specific Indian rights have been extinguished under the Proclamation. In 1889 the Privy Council held in *St. Catherine's Milling* that Indians retained 'usufructuary' rights to their lands, that, 'shall be reserved for the use of the Indians, as their hunting

grounds.'(73) But the Council failed to define the nature of the rights it recognized. Because of the lack of Canadian case law on this subject, until recently, there has been almost no judicial opinion as to the character of aboriginal title or the meaning of a 'usufructuary right.' The 1889 *St. Catherine's Milling* case remains the most complete statement on usufructuary rights. Canadian courts clearly support the notion that aboriginal rights include variations of the right to hunt, farm and exploit the natural resources on their lands, but our judicial system has not gone substantially beyond this point.(74)

Theory and practice are intimately related. When we look at this relationship in terms of native policy in Canada and the United States, we see that the Americans were more concerned with theory and the Canadians with practices. The reasons for this are related, among other things, to the prevailing political conditions at the time of national consolidation. Soon after independence the Americans were faced with the question of the status of Indian tribes, and at the time, the federal government was desperately trying to assert its authority over recalcitrant state governments in the American Southeast. With the help of the courts, the Americans successfully created a theoretical structure within which the Indians would fit, but neglected to adapt the theory to the appropriate practices. In Canada, policy evolved in the opposite direction. The property-based civil structures for Indian political incorporation were set, but Canadians failed to create an adequate theoretical structure. "It would be an oversimplification to say that in

the United States the end was kept clearly in mind but the means wallowed in murky waters, while in Canada the means were consistency applied yet the end never properly perceived—but it would not be an atrocious oversimplification.”(75)

American admirers of Canadian policy considered it the more ‘successful’ because the Canadian government had kept sight of practical objectives. Canadian policy was seen as fairer because the promises that were made were kept, while the Americans broke the promises they made. But, it was much easier for Canadians to keep their promises because they promised the Indians nothing but assimilation in the first place. The Americans on the other hand made symbolic and unrealistic promises they had no intention of keeping. In other words, the Americans promised everything and gave nothing; the Canadians promised nothing, but kept their promise.(76) In the final analysis Indians in both countries ended up with about the same — officially recognized but poorly defined rights that neither government held any substantial commitment to.

The Indian policy reform that took place in the United States in the 1930’s, was a major development that moved American policy much closer to Canadian in terms of its practical application. As part of the general New Deal reformism of the 1930’s, the Americans instituted a new Indian policy. The *Indian Reorganization Act 1934 (IRA)* corrected many of the major deficiencies policy analysts had identified earlier and introduced a more tutelary Indian policy similar to the policy the Canadians had been developing since the 1860’s. The major criticism had been the Americans’ neglect of a practical means to Indian political incorporation. One report recommending the adop-

tion of a policy consistent with the one "...so successfully followed in Canada.."

described the new approach to American Indian policy as one which "...led the Indian down the White man's road, instead of sending them off along the road alone."(77)

Possibly no era of American Indian policy history has received more attention than the IRA period and the character of its chief architect, John Collier, is often central to the discussion.(78) The intent of IRA legislation was, ostensibly, to create an alternative to assimilation. Overt assimilationist policy was replaced with a policy meant to strengthen tribal governments, consolidate Indian land holdings and encourage economic development.(79) The IRA established a policy that imposed a structure for political incorporation patterned roughly on the Canadian model. Further allotment of land was prohibited and Indian interests in land were better protected; funds were made available for the development of reservation-based natural resources and a framework for local self-government was set out. The IRA was not a replica of the Canadian *Indian Act*, but it redirected American policy in a way that strikes a familiar ring to Canadian native policy analysts by effectively narrowing the gap between theory and practice created by the Marshall decisions in the Cherokee Nation cases. While only half the Indian nations in the United States come under the legislation, like the *Indian Act* it was an attempt to bring forth a uniform policy.(80) The IRA permitted Indian tribes to organize politically and adopt constitutions, but the form and structure of local political institutions, like local band councils in Canada, were subject to government approval. Most tribal constitutions were 'boilerplate' constitutions prepared by the Bureau of Indian Affairs, and based on federal constitutional and common law notions rather than tribal custom. The

Commissioner of Indian Affairs retained many discretionary powers, and on a few occasions Collier used these powers to pressure some groups to comply with the policy.(81) The IRA called for elected tribal councils and introduced many implicit Western cultural presuppositions that were not necessarily compatible with those held by reservation populations.(82) Elected councils, rules of parliamentary procedure and constitutions were all features of European concepts of political organization imposed on Indian nations by both the Canadians and Americans.

If we isolate a comparison of the IRA and the political structures it left behind with structures of local Indian self-government in Canada, major differences would be apparent. But put in its historical context, it is the fact that the changes brought by the IRA moved American native policy in a direction similar to Canadian policy that is of greater importance. The IRA narrowed the gap between the conceptions held of Indian nations in Canada and the United States, created by Marshall's theoretical formulations of the 1830's. As institutions, both the IRA governments in the United States and local Band councils in Canada owe their existence to the federal governments and not to their own people. All links to other political structures are through the federal bureaucracies established to manage Indian matters. The more Indians exercise their limited powers through these local structures the more they resemble and behave like other corporate actors or municipalities in the dominant political system. "(T)he tribal governments were an integrative mechanism; they promoted the assimilation of Indians, as groups, into society. The form of self-government was more impressive than its substance."(83)

But the gap is not only narrowing in one direction. By the same token, recent Supreme Court challenges in Canada, Constitutional conferences, self-government negotiations and political confrontations, such as occurred at Oka over the Summer of 1990, and the analyses these debates inspire, indicate Canadians are now attempting a more theoretical understanding of the place of Indian nations in Canada.(84)

**FOOTNOTES
CHAPTER THREE**

- (1) John S. Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change", in Ian Getty and Antione Lussier, *As Long As the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (Vancouver: University of British Columbia Press, 1983), pp. 58.
- (2) Ibid., pp. 60
- (3) J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), pp. 96, Sarah Carter, *Lost Harvests: Prairie Indian Reservation Farmers and Government Policy* (Montreal: McGill-Queen's Press, 1990).
- (4) John S. Milloy, "The Early Indian Acts", op. cit., pp. 60.
- (5) J.R. Miller, *Skyscrapers Hide the Heavens*, op. cit., pp. 114.
- (6) Wayne Daugherty and Dennis Madill, *Indian Government Under Indian Act Legislation 1868-1951* (Ottawa: Department of Indian Affairs and Northern Development, 1980), pp. 6.
- (7) Ibid., pp. 20.
- (8) John S. Milloy, "The Early Indian Acts", op. cit., pp. 62.
- (9) Leroy Little Bear, Menno Boldt and J. Anthony Long, *Pathways to Self-Determination: Canadian Indians and the Canadian State* (Toronto: University of Toronto Press, 1984), pp. xii.
- (10) Wayne Daugherty and Dennis Madill, *Indian Government Under Indian Act Legislation*, op. cit., pp. 1.
- (11) Harry B. Hawthorn, *A Survey of the Contemporary Indians of Canada: Economic, Educational Needs and Policies, Part II*, (Ottawa: Department of Indian Affairs and Northern Development, 1968), pp. 178.
- (12) Christine Bolt, *American Indian Policy and American Reform* (London: Allen and Unwin, 1987), pp. 89.
- (13) Ibid.
- (14) John Crossley, *The Making of Canadian Indian Policy to 1946*, (Phd Dissertation), University of Toronto, Toronto, 1987.
- (15) Canada, Department of Indian Affairs and Northern Development, *The Historical Development of the Indian Act* (Ottawa: Department of Indian Affairs and Northern Development, 1978).

- (16) J.E. Chamberlain, *The Harrowing of Eden: White Attitudes Toward North American Natives* (Toronto: Fitzhenry and Whiteside Ltd., 1975), pp. 35.
- (17) Ibid , pp. 36
- (18) John S Milloy, "The Early Indian Acts", op. cit , pp. 62.
- (19) Allan G Harper, "Canada's Indian Administration: The Indian Act", *America Indigena* 6:4(1946).
- (20) Frederick H Abbott, *The Administration of Indian Affairs in Canada* (Washington D.C Board of Indian Commissioners, 1915), pp. 49.
- (21) Ibid., pp. 49-50
- (22) Ibid
- (23) Lewis Morgan in Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (New York: Oxford University Press, 1988), pp. 56.
- (24) Ibid., pp. 80.
- (25) Donald J. Berthrong, "The Bitter Years: Western Indian Reservation Life", in Philip Weeks, *The American Indian Experience: A Profile 1524 to the Present* (Arlington Heights: Forum Press, Inc , 1988), pp. 167.
- (26) Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), pp. 71.
- (27) Stephen Cornell, *The Return of the Native*, op. cit , pp. 57.
- (28) Christine Bolt, *American Indian Policy and American Reform*, op cit., pp. 88.
- (29) This was the origin of the business council of the Navajo Reservation, where oil was discovered in the 1920's. The Treaty of 1868 with the Navajos required tribal consent for the granting of leases, yet there was no body that could speak for the whole tribe when the question of oil leases arose. In 1922 the secretary of the interior appointed a 'business council' of three Navajos to act on behalf of the tribe. The council was neither representative of, nor controlled by the Navajos. Its function was to approve oil leases. See Stephen Cornell, *The Return of the Native*, op. cit , pp. 58.
- (30) Robert F Berkhofer, *The White Man's Indian Images of the American Indian from Columbus to the Present* (New York: Alfred A. Knopf, 1979), pp 171
- (31) Bradford Morse, *Indian Tribal Courts in the United States A Model for Canada?* (Regina: University of Saskatchewan Native Law Centre, 1980).
- (32) Ibid.

- (33) Quoted in J. E. Chamberlain, *The Harrowing of Eden*, op. cit., pp. 217, footnote 15.
- (34) Alvin J. Zions, "Indian Litigation", in Sandra Cadwalader and Vine Deloria Jr., *The Aggressions of Civilization: Federal Indian Policy Since the 1880's* (Philadelphia: Temple University Press, 1984), pp. 150
- (35) Walter L. Williams, "From Independence to Wardship: The Legal Process of Erosion of American Indian Sovereignty, 1810-1903", *American Indian Culture and Research Journal* 7 4(1984), pp. 29
- (36) Sharon O'Brien, *American Indian Tribal Governments*, op. cit., pp. 72.
- (37) *Ibid*, pp. 73.
- (38) *Ibid*, pp. 75
- (39) Alvin J. Zions, "Indian Litigation", op. cit., pp. 158
- (40) Walter L. Williams, "From Independence to Wardship", op. cit., pp. 26.
- (41) Randolph C. Downes, "A Crusade for Indian Reform: 1922-1934", in Roger L. Nichols, *The American Indian: Past and Present* (New York: John Wiley and Sons, 1981), pp. 232.
- (42) Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act 1934-45* (Lincoln: University of Nebraska Press, 1980), pp. 240.
- (43) J.E. Chamberlain, *The Harrowing of Eden*, op. cit., pp. 39
- (44) Graham D. Taylor, *The New Deal and American Indian Tribalism*, op. cit., pp. 24.
- (45) Robert F. Berkhofer, *The White Man's Indian*, op. cit., pp. 178.
- (46) Allan G. Harper, "Canada's Indian Administration: The Indian Act", *America Indigena* 6:4(1946), pp. 298.
- (47) John Collier, *American Indian Life*, #21, January 1933. (American Indian Defense Association).
- (48) Leming Benson Priest, *Uncle Sam's Stepchildren. The Reformation of United States Indian Policy* (New Brunswick: Rutgers University Press, 1942), pp. 168.
- (49) *Ibid*
- (50) Harry B. Hawthorn, *A survey of the Contemporary Indians of Canada*, op. cit.
- (51) Felix S. Cohen, *The Handbook of Federal Indian Law* (1982 Edition), (Charlottesville: Law Publishers, 1982).

- (52) Sharon O'Brien, *American Indian Tribal Governments*, op. cit., pp. 57.
- (53) Quoted in Walter L. Williams, "From Independence to Wardship", op. cit., pp. 11-12.
- (54) Ibid., pp. 13.
- (55) Sharon O'Brien, *American Indian Tribal Governments*, op. cit., pp. 57.
- (56) Ibid.
- (57) Quoted in D'Arcy McNickle, *Native American Tribalism: Indian Survivals and Revivals* (New York: Oxford University Press, 1973), p. 55.
- (58) Jessie Green and Susan Work, "Comment: Indian Sovereignty", *American Indian Law Review* 4 2(1976), pp. 312.
- (59) Ibid., pp. 313.
- (60) Sharon O'Brien, *American Indian Tribal Governments*, op. cit., pp. 58.
- (61) Walter L. Williams, "From Independence to Wardship", op. cit., pp. 12.
- (62) Ibid., pp. 14.
- (63) Charles F. Wilkinson, *American Indians, Time and the Law* (New Haven: Yale University Press, 1987), pp. 65.
- (64) Walter L. Williams, "From Independence to Wardship", op. cit., pp. 10.
- (65) Vine Deloria and Clifford M. Lytle, *American Indians and American Justice* (Austin: University of Texas, 1983), pp. 33.
- (66) Ibid.
- (67) J.E. Chamberlain, *The Harrowing of Eden*, op. cit., pp. 193.
- (68) Charles Wilkinson traces the two lines of reasoning through the history of US/Indian relations. The first line began with the Marshall trilogy and includes Johnson v. McIntosh, Cherokee Nation v. Georgia, Worcester v. Georgia and Ex parte Crow Dog. In this line Indian tribes are subject to an overriding federal authority, but are largely autonomous and essentially free of state control. The second line includes US v. Kagama and Lone Wolf v. Hitchcock and recognizes a seemingly unlimited federal power to alter tribal property and jurisdictional prerogatives contemplated by the treaties and treaty substitutes. See Charles F. Wilkinson, *American Indians, Time and the Law*, op. cit., and Alvin Zionsz, "Indian Litigation", in Sandra Cadwalader and Vine Deloria Jr., *The Aggressions of Civilization*, op. cit.
- (69) Lorien Benson Priest, *Uncle Sam's Stepchildren*, op. cit., pp. 173.

- (70) D'Arcy McNickle, *Native American Tribalism*, op. cit., pp. 141.
- (71) Lynn Niedermeier, "Aboriginal Rights: Definition or Denial?", *Queen's Law Journal* 6 2(1981), pp 578.
- (72) William B Henderson, "Canadian Legal and Judicial Philosophies on the Doctrine of Aboriginal Rights", in Menno Boldt and Anthony Long, *Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985), pp 221.
- (73) Neil H Mickenberg, "Aboriginal Rights in Canada and the United States", *Osgood Hall Law Journal* 9(1971), pp 150.
- (74) Ibid. The leading case on the meaning of the Royal Proclamation of 1763 remains *St Catherine's Milling and Lumber Co v. the Queen*, 1889. See L.C. Green and Olive P Dickason, *The Law of Nations and the New World* (Edmonton: University of Alberta Press, 1988), pp 113
- (75) J.E. Chamberlain, *The Harrowing of Eden*, op. cit., pp. 30.
- (76) Douglas Sanders, *Aboriginal Self Government in the United States* (Kingston: Institute of Intergovernmental Relations, 1985), pp. 1.
- (77) Warren K. Moorehead, *Plan of Reorganization of the United States Indian Service* (Andover Massachusetts: 1925), pp. 4; 27
- (78) Major sources on this period include: Lawrence Kelly, *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform* (Albuquerque: University of New Mexico Press, 1983); Kenneth R. Philp, *John Collier's Crusade for Indian Reform 1920-1954* (Tucson: University of Arizona Press, 1977); Francis Paul Prucha, *The Great Father: United States Government and the American Indians*, 2 Vols., op. cit.; Graham D. Taylor, *The New Deal and American Indian Tribalism*, op. cit.
- (79) Alfonso Ortiz, "Half A Century of Indian Administration: An Overview", in Jennie R. Joe, *American Indian Policy and Cultural Values. Conflict and Accommodation* (Los Angeles: UCLA Publications, 1986).
- (80) Sharon O'Brien, *American Indian Tribal Governments*, op. cit., pp. 83. The IRA policy was not as uniformly applied as policy makers would have liked. Successful lobbying by the Cherokees left them exempt from the IRA and the Navajo and Iroquois, two of the largest and highest profile Indian nations, managed to organize a majority vote to reject it. A 'no' vote would have required a concerted effort on the part of the Indian nations since abstentions or non-votes were counted as votes in favour of acceptance of the IRA.
- (81) Felix Cohen, *Handbook of Federal Indian Law*, op. cit., pp. 149-50.

- (82) Duane Champagne, "American Indian Values and the Institutionalization of IRA Governments", in Jennie R. Jc , *American Indian Policy and Cultural Values* (Los Angeles: UCLA Publications, 1982), pp. 25
- (83) Stephen Cornell, "Crisis and Response in Indian-White Relations", *op cit* , pp 45.
- (84) For example, Michael Asch, *Home and Native Land. Aboriginal Rights and the Canadian Constitution* (Toronto: Methuen, 1984); David C Hawkes, *Aboriginal Peoples and Constitutional Reform: What Have We Learned?* (Kingston: Institute of Intergovernmental Relations, 1989), final in a series on Aboriginal Peoples and Constitution Reform published by the Institute, Brian Schwartz, *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft* (Montreal: Institute for Research on Public Policy, 1986), Leroy Little Bear, Menno Boldt and Anthony J Long, *Pathways to Self-Determination: Canadian Indians and the Canadian State* (Toronto: University of Toronto Press, 1984), Menno Boldt and Anthony J Long, *Governments in Conflict? Provinces and Indian Nations in Canada* (Toronto: University of Toronto Press, 1988) and *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University Press, 1985) or Bruce Clark, *Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada* (Montreal: McGill-Queen's Press, 1990). It is interesting to compare the contexts within which the debate over theoretical structures emerged in Canada in the 1980's and in the United States in the 1830's. Although it is over 150 year later, in both cases the debate over the status of Indian nations occurred as a by-product of constitutional power struggles between the central governments and the states/provinces. Furthermore, just as with the Marshall decisions in the United States, it will be the Supreme Court of Canada that will ultimately determine Indian status. It does not appear that such a determination will result from any concerted effort on the part of the government to seriously negotiate with the Indian nations.

CHAPTER FOUR ECONOMIC INCORPORATION

A dichotomy between white desires and white idealism persists in North American native policy making. White society has always taken what it wanted from Indian peoples, carefully reconciling this behaviour with references to special recognition of Indian rights so as not to violate their political idealism. A pattern of affirmation and denial of Indian rights that was established in the early years of contact has never been outlived or outmoded. "Men in the dominant society who labored to defend the interests of tribal people were invariably matched by men who resented the existence of 'savages,' particularly if they controlled landed property and presumed to autonomy in the conduct of their affairs. (1) While Chief Justice John Marshall spoke for the right of an Indian tribe to exercise jurisdiction over its native homeland, Andrew Jackson chose to have the same tribe removed by force rather than defend their right to self-determination.(2)

A century later, the response to Collier's reforms of the 1930's was similar. By the early 1950's, the affirmation of Indian collectivist rights contained in the *Indian Reorganization Act* were blatantly denied by a conservative backlash that surfaced as soon as Collier attempted to acquire federal land for Indians (3) Collier was forced out as Commissioner of Indian Affairs in 1945 and in 1953 Congress passed House Concurrent Resolution 108, a general statement endorsing the 'termination' of the longstanding trust relationship between Indian nations and the federal government (4) Like Roosevelt's New Deal reforms in general, the so called 'Indian New Deal' had fallen victim to post war American conservatism. Aroused by the Cold War, the idea of the status of Indian

tribes as distinct was too reminiscent of communism for conservative Americans' comfort. It violated American ideals of individual achievement and free enterprise and had failed to bring about Indian economic development (5) Indians, it was believed, had to be freed of the restrictive relationship they had with government and be permitted to compete as individuals with other Americans in the common marketplace (6)

The new 'Termination' policy consisted of four components: the once and for all settlement of outstanding claims through an Indian Claims Commission; the formal withdrawal of federal responsibility for Indians, a program of Indian relocation to urban centres, and the transfer of services for Indians to the states and other federal agencies.(7) Congress wasted no time implementing its program. Between 1954 and 1962 one hundred and fourteen Indian groups were unilaterally terminated, meaning they ceased to exist as legal entities enjoying special guarantees of federal protection as promised by treaty.(8)

Indian response to the termination strategy was swift and effective. From the ranks of a growing number of Indian university students a vocal and radical protest movement began in the cities, while tribal councils created under provisions of the *Indian Reorganization Act* organized the Indian response from the reservations (9) Intertribal communication and organization developed largely as a result of Collier's reforms of the 1930's. The *Indian Reorganization Act* not only established these councils, but had acknowledged them to be legitimate representatives of Indian concerns. They became direct channels of communication to the federal government. The creation of the coun-

cils contributed directly to Indian political capacities by forming the organizational framework within which Indian tribes cooperated and communicated to better identify common goals, and through which they could articulate these common interests as political demands. Tribal councils organized under the IRA were instrumental in the creation of organizations such as the National Congress of American Indians and the Council of Energy Resource Tribes. Stephen Cornell concludes, the " ramifications (of the IRA) far outstripped the framework it originally set up ' (10)

When the Canadian government attempted its termination program in 1969, the effect was much the same. The stated premise of the White Paper, the Canadian government's proposed termination policy, was the recognition of " the simple reality that the separate legal status of Indians and the policies which have flowed from it have kept the Indian people apart from and behind other Canadians " It proposed a partnership, through which the goal of Indian equality was to be achieved. "The partners are the Indian people, the governments of the provinces, the Canadian community as a whole and the government of Canada." The White Paper was worded so that to disagree with it was to be in agreement with racial inequality. "This Government believes in equality. It believes that all men and women have equal rights. It is determined that all shall be treated fairly and that no one shall be shut out of Canadian life, and especially that no one shall be shut out because of his race."(11)

The White Paper proposed the repeal of the legislative and constitutional bases of discrimination, (the *Indian Act*); that Indians receive governmental services from the same sources as other Canadians, (the Provinces), that control of Indian lands be transferred to the Indian people, (termination of trust status), and that those individuals who are farthest behind be helped the most, (economic development) As well, the White Paper proposed the appointment of an Indian Claims Commissioner and suggested that the Department of Indian Affairs would cease to operate after five years, when existing programs would be devolved to the provinces (12) While the termination policy in the United States and the White Paper in Canada varied, both proposed fundamentally the same thing.

Instead of resulting in the termination of the federal trust status of Indian nations, the White Paper inspired a united aboriginal political movement that, a decade later, successfully lobbied for the entrenchment of 'existing' aboriginal rights into the Canadian constitution.(13) Like the American counterpart, the termination program provided the critical issue around which Indians organized politically. Furthermore, once organized, Indians not only successfully defended themselves against termination, but also succeeded in organizing a coherent and unified movement to pressure the government with well articulated political demands that went well beyond the retention of federal trust status.

As with earlier policy, isolated comparisons reveal less than historically situated ones. It seems that in the United States termination resulted from a generalized conservative backlash to Collier's suspicious reformism.(14) In Canada termination policy could be better described as a thinly disguised attempt on the part of the federal government to abandon its commitment to Indians by appealing to public morality.(15) But the fact remains that despite these differences, termination as a policy reform, was actually very similar in the two countries. Furthermore, each government responded to the Indian reaction to termination in significantly similar ways.

By the mid 1970's both governments had officially denounced termination policy, and responded to post-termination Indian political demands with endorsements of 'Indian Self-government' as the new direction in Indian/government relations. The policy making environment had changed as a result of Indian political mobilization. The established structures of White control had broken down, and the 'unilateral' nature of Indian/White relations, which had characterized the Indian policy making context since the mid 19th century began to disintegrate.(16) In the past, the degree of government recognition for Indian rights has increased or decreased in relation to the degree of Indian political influence. Recent government promotion of Indian self-government therefore, can be viewed as a response to increased Indian political capabilities.

But another factor has influenced post termination Indian policy making — the increased non-native demand for natural resources on Indian land.(17) Prior to the failure of the termination strategy, neither government had done much to promote the

economic development of reserves or reservations. Each had either overlooked the resource value of Indian lands or anticipated the day when Indians would no longer pose a barrier to non-native access and exploitation. Since the 1950's, coal, uranium, oil, gas, and minerals have all been found in abundance on Indian lands and it is estimated that energy resource-rich tribes own 40 percent of American uranium reserves, 30 percent of all strippable coal west of the Mississippi and a large portion of the country's oil shale, natural gas and petroleum reserves.(18) The 1960's also saw many of the newly independent 'Third World' countries begin to challenge American domination of their economies, with the formation of producer's organizations such as OPEC (oil), CIPEC (copper) and IBA (bauxite). In an effort to avoid conflict with the new Third World governments, and to ensure access to important resources, exploration was concentrated in the so called 'developed' countries where greater control and cooperation was anticipated. Since large proportions of these resource were to be found on Indian reserves and reservations in Canada and the United States, access to the resources became the central concern of Indian policy.(19)

Given the state of Indian/government relations, neither the Americans nor the Canadians were in any position to take for granted unrestricted access to natural resources on Indian lands. Cornell points out that 'the scramble for Indian resources' that occurred in the United States in the post-termination period involved a variety of interests, including several federal agencies, multinational corporations and the Indian nations themselves. Often the interests of all converged, but not all Indian nations approached the exploitation of their resources with equal enthusiasm. Some have

demanded high royalties, preferential Indian employment and tribal control over certain aspects of the development process, or have refused to cooperate with certain types of development outright.(20) Access to resources on Indian lands therefore involves an important degree of Indian political cooperation. "Convinced that the basis of their community lay in their common land base, the Indian nations..had, in large measure, turned against ruinous resource development. This posture laid the groundwork for an intense conflict with some very powerful corporate interests. The object of the conflict, as usual, was land and resources."(21)

The challenge of Indian militancy in the 1960's and 1970's was serious. Substantial non-Indian interests were adversely affected and the American government appeared to be losing control of Indian/government relations. The government responded with the 1975 'Self-determination' policy.(22) Yet what appears to be a reversal in Indian policy is really a different tack toward the same policy end. Stephen Cornell has analysed American Indian policy reform of the 1970's and has identified a well integrated strategy that involves: 1) the suppression of the most politically radical Indian leaders, 2) a symbolic response to some Indian demands in a public forum while, 3) policy is reformed substantively in a less public forum. The substantive reforms, Cornell points out, both accommodate moderate Indian demands and strengthen the institutional structure of Indian/White relations in a manner that ultimately benefits non-Indian interests.(23)

The American government responded to Indian militancy of the 1960's and 1970's with a campaign to discredit and cripple the most radical Indian organizations. Its specific target was the American Indian Movement (AIM). Accounts of events surrounding the confrontation between AIM and the FBI at the Pine Ridge reservation (Wounded Knee II) in 1973 tell of politically motivated murders, the arrest and imprisonment of many Indian leaders on trumped up charges, police harrassment and surveillance of individual Indians, the manipulation of the legal system and local police forces by the FBI and the infiltration of the American Indian Movement. AIM was the object of an elaborate 'spy' network that involved the FBI, RCMP, local police forces, police informants and fabricated evidence.(24) The campaign was effective. Factional divisions within the organization were exacerbated as members grew suspicious of each other. Court cases tied up limited human and financial resources, and more importantly, from the government's point of view, militant Indians occupied with criminal charges were unable to press treaty claims to resource rich lands.(25)

With the most radical Indians successfully frustrated or languishing in jail, the government was free to move on its symbolic reform agenda. This strategy involved the appointment of Indians to review boards, commissions and the federal bureaucracy. The best example, is the American Indian Policy Review Commission (AIPRC). Staffed mostly by Indians, the high profile commission carried out a series of studies of major issues in Indian Affairs and made recommendations that were largely ignored. The AIPRC conducted hearings for two years, with no clear objective or method. The Commission made over 200 recommendations that were "...basically housekeeping measures

designed to enhance certain privileges of the Indian ruling class while making tribal governments more comfortable in their dealings with the federal bureaucracy. The lot of the reservation Indian was hardly mentioned in the several thousand pages of task force reports that covered a variety of subjects."⁽²⁶⁾ The AIPRC was followed by a special Senate Committee on Indian Affairs, but it had become clear that "...any future efforts on the federal level to direct the Indian programs would be merely ad hoc instructions designed to placate the natives."⁽²⁷⁾ Such appointments imply the government is responding to Indian grievances and give the impression Indians have influence over the policy making process, but in reality the policy processes and administrative structures remain largely unaffected.⁽²⁸⁾

Substantive reform of Indian policy took place on a much less public level. Faced with newly assertive Indian governments, the federal government and multinational corporations turned to bargaining with the tribes for access to Indian resources, meeting many Indian demands with higher royalty payments, investment in reservation infrastructures, environmental protection, preferential Indian employment strategies and expanded Indian control over development.⁽²⁹⁾ But Cornell points out that the exchange is not only economic. There is also a political exchange. The American government was not about to introduce reforms that increased the power of the political challengers. The political arena was opened to Indians in the 1960's and 1970's in ways it had never been opened to them before, but only certain Indian political actors were allowed in. Political access was granted only to federally recognized tribal governments. Indians were invited to play an expanded political role, but only through established institutions.⁽³⁰⁾

Cornell warns that the federally-sponsored expansion of tribal government political power is also a mechanism, that serves to control Indian political opposition. Indian groups that challenged the prevailing structure of Indian/White relations and rejected not only non-Indian control of Indian lives and resources, but of white society as well pose a significant threat to Indian/White relationships and the 'smooth incorporation of Indian resources.'(31)

As the powers of tribal governments grow within this structure, so does their stake in its maintenance. Individual Indian participants are unlikely to attack the structure itself or its prevailing patterns of government and economic organization, or to look kindly on those who do. They will become, Cornell predicts, protectors of the status quo and will come to regard tribal governments as the only legitimate representatives of Indian interests. The federal government therefore, will be justified in ignoring political actions which bypass the tribal councils or their representatives. Indian political action is directed into tribal government channels which remain subject, ultimately, to non-Indian controls. Tribal governments therefore form buffers against more defiant political actors whose priorities more directly challenge the interests of white society.(32)

The expansion of the post war Canadian economy relied heavily on energy and base minerals as well, and to a considerable extent these resources were also found on Indian land.(33) The scenario in Canada is significantly different from the American, however, because a goodly portion of resource rich land is as yet still not formally ceded by the Indian Nations to the federal government. In the early years of the resource boom, the ten-

dency was to ignore Indian interests, but that changed after two Supreme Court decisions in the early 1970's affirmed the existence of aboriginal rights, and made formal extinguishment of aboriginal title a legal requirement before expansion of the resource economy onto Indian lands.(34) Indians in Canada are now challenging the government and private interests for control and access to resources on reserves and lands currently under negotiation

Indian policy reform in Canada over the last 20 years has paralleled the self-determination movement in the United States.(35) The focus of policy concern in Canada, as in the United States, is management of Indian lands, with the provinces playing a greater role in Canada than the states in the United States. As Indians became better organized and more insistent that they control change in their homelands, access to the land and its resources has become a major point of confrontation.(36) Not surprisingly, Cornell's three part integration strategy is apparent in the Canadian approach to Indian policy reform in the post-termination period.

In the 1970's, surveillance of native groups in Canada increased, as did cooperation between American and Canadian police forces. The Native Peoples Caravan, a protest movement that followed the occupation of Anicinabe Park in Kenora, Ontario was infiltrated by the FBI in 1973, RCMP training courses began to include instruction on 'native extremism', spies were recruited from within the civilian population and Indian organizations and individuals became the object of a smear campaign.(37)

More recently, the events at Oka, Quebec over the summer of 1990 were not totally unbeneficial to the government. Both Indian and non-Indian attention was diverted away from ongoing policy developments. 'Noble savages' became 'ignoble savages' in the eyes of many non-natives, and, ultimately, some of the 'most radical' Indians in Canada were arrested and will soon to be tried in Canadian courts on a number of very serious criminal charges.

In light of Cornell's assertions, the Constitutional debate in Canada warrants particular attention. The constitutional status of the Indian nations in Canada is important, but it is not the only Indian policy reform process that is underway. After no agreement was reached in the last of four First Ministers Conferences on aboriginal rights in 1987, a general perception developed that a native policy vacuum had been created.(38) In actuality, the federal government had been pursuing a 'two-track' policy reform process that was supposed to have culminated in constitutional entrenchment of the self-government policy that had been going on all along in a much less public policy-making arena. While Indian leaders fought publically for constitutional recognition of an inherent right to self-government, the federal government was quietly negotiating local 'self-government' arrangements with individual groups across the country.(39)

The form of aboriginal self-government the federal government is pursuing is not substantially different from the long standing municipalization strategy of the 19th century.(40) The model for Indian self-government in Canada is Bill C93, *The Sechelt Indian Band Self-Government Act 1986*, which provides through legislation, the legal framework

for a third level government, and affirms the municipal model of self-government.(41) But these municipal-type Indian governments are considered inadequate by many Indian leaders because they confer a very limited jurisdiction over matters that affect Indian lives, government and economies. They are also considered dangerous, both symbolically and as legal precedents because in the Canadian constitution, municipalities are the legal creatures of, and are answerable to, the provinces. After the uncomfortably close encounter with the White Paper termination attempt, and in light of the cost cutting priorities and "...ideological hostility to the notion of Aboriginal special status.." contained in the 1985 Nielsen task force report on Indian policy, native organizations are suspicious of government motives.(42) They fear that acceptance of municipal-style self-government will lead to their being abandoned constitutionally by Ottawa in yet another federal attempt to consign them to the provinces, the objective of Canadian Indian policy since 1859.(43)

The Canadian government has been introducing the municipal structure on a piecemeal basis since the failure of the White Paper in 1969. A year later, funds were made available for reserve based economic development, but bands had to first incorporate, accept provincial taxation and risk the loss of Indian land by using it for collateral on government loans (44) In 1975 the Canadian government began transferring responsibility for federal programs and services to band councils, a strategy the Americans also endorsed the same year. These programs forced band councils to establish Euro-Canadian institu-

tions through which adoption of municipal government status and provincial jurisdiction is introduced gradually, and would ultimately result in the termination of Indian rights and status by eventually undermining federal jurisdiction.(45)

Policy reform in Canada may be piecemeal, but change is substantive. The First Minister's Conferences on constitutional reform on the other hand, remain symbolic. The only entrenchment of aboriginal rights to self-government acceptable to the federal government would have been the substantive policy reform based on the Sechelt model. Not only did the Conferences not get aboriginal peoples anywhere in terms of constitutional recognition of a right to self-government, but by entering the constitutional arena, Indians encountered a much more resistant and hostile policy environment. "Indian concerns were raised to a symbolic plane where they encountered major obstacles", warns Roger Gibbins. "Canada's constitutional debate has become a trap for Canadian Indians by elevating the discussion of Indian affairs to a plane where it is very difficult for Indians to win and where major losses are possible."(46)

The Canadian government's 'two-track' approach to Indian policy reform parallels the American symbolic versus substantive policy reform strategy. While negotiations over the constitutional status of Indians raged publicly, more substantive policy changes were well underway in a less public policy making forum. Indian leaders were fighting for recognition of an inherent aboriginal right to self-government, but at the same time the government was actively pursuing a much more moderate alternative, a legislated form of self-administration. One critic charges that without publicly admitting what it was

doing, the federal government has simply reintroduced its latest termination strategy. The current self-government policy sanctions the creation of Indian municipalities, affirms provincial title over Indian lands, supports the break-up of such lands into fee-simple holdings, and a phased shift of jurisdiction from the Federal Crown to the provinces (47) Furthermore, the government believes that once a number of Indian bands and tribal groups accept the government's strategy, and commit themselves to municipal status, the Department of Indian Affairs can use them as tangible precedents, and represent them as a consensus among Indian people about the form and nature of Indian self-government. "This definition, then, is expected to facilitate an understanding that will authorize the federal government to pursue a termination policy on an even larger scale." (48) The constitutional strategy gave the public impression that the government was doing what it could to address Indian demands, but it was also a means to produce constitutional amendments that would legitimate the municipal model that had already been developed. This would give Ottawa a constitutional mandate to impose the same results on other Indian nations by persuasion, pressure, manipulation or even unilateral legislation. "In other words, for the first time, the federal agreement would have constitutional authority to implement a full-scale and accelerated termination policy (49)

FOOTNOTES CHAPTER FOUR

- (1) D'Arcy McNickle, *Native American Tribalism: Indian Survivals and Renewals* (New York: Oxford University Press, 1973), pp. 166.
- (2) *Ibid*, pp. 167.
- (3) Joseph Jorgensen, "Federal Policies, American Indian Politics and the 'New Federalism'", *American Indian Culture and Research Journal* 10:2(1986), pp. 6
- (4) The concept of a federal trust status responsibility for Indians began in the United States with Marshall's decision in *Cherokee Nation v. Georgia*. Marshall described the Indian nations as "domestic dependent nations" and went on to state "that their relation to the United States resembles that of a ward to his guardian". Since then the trust relationship has been applied as a means to establish and protect Indian rights, thus Indians will fight for its retention. The trust relationship between Indian nations and the Canadian government is similar and is embodied in the Indian Act. See Felix Cohen, *The Handbook of Federal Indian Law* (1982 Edition) (Charlottesville: Law Publishers, 1982), pp. 220.
- (5) Kenneth R. Philp, "Termination: A Legacy of the New Deal", *The Western Historical Quarterly* 14.2, pp. 174.
- (6) Larry Burt, *Tribalism in Crisis: Federal Indian Policy 1953-61* (Albuquerque: University of New Mexico Press, 1982), pp. 20.
- (7) In 1947 assistant Commissioner of Indian Affairs, William Zimmerman, prepared a list of tribes considered ready for release from federal assistance. Three categories were established. tribes ready for immediate release, tribes expected to be ready in ten years, and another group which would remain indefinitely under federal supervision. The list later became the agenda for termination. See Donald Fixico, *Termination and Relocation: Federal Indian Policy, 1945-60* (Albuquerque: University of New Mexico Press, 1986), Larry Burt, *Tribalism in Crisis: Federal Indian Policy 1953-61*, op. cit. and Kenneth R. Philp, *Indian Self-Rule: First Hand Accounts of Indian-White Relations from Roosevelt to Reagan* (Salt Lake City: Howe Brothers, 1986).
- (8) The best known example of the effects of 'termination' is the Menominee of Wisconsin. In 1954 the Menominee enjoyed a reservation based economy that thrived on a forest products industry. Under the Termination policy the reservation became a county, tribal assets came under the control of a corporation in which individual Menominee held shares, previously untaxed lands became subject to state and local taxes and hospitals and other services were cut. The Tribal corporation was forced to lay off workers, who eventually had to sell their shares to survive. The corporation began leasing land to non-Indians and later had to sell all their land. Finally the Menominee became dependent on state welfare programs. A few years later the federal government admitted Termination had been an abysmal failure and rescinded the Termination policy. See, Deborah

Shames, *Freedom with Reservation: The Menominee Struggle to Save Their Land and People* (Madison: University of Wisconsin Press, 1972) and Nicholas C. Peroff, *Menominee Drums. Tribal Termination and Restoration 1954-1974* (Norman: University of Oklahoma Press, 1982)

- (9) Hazel W. Hertzberg, *The Search for An American Indian Identity* (Syracuse: Syracuse University Press, 1971)
- (10) Stephen Cornell, *The Return of the Native. American Indian Political Resurgence* (New York: Oxford University Press, 1988), pp. 174-75
- (11) Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy 1969* (The White Paper) (Ottawa: Queen's Printer, 1969), pp. 5-6
- (12) *Ibid.*, pp. 6. The Claims Commission was proposed solely as an advisory body. While the White Paper recognized the existence of Indian claims, they were considered so "general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy and program that will end injustice to Indians as members of the Canadian community." Then in 1973 a Supreme Court decision in *Calder v. Attorney-General of British Columbia*, (the Nishga case), convinced the government not to leave the question of outstanding Indian claims to the courts. Since then, the government has committed itself to the settlement of Indian claims. See J.S. Frideres, *Canada's Indians: Contemporary Conflicts* (Scarborough: Prentice-Hall Canada Inc., 1983), pp. 104-106; Daniel Raunet, *Without Surrender, Without Consent. A History of the Nishga Land Claims* (Vancouver: Douglas & McIntyre, 1984); and Department of Indian Affairs, *Living Treaties Lasting Agreements: A Report of the Task Force To Review Comprehensive Claims Policy* (Ottawa: Department of Indian Affairs and Northern Development, 1985)
- (13) J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), pp. 230.
- (14) Larry Burt, *Tribalism in Crisis. Federal Indian Policy 1953-61*, op. cit., pp. 4.
- (15) Sally M. Weaver, *Making Canadian Indian Policy The Hidden Agenda 1968-70* (Toronto: University of Toronto Press, 1981).
- (16) Stephen Cornell, "Crisis and Response in Indian-White Relations: 1960-1984", *Social Problems* 32:1(1984), pp. 44
- (17) *Ibid.*, pp. 46, also, Douglas E. Sanders, "Native People in Areas of Internal Economic Expansion", *Saskatchewan Law Review* 38
- (18) Roxanne Dunbar Ortiz (Editor), *American Indian Energy Resources and Development* (Albuquerque: University of New Mexico Press, 1980), pp. 13.
- (19) *Ibid.*, pp. 14

- (20) Stephen Cornell, "Crisis and Response in Indian-White Relations: 1960-1984", *op. cit.*, 50-51.
- (21) Bruce Johansen and Roberto Maestas, *Wasi' Chu: The Continuing Indian Wars* (New York: Monthly Review Press, 1979), pp. 1-3.
- (22) The 1975 Indian Self-Determination and Education Assistance Act enabled the federal government to override existing legislation as it applied to government contracting, purchasing and property management, so that Indian tribes could contract directly with the federal government to deliver existing BIA programs. The Act gave Indians in the United States some control over social services and other programs usually administered by the BIA, but tribal lands and resources were left under federal supervision. See Douglas Sanders, *Aboriginal Self-Government in the United States* (Kingston: Institute of Intergovernmental Relations, 1985); Jeanne Guillemin, "The Politics of National Integration: A Comparison of United States and Canadian Indian Administrations", *Social Problems* 25:3(1978), and Emma Cross, *Contemporary Federal Policy Toward American Indians* (New York: Greenwood Press, 1989).
- (23) Stephen Cornell, *The Return of the Native*, *op. cit.*, chapter 12.
- (24) Rex Wyler, *Blood of the Land: The Government and Corporate War Against the American Indian Movement* (New York: Vintage Books, 1982), chapter 6; Bruce Johansen and Roberto Maestas, *Wasi' Chu. The Continuing Indian Wars*, *op. cit.*, pp. 120. See also Ward Churchill and Jim Wander Wall, *Agents of Repression: the FBI's Secret War Against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1988).
- (25) Rex Wyler, *Blood of the Land*, *op. cit.*
- (26) Vine Deloria Jr., *Indian Policy in the 20th Century* (Norman: University of Oklahoma Press, 1985), pp. 254.
- (27) *Ibid.*
- (28) Stephen Cornell, *The Return of the Native*, *op. cit.*, pp. 203.
- (29) Stephen Cornell, "Crisis and Response in Indian-White Relations, 1960-1984", *op. cit.* pp. 52.
- (30) *Ibid.*, pp. 53.
- (31) *Ibid.*
- (32) *Ibid.*, pp. 54.

- (33) For example, this was the case with the Hobbema Reserve southeast of Edmonton, where oil was discovered in 1947. Another example is the Crees in the uranium rich areas of northern Saskatchewan, who have been struggling with Eldorado Nuclear and the federal and provincial governments for control over uranium mining in that area. See Jim Harding, *Aboriginal Rights and Government Wrongs: Uranium Mining and Neo-colonialism in Northern Saskatchewan* (Regina: Prairie Justice Research, 1988); J.R. Miller, *Skyscrapers Hide the Heavens*, op.cit. pp. 250; and Douglas Sanders, "Native Peoples in Areas of Internal National Expansion", op. cit.
- (34) J.R. Miller, *Skyscrapers Hide the Heavens*, op. cit., pp. 251. This approach to resource development can be explained to some extent by the fact that the BNA gave the provinces jurisdiction over resources. The provincial governments have more often ignored Indian interests, and proceeded to authorize private exploitation of natural resources.
- (35) Jeanne Guillemin, "The Politics of National Integration: A Comparison of United States and Canadian Indian Administrations", op. cit., pp. 325.
- (36) J.E. Miller, *Skyscrapers Hide the Heavens*, op. cit, pp. 250.
- (37) Johanna Brand, *The Life and Death of Anna Mae Aquash* (Toronto: James Lorimer & Company, Publishers, 1978), chapter 10. See also, Vern Harper, *Following the Red Path: The Native Peoples Caravan*, 1974 (Toronto: NC Press Limited, 1979); Rex Weyler, *Blood of the Land*, op. cit., Chapter 6; Bruce Johansen and Roberto Maestas, *Wasi' Chu: the Continuing Indian Wars* (New York: Monthly Review Press, 1979).
- (38) David Hawkes, *Aboriginal Peoples and Constitutional Reform: What Have We Learned?* (Kingston: Institute of Intergovernmental Relations, 1989), pp. 53.
- (39) Walter Rudnicki, "The Politics of Aggression: Indian Termination in the 1980's", *Native Studies Review* 3:1:(1987), p. 88-89.
- (40) Tony Hall, "Self-Government or Self-Delusion? Brian Mulroney and Aboriginal Rights", *Canadian Journal of Native Studies* 6:1(1986), pp. 79.
- (41) From conversations with representatives from the Assembly of First Nations, October, 1989. See also Katharine Dunkley, *Indian Self-Government* (Ottawa: Library of Parliament, Research Branch, 1986); and Carol E. Etkin, "The Sechelt Indian Band: An Analysis of a New Form of Native Self Government", *Canadian Journal of Native Studies* 8:1(1988):73-105.
- (42) Noel Dyck, "NSR Comment, by Noel Dyck", *Native Studies Review* 2:2(1986), pp. 48; Sally M. Weaver, "Indian Government in the New Conservative Government: The Nielsen Task Force", part I and II, *Native Studies Review* 2:1(1986):1-43 and 2:2(1986):1-45.
- (43) J.R. Miller, *Skyscrapers Hide the Heavens*, op. cit. 246.

- (44) Maria Smallface-Marule, "The Canadian Government's Termination Policy: From 1969 to the Present Day", in Ian A.L. Getty and Donald B. Smith, *One Century Later: Western Canadian Reserve Indians Since Treaty 7* (Vancouver: University of British Columbia Press, 1977), pp. 108.
- (45) *Ibid.*, pp. 110.
- (46) Roger Gibbins, "Canadian Indian Policy: The Constitutional Trap", *Canadian Journal of Native Studies* 4:1(1984), pp. 5; 7. The four participating national aboriginal organizations were more unified in 1987 than they had been at the beginning of the process. The four organizations representing aboriginal peoples were The Assembly of First Nations (status Indians), the Native Council of Canada (non-status Indians and Metis); Inuit Committee on National Issues; and the Metis National Council.
- (47) Walter Rudnicki, "The Politics of Aggression: Indian Termination in the 1980's", *op.cit.*, pp. 89.
- (48) *Ibid.*
- (49) *Ibid.*, pp. 90. See also George Erasmus in Boyce Richardson, *Drumbeat: Anger and Renewal in Indian Country* (Toronto: Summerhill Press, 1989).

CONCLUSION

The concept of Indian 'sovereignty', was used in the 18th century to ensure the expedient realization of European expansion. 'Sovereignty', as expressed by the recognition of an aboriginal right to 'self-government' is still used today as a means for white society to gain greater access to Indian resources. To the governments, Indian 'self-determination' is a means to an end. But to the Indians, it is an end in itself. Consistently, both governments have underestimated and failed to understand Indian political motivation.

In the 19th century, white society tried to manipulate the Indians' cultural environment. Confining Indians to reserves and reservations Indian culture was suppressed and a social policy based on private property was enforced. Then white policy tried to manipulate the Indians' political environment by establishing structures of self-government that would integrate them as individuals into the surrounding white community. When these efforts failed, policy makers tried to bring Indians directly into the dominant economic system. The question for analysts of North American native policy is this: Are Indians anymore likely to adopt the desired cultural standards in economic terms than they did in cultural or political terms?

Since the Second World War, Indians' political, cultural and economic goals have consistently had very little to do with the common American vision of success. Indian politics has been less concerned with access to the larger society and its material rewards than with the maintenance and integrity of Indians' distinct separateness as nations.(1) When

questions of 'national survival' become mixed with questions of economics, the discussion quickly turns to one of the viability of the nation. Most tribes, Stephen Cornell claims, will not willingly sacrifice political autonomy or cultural integrity for economic gain. "Indian nations typically have been and remain committed to improving the material standard of living of their peoples, but only if such improvement does not come at the expense of group identity, political autonomy, and freedom of cultural choice." (2) In the Third World, such an attitude would not seem exceptional. But in North America it is considered unusual because it 'flies in the face' of the idealized image of the lone individual breaking free of group distinctions, to make his or her way as a single member of a diverse society. Instead, Indian politics posits the preservation of the group as the fundamental criterion against which development, like politics is to be measured. (3)

Indian response to white policies confronts and confounds white North Americans' perceptions of themselves. The so called 'American Dream', as Cornell indicates, is basically a dream of individual achievement and success. American Indians share a notion of success, but in terms of the success of the collective. As Pueblo anthropologist Alfonso Ortiz points out, levelling mechanisms such as the potlatch or giveaways, or community norms that emphasize sharing over accumulation, "... (raise) all kinds of hell with the American ethic." (4) 'Success', largely understood as economic achievement, in the non-native American Dream, has a very different and more complex meaning in the Native American Dream, which involves the political and cultural, as well as economic survival of a People. Indian reluctance to involve themselves in and their general skep-

ticism about the basic institutional orientations of American life, especially the orientation to market criteria as the measure of all value and to a highly individualized and secular politics, leaves many non-natives bewildered.(5) At the same time, the persistent waves of policy reform that affirm, deny, then reaffirm Indian collective rights indicate white society's own struggle, its own 'unresolved dialectic' between individualism and collectivism.(6)

This is the point of my opening statement. This thesis has not been about Indians. To achieve a broader and more relevant conceptualization of the Indian/government relationship, we must first examine the society that created it. We must look at how and why the policy options were perceived as they were. Indian policy was much more than a product of the practical demands of colonial expansion. We have to look at Indian policy and its relationship to Euro-North American political idealism, and we must try and achieve a better comprehension of white society's own sense of loss and confusion over its dissociation with nature.

Footnotes

(1) Stephen Cornell, "American Indians, American Dreams, and the Meaning of Success". *American Indian Culture and Research Journal* 11:4 (1987), pp. 63.

(2) Ibid.

(3) Ibid., pp. 64.

(4) Quoted in Cornell, "American Indians, American Dreams", op. cit.

(5) Ibid., pp. 65.

(6) Joseph G. Jorgensen, "Federal Policies, American Indian Polities and the 'New Federalism'", *American Indian Culture and Research Journal* 10:2(1986), pp. 2.

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