Aboriginal diversity and politics in Canada.

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ABORIGINAL DIVERSITY AND POLITICS

IN CANADA

BY:

KATHERINE M. DE VERE

A THESIS
SUBMITTED TO THE
FACULTY OF GRADUATE STUDIES AND RESEARCH
THROUGH THE DEPARTMENT OF
POLITICAL SCIENCE IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE
OF MASTER OF ARTS AT THE
UNIVERSITY OF WINDSOR

WINDSOR, ONTARIO, CANADA

1995
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ABSTRACT

In assessing the progress toward a mutually acceptable agreement on aboriginal issues between native Canadians and Canadian governments, it is apparent that several obstacles have come to derail the process. This study attempts to identify one of those impediments: diversity within the native Canadian community.

This study outlines two particular types of diversity within the native Canadian community: historically-based diversity and legally-based diversity. It also outlines the role that native Canadian organizations such as the Assembly of First Nations and the Native Council of Canada have played in articulating this diversity.

The primary findings of this study are:
1. There is certainly historically-based diversity within the native Canadian community.
2. There is certainly legally-based diversity within the native Canadian community.
3. Legal divisions within the native community, particularly those which dictate whether an individual or group is granted status, have influenced the level of diversity within the native community.
community by creating different interests and agendas for status and non-status Indians respectively.

The conclusions of this study are that there is a significant amount of diversity which exists within the native Canadian community, and that therefore there are a variety of interests held therein. In order for a mutually acceptable agreement to be reached on native issues, Canadian governments must recognize the existence of this diversity when formulating policies which affect native Canadians. Similarly, native Canadians must recognize that diversity within their community makes devising a policy which will be acceptable to all is virtually impossible.
DEDICATION

This paper is dedicated to my parents, Carolyn and Malcolm De Vere, whose never-ending encouragement resulted its completion. This paper is also dedicated to Robert Ford, who has provided immeasurable support to me in this endeavor. To each of the aforementioned individuals I wish to extend sincere gratitude.
Acknowledgements

I wish to acknowledge the contributions of Professor Howard Pawley and Professor Stephen Brooks, both of the University of Windsor, to this paper. Both have provided much needed information, and much appreciated advice. I also wish to acknowledge the contribution of Professor Maureen Irish, also of the University of Windsor, in terms of providing information relating to Canadian law, and in terms of simply providing a fresh perspective on the issues.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>iv</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>vi</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>vii</td>
</tr>
<tr>
<td>CHAPTER</td>
<td></td>
</tr>
<tr>
<td>I. INTRODUCTION. REVIEW OF THE LITERATURE</td>
<td>1</td>
</tr>
<tr>
<td>II. HISTORY OF ABORIGINAL-STATE RELATIONS</td>
<td>14</td>
</tr>
<tr>
<td>1982, AND THE FIRST MINISTERS' CONFERENCES</td>
<td></td>
</tr>
<tr>
<td>THE MEECH LAKE ACCORD</td>
<td>24</td>
</tr>
<tr>
<td>THE OKA CRISIS</td>
<td>27</td>
</tr>
<tr>
<td>THE CHARLOTTETOWN ACCORD</td>
<td>36</td>
</tr>
<tr>
<td>III. HISTORICALLY-BASED DIVERSITY</td>
<td>42</td>
</tr>
<tr>
<td>THE INDIANS</td>
<td></td>
</tr>
<tr>
<td>THE METIS</td>
<td>51</td>
</tr>
<tr>
<td>THE INUIT</td>
<td>66</td>
</tr>
<tr>
<td>IV. LEGALLY-BASED DIVERSITY</td>
<td>81</td>
</tr>
<tr>
<td>THE INDIAN ACT 1876, 1951, AND BEYOND</td>
<td></td>
</tr>
<tr>
<td>DISTINCTIONS UNDER THE INDIAN ACT</td>
<td>91</td>
</tr>
<tr>
<td>DIFFERENCES : STATUS AND NON-STATUS</td>
<td>93</td>
</tr>
<tr>
<td>EVALUATIONS OF THE ACT : TWO POINTS OF VIEW</td>
<td>95</td>
</tr>
<tr>
<td>CONCLUSIONS</td>
<td>101</td>
</tr>
<tr>
<td>V. NATIVE ORGANIZATIONS</td>
<td>107</td>
</tr>
<tr>
<td>HISTORY OF NATIVE POLITICAL ORGANIZATIONS</td>
<td></td>
</tr>
<tr>
<td>MEMBERSHIP AND GOALS</td>
<td>121</td>
</tr>
<tr>
<td>HOW FRAGMENTATION HAS AFFECTED PERFORMANCE</td>
<td>126</td>
</tr>
<tr>
<td>CONCLUSIONS</td>
<td>132</td>
</tr>
<tr>
<td>VI. CONCLUSIONS</td>
<td>135</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>142</td>
</tr>
<tr>
<td>VITA AUCTORIS</td>
<td>149</td>
</tr>
</tbody>
</table>

viii
In assessing the progress toward a mutually acceptable agreement between aboriginal Canadians and Canadian governments on the issue of aboriginal self-determination, it is clear that certain impediments continue to stand in the way of such an agreement. One such impediment, and one that may in fact make an agreement on this issue impossible, is the existence of innate diversity within the native community. In an attempt to illustrate these diversities, this study will address three main areas: the existence of basic historical tribal divisions in aboriginal society; the differences between "status" and "non-status" aboriginal Canadians; and the existence of four different national organizations which represent aboriginal Canadians. Each of these three characteristics of diversity which characterize the native Canadian community further fragments the interests and approaches of native Canadians related to the issue of self-determination. And, it is these differences and diversity which continue to impede achievement of an agreement on this issue.

When considering the fact that a mutually acceptable agreement on the issue of aboriginal self-determination has yet to be reached between aboriginal Canadians and Canadian governments, it is important to stress that it is not proper nor prudent to attempt to assign any kind of "blame" to a particular group, or to one or the other of the sides in the negotiation process. Therefore, it must be stated that it is not the purpose of this study to assign the blame for the failure to reach an
agreement to either the native Canadian community, nor to the Canadian governments.

The purpose of this study is to try to gain some insight into, and some understanding of, why an agreement on the issue of aboriginal self-determination in Canada has been elusive thus far. It is offered here, that one of the impediments which has critically affected the negotiation process has been the diversity which exists within the native Canadian community. This study does not purport that the aboriginal community is characterized solely by diversity and difference, and in fact acknowledges that the native community does exhibit characteristics which are almost wholly universal throughout the community. Nor does this study purport that this diversity has been the only impediment to affect negotiation related to this issue, as there are certainly many others, which are beyond the scope of this study.

In the last twenty years the Canadian political agenda has been increasingly occupied with issues related to aboriginal Canadians, and in particular related to the issue of "self-determination". These issues have caught the attention of both politicians and the media, and have aroused many emotions within the native community, as well as within the non-native community.¹ Much of the literature related to these issues is

concerned primarily with the concept of aboriginal "self-government", and the notion that the fact that there has yet to be a comprehensive and concrete model of self-government proposed has been the primary obstruction on the road to an agreement. However, it would appear that there are also some fundamental reasons why an agreement has yet to be reached, and it is important to understand what these fundamental reasons are. This then is how this study differs from others in the field: it asserts that it is the elements which underlie the native community which have been an impediment to an agreement, and not something which has taken place at the negotiating table per se. In other words, it is the way in which aboriginal Canadians must approach the negotiating table, and what occurs once they get there because of their diversity, which has thus far made an agreement on this issue unachievable.

It is of great importance today to explore, and to hopefully understand, the reasons why an agreement on aboriginal self-determination has been elusive up until this point. This is the case because until an understanding occurs, it is unlikely that there will be any real progress toward a satisfactory resolution to the issue for either native or non-native Canadians. This study intends to increase, and perhaps to expand, the understanding of the diversity of the Canadian aboriginal community, particularly as it relates to the consistent failure to reach an agreement on aboriginal self-determination.
Before delving into the major occurrences of negotiation on the issue of aboriginal self-determination, and before discussing the pertinent literature which exists on this topic, it is first appropriate to establish some definitions of the key concepts which will periodically surface throughout the course of this study, as they relate to this study. The concepts to be defined are: "native Canadian", "non-native-Canadian", "self-determination", and "aboriginal self-government".

In the context of this study the term "native Canadian" refers to all four of the main categories of aboriginal Canadians, which are: Status Indians, Non-Status Indians, the Metis, and the Inuit. Each of these categorizations will be further defined and described in Chapters Two and Three of this study. The term "non-native Canadian", as it is used herein, refers to those Canadians who are not of direct or indirect native descent, or those Canadians who do not consider themselves to be of native origin. This term is used primarily as an antithetical reference to distinguish between something which is characteristic of the native community and something which is characteristic of the rest of the Canadian population, and is not intended to have any specific technical reference.

The term "self-determination", as it is used in the context of this study, refers to the inherent right of native Canadians
to not only govern themselves, but also to be responsible for themselves. The issue of native Canadian self-determination is in fact quite a complex one, and will be discussed at greater length later in this study. And finally, the term "aboriginal self-government", within the context of this study, refers to the inherent right of native Canadians to effectively govern themselves. This too is a decidedly complex issue, and will also be discussed at much greater length later in the study.

**Review of the Literature**

The last twenty years has seen a resurgence in interest in the issue of aboriginal self-determination. This is evident not only in the amount of attention paid to the issue in strictly political circles, but is also evident in the amount of literature which has been written on the subject. Over the course of the last two decades, work in the field of aboriginal issues has increased significantly. Many authors have come to known as "experts" in the field, such as David c. Hawkes and Frank Cassidy, and a large number of other authors have written extensively in the field.

The amount of literature on the subject of self-determination as a blanket classification is quite sizable, however, while there are several areas in which this literature is primarily focused, there are also certain areas in which there is a obvious void. Those areas in which there a sizable body of
work will be discussed first, followed by a discussion of those areas in which there is a lack of research. Finally, the end of this chapter will provide an explanation of where this paper will fit into the scope the literature which exists on the subject of aboriginal self-determination.

For the purposes of this literature review, six classifications of literature will be discussed, those relating to the history of native peoples, to particular segments of native society, and to the differences between status and non-status Indians; those relating to the definition of aboriginal self-government, and to the proposal of models of self-government; those relating to the subject of aboriginal rights, to the issue of "native sovereignty", and to the challenges which result from these two ideas; those relating to native state-relations, and to recent conflicts between the two parties; those relating to internal problems which the native community faces politically; and finally those relating to aboriginal political organizations.

One of the first things which is striking when one sets out to research native Canadians as a people, is that there is a vast body of literature on the history of native peoples, in both the Canadian and North American contexts. These histories are occasionally about only certain groups within the native community, like the Metis, as in Brown (1988) which provides an in depth discussion of the evolution of the Metis people from the
earliest point, to the modern day; or Sealy and Lussier (1975) and Lussier and Sealy (1978) who discuss the challenges faced by the Metis as a people since their conception.²

By far it is the Metis people who are the subject of most of the literature on the different members of the native community, however, the Inuit follow a close second. Much of literature relates to the traditional history and culture of the Inuit people, as in Freuchen (1961), and Harrington (1931), although some of the literature such as Graburn's *Eskimos Without Igloos* (1969) deals with more contemporary concerns. The group which has received the least amount of attention in the literature vis à vis their history are Indians, although there are some extensive histories which exist such as that by Olive Dickason (1992).

Each of these segments of native society, as portrayed in the literature, is very unique and different. The history and culture of the three segments of the native Canadian community, Indian, Metis, and Inuit are often, although not always directly, presented in contrast to one another. For example, McEwen (1966), in trying to establish the character of the Metis, described them as being less nomadic than Indians. The fact that the three segments of native society are presented in contrast to one another, indicates that the differences between them are well established and well-known.

²Other works on the Metis deal primarily with their history and contribution to Western Canada, such as McLean (1987)
There also exists a small body of literature on the differences between status and non-status Indians. Dyck (1980) suggests that the legal divisions which separate status and non-status Indians have resulted in the evolution of two separate and distinct cultures and societies. Fuller's article "Who is a Real Indian Anyway?" (1993) provides a contemporary example of Dyck's theory, in a case where status and non-status Indians enclaves are attempting to fuse. These divisions, and the conflict they spark, support the notion that division in the native community between status- and non-status Indians is a problem.

Another area of interest in the literature is that of the definition of self-government and the proposal of various models of self-government. The literature which deals with the definition of self-government not only sets out in most cases to provide a definition for a concept whose implications are often difficult to establish. While Harry LaForme (1991) sets out specifically to answer the question "What does it mean?", other authors expand the question in other directions. John Weinstrong (1986) discusses the notion of self-government for non-status Indians, and Noel Lyons (1984) addresses more specific problems relating to how the actually functioning of self-government may affect aboriginal Canadians. The main purpose of the literature here is to provide a more concrete definition of, and explanation of, the idea of self-government.

In terms of models for self-government, Thomas Courchene and Lisa Powell (1992) provide a detailed model for what they term a
"first nations province", wherein self-governing first nations would operate within the Canadian political apparatus with powers much like any other province in Canada. While Courchene and Powell are quite specific, other authors, such as David A. Boisvert (1985) and Frank Cassidy and Robert L. Bish (1989) discuss models and ideas for self-government in much more broad terms. Again, the purpose of this type of literature seem to be to provide a much more tangible framework for the implementation of aboriginal self-government. While this paper does not deal with issues of self-government per se, it does explore why agreements on issues such as self-government have yet to be reached.

The third area of literature to be discussed relates to the subject of aboriginal rights, to the issue of "aboriginal sovereignty", and to the challenges which spring from these two concepts. The notion of aboriginal rights is around the premise that native Canadians have certain inherent rights because they are the original people of Canada. This subject has also received a great deal of attention in recent years from authors. Rhadda Jhappan (1992) discusses the fact that many proposals for an agreement between the federal government and native Canadians have failed largely due to the governments' failure to acknowledge the inherent rights of native Canadians. Other authors such as Harry LaForme (1991) and Dianne Englestad seek to define and explain the term "native sovereignty", a component of inherent aboriginal rights.
Still other authors have tackled the issue of the challenges caused by the above issues. David C. Hawkes (1989) discusses the constitutional wrangling involved in negotiations between governments and native Canadians over these issues, and Frideres (1983) discusses specifically many of the conflicts which have occurred between governments and native Canadians, including those surrounding the Indian Act of 1951. The issue of aboriginal rights is a very far-reaching issue because it is at the center of the conflicts between governments and native Canadians, and that is why the issue is of interest here.

Perhaps the area of literature in which authors have been most prolific relates to the topic of direct aboriginal-state relations, and more specifically about specific crises and/or attempts at negotiating an agreement by the two. The first period which is well-documented by authors like Brock and Cohen, Smith and Warwick (1987), is the period between the signing of the Constitution in 1982 and the last legislated First Ministers' Conference on aboriginal issues in 1987. The Meech Lake Accord is also the subject of many books and articles. Hawkes and Devine (1991) discuss the Meech Lake Accord and also Elijah Harpers' role in its demise in great detail, as do Campbell and Pal in the piece "The Rise and Fall of the Meech Lake Accord" (1991). And finally the confrontation at Oka, Quebec in 1990, has also been seen as an important event in the recent history of native state-relations in Canada, not for what it did accomplish, but for what it did not. Campbell and Pal in the piece "Feather and
Gun: confrontation at Oka Kanesatake" (1991) sum up the outcome of the event by saying that essentially another unresolved conflict or negotiation process with the federal government was exactly the kind of treatment that native Canadians have always had to endure. Other pieces simply provide thorough chronologies of the complicated events which took place during the Oka confrontation, such as that by Tugwell and Thompson (1991).

Each of the following subjects related to the study of aboriginal self-determination have been well-documented. The last two areas of interest are not well-documented, and in fact there appears to be a sizable gap in the literature relating to the internal problems within the native community, and to native political organizations. In trying to determine why an agreement has not yet been reached between aboriginal Canadians and Canadian governments, it would be helpful to understand what, if any, internal conflicts exist within the native community. It is relatively easy to establish that the native community is in fact quite diverse, but it is difficult to determine how those differences are played out within the community. From popular sources such as newspapers or magazines, it is evident that there are internal divisions within the native community. Fuller in "Racism on Reserves" (1993) writes about the conflict which erupted because of the passage of Bill C-31, legislation which effectively turned many non-status Indians into status Indians overnight. Life-long status Indians were wary of what the inclusion of new status Indians might mean to their bands.
However, other than a few articles such as this one about publicized conflict, there is virtually no literature which deals with political differences within the native Canadian community.

Also, in trying to determine why an agreement has not yet been reached, it would be most helpful to understand the composition and specific motivations of the national native organizations. However, there is virtually no literature written on this subject, unless it is in the popular press, and again this is only when some kind of crisis erupts. Attempting to gain information in this subject area is indeed very frustrating because in most cases even the organizations themselves can provide little literature on their interests and activities. Therefore exploring the diversity within the native community from the angle of the aboriginal organizations is indeed a challenge, as there is very little literature in existence on which to base theories.

In conclusion, the subject area collectively known as "aboriginal issues" is for the most part well researched. However, while there are many pieces of literature which explain different aspects of native studies such as history, or those which discuss why certain crisis occurred and why certain attempts at agreement have failed, there appears to be a void in terms of explaining why up until this point agreements between native Canadians and Canadian governments have comprehensively failed. For example, there is, as was noted previously, much written about why the Meech Lake Accord failed: because native
Canadians felt they had been treated badly by the government again, and because Elijah Harper chose to cause the demise of the Accord. But this paper attempts to explore the underlying reasons why any agreement has yet to be reached, regardless of the terms, and this paper theorizes that one of those reason has to do with the inherent diversity of the native community.
Chapter Two

The history of negotiations between Canadian governments and aboriginal Canadians on the issue of self-determination, encompasses a number of instances. In order to provide a brief framework of the most recent history of these negotiations this study will focus on four specific instances of negotiation: the Constitution Act of 1982, and the First Ministers Conferences on Aboriginal Issues in the years between 1983-1987; the Meech Lake Accord; the Oka Crisis; and the Charlottetown Accord. Each of these instances illustrates a significant turning point or change in self-determination talks between the government and native Canadians.

1982, And The Subsequent First Ministers' Conferences

In the early years of the 1980s the government of Canada was continuing to work toward the patriation of the Canadian Constitution. In other words, it was looking to separate the Constitution from traditional British control and influence, and make the Constitution truly "Canadian" in nature. During this period, the aboriginal peoples of Canada were far from united on the issue of constitutional patriation, and on the proposed Charter of Rights and Freedoms.¹ However, Campbell and Pal note that "On one thing, however, all natives were agreed: in any new agreement, the federal and provincial governments would have to

address native Constitutional rights somehow.\textsuperscript{2} At this same time, in 1980, the position of the government was that "aboriginal rights" as such would not be written into the Constitution until they were somehow defined.\textsuperscript{3}

In order to protest the patriation of the Constitution, native Canadians launched court cases in Britain, arguing that the unilateral patriation of the Constitution was illegal if the government did not have aboriginal consent.\textsuperscript{4} One particular decision was written by Lord Denning in December of 1981, which upheld Canada's right to partriate the Constitution without native consent, but his decision was also sympathetic to the native perspective on the issue.\textsuperscript{5} Therefore the direct legal route for stopping patriation appeared to be ineffective.

When the constitution was indeed ratified the sections which related directly to aboriginal issues were: Section 25 of the Charter of Rights and Freedoms, Section 35 of the Constitution Act, 1982, and Section 37, Part IV, of the Constitution Act. Each of these sections will briefly be outlined below, before discussing the future changes which occurred.

\textsuperscript{2}Ibid., 313
\textsuperscript{3}Ibid., 313
\textsuperscript{4}Ibid., 314
\textsuperscript{5}Ibid., 314
Section 25 of the Charter of Rights and Freedoms reads as follows:

The guarantee in this charter of certain rights and freedoms shall not be construed to abrogate or derogate from aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:

a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.  

This section of the Charter was intended to protect both aboriginal and treaty rights from any kind of judicial scrutiny under the Charter.  

Section 35 of the Constitution Act, 1982, reads as follows:

1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Metis peoples of Canada.

This clause, it has been argued, was intended to "unite" aboriginal groups and aboriginal organizations.

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6The Canadian Charter of Rights and Freedoms, 1982


8The Constitution Act, 1982

9Brock, 272
And, Section 37 of the Canadian Charter of Rights and Freedoms is also of importance because it calls for a meeting of the First Ministers within one year of the signing of the Constitution, which would include "...constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of these peoples to be included in the Constitution of Canada."\textsuperscript{10} According to Campbell and Pal, the inclusion of this section implies that constitutional issues could not be decided upon without not only native participation in the process, but also native support of the decision.\textsuperscript{11}

These three sections previously discussed represent the consideration given to aboriginal issues when the Canadian Constitution was patriated in 1982. Because there was very little aboriginal input into the formulation of the Constitution, it did not receive wide-spread native support. However, the First Ministers Conference mandated by Section 37 of the Charter of Rights and Freedoms marked a new beginning of aboriginal participation in negotiations with governments on issues which concerned aboriginal peoples.

The first of these First Ministers' Conferences was held in March of 1983 and was seen by Canadians as quite a symbolic

\textsuperscript{10}Campbell & Pal, 315

\textsuperscript{11}Ibid., 315
occurrence. It was essentially the first time that native leaders sat at a table with the Prime Minister of Canada, and the Premiers of the ten provinces. This first conference, it can be argued, was the most successful of all. Perhaps this was due in large part to the fact that there was still a lot of positive feelings among Ministers over the patriation of the Constitution, and a sense of accomplishment at its ratification. Whatever the reasons for the sense of "compromise" which seemed to pervade the First Ministers at this time, certain important amendments were made to sections of the Constitution and the Charter of Rights and Freedoms, which were arguably beneficial to aboriginal Canadians.

One issue which was of notable importance during the 1983 conference was that of "equality". The term "equality" was used in a variety of ways throughout the conference, both in reference to the equality, or perhaps more succinctly the lack of equality, between status and non-status native Canadians, and between male and female native Canadians.\textsuperscript{12} National native groups such as the Assembly of First Nations (AFN) and the Native Council of Canada (NCC) disagreed on the role that the government, and federal legislation should play in the issue of equality. The AFN did not want the government the deal with the issue of aboriginal equality in any way. "The AFN view is that the equality

\textsuperscript{12}R. E. Gaffney, et al., Broken Promises : The Aboriginal Constitutional Conferences, (1984), 42
provisions [in a proposed constitutional amendment to Section 35] attack their national integrity. Indian nations are the sole judge of Indian rights and citizenship according to the AFN."13 Conversely, the NCC, along with certain other native groups, supported the equality provision in order to prevent the possibility of future cases of federal, provincial or Indian government discrimination.14 Other amendments, relating to other issues, such as land claims, were also presented at the 1983 conference.

The amendment made to Section 25 b) of the Charter of Rights and Freedoms was to change it to read "any rights or freedoms that now existed by way of land claims agreements or may so be acquired."15 Section 35 of the Charter was amended with a number of additions. Campbell and Pal sum up these additions in this short synopsis. "One included existing and future land claims agreements in the definition of treaty rights; another brought it into line with Section 15 equality provisions pertaining to gender so as to guarantee aboriginal and treaty rights equally to men and women not withstanding any other Charter provisions...; and another stipulated that constitutional changes affecting aboriginal rights would have to be agreed to by native peoples at

13Ibid., 43
14Ibid., 315
a specially convened first ministers' conference."\textsuperscript{16} Also at this conference, Section 37 of the Constitution was repealed, because it had been fulfilled, and it was replaced with section 37.1 which provided for at least 2 more First Ministers' constitutional conferences on aboriginal issues to be held within three years.\textsuperscript{17} These conferences would subsequently be held in 1984, 1985, and 1987.

While it is the subsequent First Ministers' conferences themselves which are of particular interest here, it is also important to briefly discuss the findings of the \textit{Report of the Special Committee of the House of Commons on Indian Self-Government}, which is also known as the \textit{Penner Report}. The report was made by this committee in November of 1983 and its main recommendation was that "the federal government establish a new relationship with Indian First Nations and that an essential element of this relationship be recognition of Indian self-government."\textsuperscript{18} The report also went on to suggest that "... the right to self-government be explicitly stated and entrenched in the constitution, thereby establishing the Indian First Nations as a 'distinct order of government'."\textsuperscript{19} Finally, the report foresaw "...that these powers would include full legislative and

\textsuperscript{16}Ibid., 315
\textsuperscript{17}Brock, 272
\textsuperscript{18}Ibid., 316
\textsuperscript{19}Ibid., 316
policy-making powers on matters affecting Indian people, and full control over territory and resources within the boundaries of Indian lands."\textsuperscript{20} To be sure, the Penner Report recommended a number of provisions for a new relationship between the federal government and native Canadians, and it recommended them in time for these provisions to have made an important impact at the next First Ministers' Conference on aboriginal issues.

Therefore, because of the timely release of the Penner Report it can be argued that the 1984 First Ministers' Conference certainly had the potential to reform the relationship between the federal, as well as provincial governments, and aboriginal peoples. However, unfortunately, this reformation did not occur. The main crux of the problem came when then Prime Minister Pierre Trudeau introduced an amendment which would entrench aboriginal self-government, but would leave the specific meaning of the term "self-government" up for negotiation with individual aboriginal groups.\textsuperscript{21} The Premiers from Ontario, Manitoba, and New Brunswick agreed to this amendment, while the other Premiers did not because they insisted on clarification of the term "self-government" within the agreement itself.\textsuperscript{22} The approach of the federal government here is characterized as a "top down"

\textsuperscript{20}Ibid., 316
\textsuperscript{21}Ibid., 316
\textsuperscript{22}Ibid., 316

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approach,\textsuperscript{23} where the idea is to first cement some kind of an agreement at the top: entrenching aboriginal self-government in the Constitution. Then, later, the details and specifics of this agreement are hammered out at a lower level, with the aboriginal groups themselves. This approach was not highly successful.

In fact, according to Campbell and Pal, who do not mince words,

"The 1984 First Ministers' Conference on Aboriginal Constitutional Matters was a failure of colossal proportions. No agreement was reached either on a constitutional amendment respecting aboriginal self-government, or on a work plan for achieving agreement. The Conference ended in suspicion and innuendo, with many First Ministers asking what aboriginal self-government 'meant', and many aboriginal leaders demanding entrenchment.\textsuperscript{24}"

The 1984 Conference, which many on both sides of the issue had hoped, would mark a positive turning point in aboriginal-state relations in fact marked a negative one. The fact that no agreement was reached was really only half of the dilemma. The other half relating to the issues of "innuendo and suspicion" is cited by Campbell and Pal, as no doubt adding to the already existing rift between the federal and provincial governments, and aboriginal Canadians.

The First Ministers' Conference held in 1985 marked a turning point in Constitutional negotiations between Canadian

\textsuperscript{23}Ibid., 317

\textsuperscript{24}Ibid., 317
governments and aboriginal Canadians. Prime Minister Brian Mulroney initially presented a proposal which would first entrench the principle of self-government in the Constitution, and then further agreement would be signed which would deal with specific definitions and forms of aboriginal self-government.\textsuperscript{25} The reaction to this proposal was varied. Aboriginal response was mixed, with the Assembly of First Nations wanting aboriginal self-government to be unconditional. And the Metis and Inuit, while they were certainly very concerned about the importance of a land claims settlements, were generally supportive of the proposal.\textsuperscript{26} This proposal marked a change in the way entrenchment was pursued.

The provinces of Alberta, British Columbia, Ontario and the federal government began to approach these negotiations from a different angle. They began to approach them at the local, regional, territorial, and provincial levels first, and then later work toward the entrenchment of these agreements into the Constitution.\textsuperscript{27} In this case, the aforementioned provinces and the federal government changed their approach to the negotiations to a "bottom up" approach, wherein the goal was to first work out the details of self-government and entrenchment at the lower levels, and then formally entrench the principles and the

\textsuperscript{25}Ibid., 317

\textsuperscript{26}Ibid., 317

\textsuperscript{27}Ibid., 317
agreements into the Constitution. Here there is a shift in the approach to the issues at this conference, as it compares to the previous ones.

The 1987 conference, which was the last mandated by Section 37 of the Charter of Rights and Freedoms, was not highly successful in its pursuits either. During this conference "...native leaders insisted on what they called an 'inherent right' to self-government that would be entrenched in the constitution with some forcing provisions to ensure the progress of negotiations on detail and form." The meeting between the Premiers and the aboriginal leaders did not last long and did not accomplish much. Campbell and Pal sum up the implications of this conference by saying that this "...meeting was the end of the road for constitutional entrenchment for some time."

The Meech Lake Accord

The Meech Lake Accord began as an attempt by the ten provincial Premiers and then-Prime Minister Brian Mulroney to correct the Constitutional "wrong" of 1982 by inviting Quebec into the Canadian Constitution through negotiation. When the Accord was originally devised by the Premiers and Mulroney it did not contain much which was related to aboriginal Canadians. In

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28 Ibid., 317
29 Ibid., 318
30 Ibid., 318

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fact, the original agreement left out a number of elements which, in hindsight, would be quite important.\textsuperscript{31} It was the omission of the issue of native rights on the agenda which would be one of the reasons for the downfall of the Accord.

In all fairness, it was proposed in the final agreement that the issue of aboriginal rights would be discussed every three years by the province and the provincial governments,\textsuperscript{32} and it was not true that aboriginal rights were completely ignored. However, the provisions that allowed for aboriginal rights fell far short of what native leaders had proposed. The conditions that native leaders proposed were:

* "recognition of Aboriginal peoples as a fundamental characteristic of Canada and as distinct societies in their own right";

* "a constitutional process that deals with Aboriginal issues";

* "a guarantee that they will be involved in any first ministers' discussions that relate to or affect Aboriginal issues";

* a return to the original formula for creating new provinces, which required only the approval of Parliament (but no longer requiring the perfunctory approval of the Parliament of Great Britain).\textsuperscript{33}

\textsuperscript{31} Andrew Cohen in A Deal Undone: The Making and Breaking of the Meech Lake Accord (Vancouver: Douglas & McIntyre, 1990), on page 54 briefly identifies the groups which the original Accord left out: women, native Canadians, northerners, and also multi-cultural Canadians.

\textsuperscript{32} Cohen, 254

It is apparent that the degree to which the ten Premiers and the Prime Minister were willing to accommodate native interests, and the degree to which Aboriginal leaders wanted those interests to be accommodated, was quite different. It was this difference in accommodation that would, in the end, defeat the Accord.

Practically speaking, the Meech Lake Accord was not passed because of the actions of Manitoba MLA Elijah Harper. On June 12th 1990 Manitoba Premier Gary Filmon asked the Manitoba legislature for the unanimous consent required for him to introduce the Accord for debate without the customary two-days notice. Elijah Harper denied the Premier this unanimous consent. His protest of the Accord by not giving his consent continued and "The stand-off in the Manitoba legislature reflected their [native Canadians'] frustration not over the Accord itself, which had denied them specific rights, but over a process that had ended in failure since 1987." While many politicians had touted the possible failure of the Accord as being somewhat akin to the apocalypse, native Canadians felt that they really had nothing to lose. And, despite the federal governments' eleventh hour attempt to accommodate native concerns, Harper maintained his position, and the Meech Lake Accord "died" on June 22nd 1990.

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34 Cohen, 258
35 Cohen, 259
Again, with the negotiation of the Meech Lake Accord, Aboriginal issues were left out of the framework.\textsuperscript{36} But the public awareness which grew out of the stand that Elijah Harper took against not only the Accord itself, but also the process, was arguably beneficial to native interests. Hawkes and Devine point to an Angus Ried Poll conducted in the fall of 1990 which claimed that 85 per cent of Canadians approved of Elijah Harper's stand on the Meech Lake Accord.\textsuperscript{37} The public attention which was cast on native concerns after the demise of the Meech Lake Accord would continue into the summer of 1990 with the outbreak of the Oka Crisis.

**The Oka Crisis**

The Oka crisis, while it did not involve negotiations of a directly Constitutional nature, is important to discuss here because it did represent one of the most explosive expressions of native discontent to occur in recent times. The negotiations at Oka were really carried out on two separate but inter-related levels. On the surface, the stand off began over the issue of the "ownership" or "title to" a specific piece of land. However, as the crisis continued, negotiations evolved from this fairly specific beginning to a much broader negotiation of native issues such as land claims and self-government.

\textsuperscript{36}Some participants in the negotiations however did recognize the importance of native issues and attempted to have them included in the final agreement to a greater degree than they were. In the final Accord, however it was the concerns of Quebec which were paramount.

\textsuperscript{37}Hawkes and Devine, 55
The Oka crisis was originally based on the objections that native Canadians, in particular Mohawk Indians who are members of the Six Nations Confederacy, had regarding the expansion of an existing golf course. The proposed expansion would require the relocation of an existing native cemetery. At the time this issue arose, it was simply another chapter in the long history of land claim disputes between the Mohawks and various British, federal, and provincial governments.\textsuperscript{38} However, this issue would result in an armed stand off which would last the entire summer of 1990.

The Mohawk concern over the golf course lands dates back to May of 1987 when Chief Alex Montour "...asserted that the land rented by the Club de Golf d'Oka is part of territory that was set aside long ago, for the use of Kanesatake Mohawks, ...to serve the native community for pasture and wood cutting purposes."\textsuperscript{39} The Chief went on to say that the Mohawk people had unjustly lost this ancestral land and were interested in taking it back.\textsuperscript{40} Later, in May of 1988, the Club de Golf d'Oka submitted a proposal to the Municipality to expand the golf course. This proposed development obviously angered the Mohawk leaders. On March 22nd 1989, Grand Chief Clarence Simon wrote to the Municipality, "...enjoining the Municipality not to proceed


\textsuperscript{39}Ibid., 14

\textsuperscript{40}Ibid., 14
with the expansion of the golf course, asserting unextinguished aboriginal title to the land and strongly advising the Municipality not to make any further developments on Mohawk territory."

Without going into too much detail, negotiations between the Municipality of Oka, and the owners of the golf course continued through March of 1990. By this time the Mohawks of the Kanesatake reserve had grown both frustrated and angry at having been left out of the negotiations process. On March 11th, 1990 the Mohawks took action and erected barricades along the road leading to the golf course and the reserve, effectively cutting off access to the area. This action, which many perceived to be decidedly confrontational in nature, set off a wave of events which would be unprecedented.

On July 10th the Quebec government sent Surete du Quebec (SQ) officers to the scene, who are essentially Quebec's provincial police force, and an armed standoff between the army and the Mohawks had begun. The next day Mohawks on the Kahnawake reserve, in nearby Chateaugay, began a "sympathy" blockade of the Mercier Bridge, which caused unbelievable problems for commuters to and from the island of Montreal. The response of the federal government early on in the dispute was to take a strictly "hands off" approach. Instead the federal government made it clear that

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*Ibid.*, 16

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the Oka dispute was Quebec's problem. On July 11, 1990 an attempt, which would later be deemed by many to be "misguided" at best, was made to raid the Mohawk barricades and tear them down. During this raid there was an exchange of gunfire between the Mohawks, the Quebec provincial police, and the Surete du Quebec. Corporal Marcel Lemay of the SQ died from gunshot wounds during the exchange. It is still unclear today who was specifically responsible for his death. However, his death escalated the tensions surrounding the standoff, and appeared to mark a turning point in the crisis.

In July of 1990, the Quebec government, through its' Minister of Native Affairs J. Ciaccia, tabled a package of terms to the Mohawks. Essentially the package included the following provisions.

1) recognition of Mohawk land
2) the SQ would slowly withdraw, as the barricades came down
3) representatives of the Roman Catholic Church would monitor the process
4) Ciaccia would do what he could to ensure "nation to nation" talks between the federal government and the Mohawks
5) there would be a public inquiry into Ottawa's role in the crisis
6) Mohawks would agree to participate in the inquiry into the death of Corporal Lemay
7) all civil and criminal prosecution would be referred

42 Campbell & Pal, 278
On the surface this package appears to be a reasonable one, except that there are some definite underlying problems with it.

In the first place, the Province of Quebec, neither any other Canadian province, has any real authority to bargain with native Canadians alone because native Canadians are legally a federal responsibility. Therefore, in reality, any promises made by the province were really not binding on them because it legally did not have the authority to make them in the first place. Second, the mayor of the city of Oka publicly denounced the tentative agreement because there was no municipal participation. And third, there were some definite splits within the Mohawk side of the dispute relating to the agreement. It became clear that the Quebec government did not have the authority to make this kind of deal, and that the province did not have the support of the municipality; the Mohawks knew this, and the stand off continued.

Briefly, the third problem discussed above, relating to the splits within the Mohawk community itself warrants some discussion here. Essentially it can be argued that during this crisis those in the Mohawk community both on Kanesatke and on the

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43Ibid., 279; and see also The Globe & Mail July 17, 1990

44Ibid., 281

45Ibid., 281

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surrounding reserves can be divided into two groups: moderates and the Warriors. While each of these two categorizations was likely characterized by many differing opinions within, these two categories are used here as a means of showing the most visible and important divisions.

The moderates within the Mohawk communities were members of the band council, and those who sided with them. They wished to resolve the conflict without the use or threat of violence; and for the most part they leaned toward the achievement of an agreement. On the other hand, the Warriors who were the most visible in the Mohawk community both because of their actions, and because of the intense media coverage of the crisis, tended to be much more willing to use violence and the threat of violence to gain concessions. They also pressed for a number of demands which the moderates saw as being unimportant or less important than reaching an agreement. For example, the Warriors would press strongly for immunity in the death of Corporal LeMay and immunity relating to other areas of the stand-off. It is evident that the divisions within the Mohawk community with regard to what the goals of their actions were, as well as the extent to which they were willing to use violence to reach those goals, caused a significant amount of division within the Mohawk community itself during the Oka Crisis. As the crisis wore on the decision made by the Mohawks indicate that as the conflict neared

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"Ibid., 283
its conclusion the Mohawk community may have been led to a greater extent by the Warriors than by the moderates.

Although Federal Minister of Northern and Native Affairs T. Siddon stated "We cannot engage in negotiations at gun point", it became apparent that the Mohawks had no intention of giving up the barricades. Negotiations continued between the province of Quebec and the Mohawks behind closed doors, and the Federal government claimed that it would negotiate the land claims issue only when the barricades were dismantled. Here we can see an important log-jam between the two sides: the Mohawks were not going to remove the barricades until they got some concessions on the land issue, and the federal government would not negotiate on the land issue until the barricades came down.

Movement did not occur again until August 12th, when two key points regarding the conduct of the negotiations were agreed upon by the two sides, and were publicly announced. They were: 1) Mohawks would be allowed access to necessities and advisors during the course of the negotiations, and 2) the situation at Oka would be monitored by the International Federation for Human Rights. While both of these points were important to the Mohawks, the second point, which symbolically implied that the Mohawks were a "nation" of equal status to Canada, was

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47Ibid., 281
48Ibid., 284
particularly meaningful.\textsuperscript{[49]}

On August 18th, the Mohawks dropped a "bombshell" of an issue into the negotiations.

"In addition to a transfer of the land originally in dispute...the warriors demanded a cessation of the prosecution related to an illegal bingo parlor at Kahnawake, and a commitment to the establishment of...a unified, sovereign, Mohawk nation within three years...[which would] consist of the six Mohawk communities...In addition, the Mohawk negotiators raised the question of a separate native armed force to defend the nation, a native justice system, and reliance on the World Court in the Hague to rule on matters of native sovereignty."\textsuperscript{[50]}

The problem here was that the issues that the Mohawks were now bringing to the table were far too broad for the Quebec provincial government to handle, especially since the federal government continued to maintain a "hands off" approach to the situation. The Quebec government was simply there to negotiate an end to the armed stand off. But it became clear with the release of these demands, that the Mohawks wanted to negotiate the terms of sovereignty.\textsuperscript{[51]} It is at this point that the negotiation process was no longer just about the disputed golf course land; it was now about native sovereignty.

\textsuperscript{[49]} For many years in Canada native Canadian groups, not only the Mohawks, have preferred to call themselves "nations", as in being one of three, not two, of the founding "nations" of Canada. (French, British and Aboriginal) See Campbell & Pal, 284 for a more detailed explanation of this.

\textsuperscript{[50]} Campbell & Pal, 298

\textsuperscript{[51]} Ibid., 298
Unfortunately the rest of the events at Oka unfolded in a fractious and jumbled manner. Briefly the highlights of the last part of the Oka crisis are: On August 25th negotiations again broke down, this time over the question of amnesty for the Warriors, as well as other issues; August 25th brought with it the first large scale emigration of Mohawks from the Kanesatake reserve; On September 1st the army moved into Kanesatake, removing the barricades with force; and... on September 6th the Mercier Bridge finally re-opened.\textsuperscript{52}

While the events of this crisis were no doubt explosive in nature, and were also widely publicized, it is the outcome of the crisis which is of particular importance here. The fact that there was no negotiated settlement of the Oka dispute is simply another chapter in a long history characterized by a lack of resolution to the concerns of native Canadians. Cambell and Pal note that "A negotiating process without results is exactly what natives had endured in Canada for the last thirty years."\textsuperscript{53} The absence of a negotiated resolution to the Oka crisis appears to again simply dismiss the concerns of native Canadians.

However, it can be argued that the Oka crisis also had some positive implications for the interests of native Canadians.

\textsuperscript{52}Maurice Tugwell & John Thompson, \textit{The Legacy Of Oka} (Toronto : The MacKenzie Institute, 1991), 43-45

\textsuperscript{53}Campbell & Pal, 303
While the drastic actions taken by some of the Warriors, and the threat of violence which enveloped the situation, resulted in a lack of sympathy for the native position in the community itself, the media attention which resulted from these same actions served to increase public awareness and sympathy toward the native position.

The events of the Oka crisis continued on into the fall of 1990 when the last of the holdout Warriors agreed to surrender to police. However, once the barricades came down, media attention on the situation diminished. But, for the entire summer of 1990, the cause of the Mohawk people, and native people in general, captured the attention of Canadians. The crisis brought a renewed awareness among non-native Canadians of the concerns of native Canadians, and of their new intentions as a people to change their relationship with Canadian governments.

The Charlottetown Accord

The inception of the Charlottetown Accord marked the most recent attempt by the federal and provincial governments to execute constitutional change. The issue of Aboriginal self-government was of key importance to the government during this particular round of Constitutional talks, largely due to the outcomes of the Meech Lake Accord, and to the rising tide of

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54 see accounts of the protests by the residents of both Oka and Chateaugay on July 17th, in the Globe and Mail
native protest and non-native sympathy for their cause. 
In this round of talks many of the past discrepancies were
addressed by the agreement.

Perhaps most important was that this was the first time that
native leaders publicly engaged in negotiations with the federal
and provincial governments over the issue of constitutionally
entrenching self-government. Because of the extensiveness of
native participation in the drafting of the Accord, it was the
first such agreement to be largely based on native ideas. In
the final legal text of the agreement there is a clause which
specifically recognizes the "inherent" right of self-
government. However despite the importance of native
participation in the drafting of the Charlottetown Accord, there
were some definite problems with it.

55See Radha Jhappan, "Aboriginal Peoples' Right to Self-
Government" in Duncan Cameron and Miriam Smith eds. Constitutional
Politics (Toronto: James Lorimer & Company, Publishers, 1992), 146

56In all, four native organizations sat at the negotiation
table: the Assembly of First Nations, the Inuit Tapirisat of
Canada, the Native Council of Canada, and the Metis National
Council.

57Mary Ellen Turpel, "The Charlottetown Discord and
Aboriginal Peoples' Struggle For Fundamental Political Change" in
Kenneth McRoberts and Patrick Monahan eds., The Charlottetown
Accord, The Referendum and the Future of Canada (Toronto:
University of Toronto Press, 1993), 121

58In the Draft Legal Text of the Charlottetown Accord,
October 9, 1992, on page 37, Section 35.1 of the Constitution Act
1982 is to be repealed and replaced in part by 35.1 (1) which
states that: "The Aboriginal Peoples of Canada have the inherent
right to self-government within Canada".

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Jhappan notes that there were essentially two problems with the Charlottetown Accord. One is that the Accord did not link self-government with the land claims issue, and the other was that enforcing the provisions of the Accord could take up to ten years.\(^{59}\) Turpel identifies another problem which tarnished the appeal of the Accord, and that was that it excluded the Native Women's Association of Canada from the process, and was therefore perceived to be harmful to native women.\(^{60}\) These problems were no doubt some of the primary reasons that the Accord was not ratified in the referendum.

Aboriginal turnout in the referendum was quite low, with less than eight per cent of aboriginal peoples of voting age casting ballots.\(^{61}\) However Turpel explains the poor referendum turn out, and the fact that only 37.4 per cent of the aboriginal ballots cast were "Yes" votes,\(^{62}\) as being directly a result of the suspicion that many native Canadians had regarding the process. ". . . given the history of dealing in bad faith on the part of the Crown on every issue from the Indian Act through to treaties, how could any agreement unanimously reached by thirteen

\(^{59}\)Jhappan, 127; see also Shaping Canada's Future Together: Proposals (Ottawa; Supply and Services Canada, 1991), 8

\(^{60}\)Turpel, 131; Turpel also notes that native women did participate in the negotiations, and therefore clarifies the issue by asking whether or not the women who did participate in the negotiations in fact were representative of native women in general.

\(^{61}\)Ibid., 142

\(^{62}\)Ibid., 142
governments be seen as fair for Aboriginal peoples?" The Charlottetown Accord was not widely supported by Aboriginal Canadians, nor by non-native Canadians, at least not enough to pass the Accord into law under the referendum.

The Charlottetown Accord marked the last foray the governments of Canada have made into constitutional reformation up until this point. However, many of the issues and dilemmas on which the package was based still exist. The Accord, despite the good intentions of those who created it, failed to enshrine the right to Aboriginal self-government in the Constitution, as have the previous attempts by both governments and native Canadians. There has been no amendment relating to aboriginal self-government made since the 1983 First Ministers' Conference on Aboriginal Issues.

In conclusion, the subject area collectively known as "aboriginal issues" is for the most part well researched. However, while there are many pieces of literature which explain different aspects of native studies such as history, or those which discuss why certain crisis occurred and why certain attempts at agreement have failed, there appears to be a void in terms of explaining why up until this point agreements between native Canadians and Canadian governments have comprehensively failed. For example, there is, as was noted previously, much written about why the Meech Lake Accord failed: because native Canadians felt they had been treated badly by the government.
again, and because Elijah Harper chose to cause the demise of the Accord. But this paper attempts to explore the underlying reasons why any agreement has yet to be reached, regardless of the terms, and this paper theorizes that one of those reason has to do with the inherent diversity of the native community.
Chapter Three

The native peoples of Canada are a complex people. While it is a common perception shared by many that native Canadians can be categorized under one all-encompassing category, native Canadians are certainly not a homogeneous group. In fact, when one realizes that today in Canada there are at least thirteen different terms in common usage to describe various native sub-groupings,¹ the complexity of the native Canadian people becomes apparent. This chapter will outline the diversity which characterizes native Canadians from a strictly historical, or rather "non-legal", perspective by looking at the history and evolution of three key groups: the Indians, the Metis, and the Inuit. The next chapter, Chapter Three, will discuss the differences between these three groups, as well as those in the native community referred to as "Non-Status Indians", under Canadian law.

The differences between the Indians, the Metis, and the Inuit of Canada are many, and it is also important to understand

that within each of these groups there are many differences today. In order to understand these differences it is important to look at the history of these three groups and trace the changes that have occurred for each of these peoples from the time before the Europeans came, to the present day. Because of the different experiences of these peoples, each group also has unique needs and concerns today which it wants Canadian governments to address. This chapter will identify these needs and concerns, and discuss the importance of understanding the uniqueness of each group.

The Indians

Indian peoples have populated North America for centuries, long before the Europeans arrived. Their culture, their customs, and their languages were unique to their tribal units. Today when one classifies a native Canadian as a "Mohawk" there is not a sense of recognition among non-native Canadians of what that tribal designation means. But, that distinction entails a number of important characteristics which are unique to the Mohawk tribe. This section will discuss the numerical, cultural, and linguistic complexity of various tribes, and will then relate the history of Indians from before contact with the Europeans.

There are essentially three methods which are generally used to characterize the Canadian Indian population, they are: linguistically, culturally, and along tribal lines. Linguistic
and tribal identity are the most easily discernable of these characteristics, and they will be used here. First of all, there are ten language families among native Canadians, they are:

1) Algonquin: found on the Atlantic Coast and in the Rockies Mountains
2) Iroquoian: found in Eastern Canada
3) Siouan: found on the Prairies and in the foothills of the Rockies Mountains
4) Athapaskan: found in the Northern parts of the Western provinces, and also in the Yukon and Northwest Territories
5) Salishan: found in British Columbia
6) Tsimshian: found in British Columbia
7) Wakeshaw: found in British Columbia
8) Tlingit: found in British Columbia
9) Kootenaya: found in British Columbia
10) Haida: found in British Columbia²

While the native Canadians who compose each of these ten language groups speak a unique language this does not necessarily mean that they have a different culture from those in other language groups. Similarly, the native Canadians within each of these language groupings, while they share the same language, may not share a similar culture.³ Already the complexities of attempting to "classify" native Canadians becomes apparent.

There are six tribal categories which are most frequently

²Cambell & Pal, 287
³Ibid..
used to identify native Canadians. They are: 1) Woodland Indians; 2) Indians of South Eastern Ontario; 3) Plains Indians; 4) Indians of the Plateau; 5) Pacific Coast Indians; and 6) Indians of the MacKenzie and Yukon River Basins. These are the six broad headings under which Indian tribes can be categorized. There are usually many individual tribes which fall under each of these six categories.

In order to provide an example of the large number of tribes found in a single category, a part of one of these categories will be examined in greater detail. The Eastern Woodlands, which is a sub-category of the first categorization, "Woodland Indians", discussed above, geographically stretches from the Laurentian Shield of Northern Ontario and Quebec, to part of the Maritimes, and to the Eastern end of the St. Lawrence River Valley. In order to appreciate the diversity, note the complex nature of the list of nations who are or were indigenous to this region.

"The migratory nations included the Beothuck of Newfoundland (now extinct); the Micmac of Nova Scotia, New Brunswick, and Prince Edward Island, and the Gaspe region of Quebec; the Malecite of the St. John River region of New Brunswick; the Montagnais-Naskapi of Labrador and Northern Quebec; the Cree of the marshy lowlands of James Bay; the Algonkians of the Ottawa Valley; and the Ojibway of Lake Superior and Lake

\[\text{Ibid.}\]

\[\text{J. E. Foster, "The Home Guard Cree and the Hudson's Bay Company: The First Hundred Years" in Bruce Cox ed. Native Peoples, Native Lands: Canadian Indians, Inuit and Metis (Ottawa: Carleton University Press, 1988), pp. 56}\]
Huron."

Here the extremely complex nature of tribal distribution in only one comparatively small part of the country is evident: there are many different tribes, who speak a number of different languages, and likely have different cultures, within a relatively small geographic area.

**History**

Now that the diversity of the tribes themselves have been discussed, it is now important to shift the focus of this discussion to the history of native Indians. While it has already been noted that native peoples in different regions arguably had different experiences throughout history, because the aboriginal tradition of history is an oral one, rather than a written one, an extensive body of readily available knowledge does not appear to exist regarding these more specific experiences. Instead historians have tended to relate a generic history of Indian life, the generality of which will be presented here in order to get some sense of the changes which have taken place for native Canadians universally.

Very little is known about the lives of native Canadians before the arrival of the Europeans, largely because there was no one here to record it. The Indians themselves, as was discussed earlier, did not tend to write things down on paper because their

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6 Ibid..
tradition of record-keeping and story-telling was oral. However, it is known that the lives of native peoples in Canada were hardly harmonious before European contact. In fact wars between tribes, and even within tribes, were significantly common in the pre-contact period and focused on disputes over territory and possessions in the same vein as historical "European" disputes.  

In the early years of the European explorers, beginning in the 1600's, the first contact was made between the Europeans and the native Canadians. The most common adjectives used to describe the Indians at this time were likely words like "savage", "barbaric", and "uncivilized". However, it would be incorrect to imply that the Europeans thought in completely negative ways about the new people that they had encountered. In fact, very strong ties would grow between the Europeans and the native Canadians as the years passed.

At the time of first contact between Europeans and Indians, the Indians led lives which revolved entirely around their surroundings. They hunted and fished not for economic gain but purely out of a need for subsistence. While in some cases the entire tribe was nomadic, more often the male members of the tribe would set out from the community at certain times during the year for certain ritual hunts, such as for buffalo. Then they

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'See a brief account and explanation of aboriginal disputes in the pre-contact period in Jeffery Simpson's Faultlines (Toronto : HarperCollins, 1993), 219
would return to the community with their catch. Often times there was hostility between certain Indian tribes, which was often played out in violent confrontations.

When the Europeans began to seek trade with the Indians, this is when the economic traditions of the Indians changed: they no longer hunted and fished strictly for the subsistence of their family or community, but also to supply the Europeans with items for which they could obtain other items through trade. From the earliest days of contact between the Europeans and the native Indians, this type of economic relationship between the two races was forged. Much of the history of this economic, as well as social, relationship between them will be discussed in the next section of this chapter on the Metis. However, because the close contact between the two races increased as time went by, most historical accounts of the first years of European-native contact discuss how the introduction of technology "revolutionized" the lives of native Canadians. ¹

While initially this "revolutionization" may have been seen to be a positive occurrence, "Although the Indian enjoyed an improved standard of living with these products, he paid a significant price for the loss of his traditional skills. In time he became dependent on the fur trader, which was a factor in

¹Foster, 107
explaining the Indians enduring peaceful relationships with him." Here one of the most common themes which runs through the entire history of European-native relations, and later Canadian-native relations, is inferred: the dependence of natives on Europeans, and later on Canadians. In the next chapter this dependence will be discussed at greater length relating to the governments' role in the history of this "dependence" in legal terms.

This economic relationship between the two peoples steadily increased over time. This economic relationship was often also supplemented by a social and matrimonial one as well. The intermarriage of Europeans and native Canadians was quite common from the earliest contact, and this intermarriage would give rise to a new race known as the Metis. These people and their role in Canadian history, as well as their unique concerns will be discussed in the next section of this chapter.

As European settlement of the land which would later be known as Canada increased, so did the amount of influence that the Europeans had over the Indian population. At the time of Confederation, the native peoples were not consulted about the process, nor about their desire to become a part of the new nation. Also at the time of Confederation, the first government department was set up by Sir John A. McDonald to "administer" the

\[9\text{Ibid.}\]
native population in Canada. This is a trend which continued throughout Canadian history.

Reserves

As the Europeans expanded westward, the native peoples of the plains were slowly pushed farther and farther off of their traditional lands, both to the north and to the west. When they could no longer be resettled, and the native Canadians began to protest this movement, the government began to set up a series of reservations for the aboriginals. These reserves sprung out of many of the Treaties which were agreed to between the government of Canada and certain Indian tribes and groups. These reserves were granted by the government in exchange for aboriginal title.

"By 1850 the process had been so refined that reserves were provided and there was no confusion as to what the extinguishment of aboriginal title meant, including the limitation (as time went on of Indian hunting and fishing to lands not taken up for settlement or development."  

Reserves were a way of preventing Indian populations from interfering with settlement.

Reserves were established strictly for Indians, and this stipulation brought with it the need to define what an "Indian" was.  

10 James S. Fricieres, Native People In Canada: Contemporary Conflicts (Scarborough, Ontario: Prentice-Hall Canada, Inc., 1983), 59

11 Ibid., 65
which will be discussed at greater length in the next chapter. In 1983 there were 2,241 Indian reserves in Canada, although it is important to note that this is not an absolute number because the number of reserves can vary over time depending on the policy of the federal government.\textsuperscript{12} Although there is no minimum amount of land that a reserve can occupy, the maximum area that each person is entitled to is 160 acres, and the largest reserve covers 500 square miles.\textsuperscript{13}

The language and cultural distinctions discussed earlier relating to Indians have not been acknowledged or respected by the Canadian government and therefore frequently groups of Indians with different origins have been placed on the same reserve, resulting in a mixing of the groups. The forced migration of many Indian peoples has also had the same result.\textsuperscript{14} Therefore the reserve system has had some detrimental effects on its Indian populations.

Another area in which the Indians on the reserves have been adversely affected has to do with economics. While some reserves are on prime agricultural land or are near urban centres, both of which have the potential for economic gain for the residents, most reserves are on land which is not suitable for farming or

\textsuperscript{12}Ibid., 140
\textsuperscript{13}Ibid.
\textsuperscript{14}Ibid.
are in remote locations. Because of certain provisions of the Indian Act, which will be discussed at greater length later, the Indians are prohibited in many ways from making their economic situation better.

In conclusion, the Indians of Canada today are somewhat different from the Indians that the Europeans encountered when they first arrived hundreds of years ago. The most predictable changes have come in terms of lifestyle due to the increase of technology. But one element which the settlers expected to change, but largely did not, was the Indian identity. The goals of the Canadian Indian have not changed: they want the recognition of their inherent right to self-government and self-determination.

The Metis

The group of native Canadians known as the "Metis" while they are of partial Indian ancestry, have a unique history and culture. The Metis are a people who, because of this unique history and culture, have different goals than do Indians. This section will outline the history of the Metis, by answering the often asked question "Who are the Metis?"\textsuperscript{16}, and will discuss their current situation in terms of their lifestyles and

\textsuperscript{15}Ibid., 308

\textsuperscript{16}Julia D. Hanison, Metis: People Between Two Worlds (Vancouver & Toronto: The Glenbar - Alberta Institute, 1985), 147
aspirations as a people.

The word "Metis" comes from the latin verb "miscere", which means "to mix". In fact, the Metis people are a mix of both European and Indian ancestry. The term "Metis" was first coined by the French-speaking population of North America to classify those people who were of "mixed blood". Originally, there were two classifications of Metis, those who were Anglo-Indian and those who were Franco-Indian. In the West, where most people of mixed origins settled, the primary Indian ancestry was Cree or Ojibway; the primary European ancestry was French, English, Scottish, Irish or Scandinavian.

While most often the "Metis" are associated with the Red River Settlement in Manitoba, there was another pocket of "mixed bloods" which was the largest one outside of Manitoba, in the Great Lakes region. In the Great Lakes region these people were primarily concentrated in and around Sault Ste. Marie, St Joseph, and La Baie. These two enclaves of the Metis population shared similar characteristics. However, there was one key difference

17Ibid., 11
18Antoine Lussier & D. Bruce Sealy ed., The Other Natives: The Metis (Winnipeg: Manitoba Metis Federation, 1978), 1
19Hanison, 12
20Harriet Gorham, "Families of Mixed Descent in the Western Great Lakes Region." in Bruce Cox ed., Native peoples, Native Lands: Canadian Indians, Inuit and Metis (Ottawa: Carleton
between the two groups: the Great Lakes enclave did not come to develop the same sense of identity as did those living in Manitoba.21 The uniqueness of the Manitoba Metis will be discussed at greater length later.

**History**

The birth of the Metis began with the birth of the first child who was of both European and Indian ancestry. The European explorers who came to North America almost always came alone. In most cases they developed relationships with native women, who lived in and around the trading posts. Many of these relationships were "marriages" in the same terms as are used today. In certain cases others however are more correctly classified as being "marriages of convenience" where the couple were not legally married, or their marriage was not recognized by the Church.22 Both of these types of marriages occurred frequently.

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21Ibid., 38

22Many of the marriages which occurred between Europeans and Native Canadians were recognized as legal by the British government and by the Church, although there were certain circumstances where this was not the case. However, while marriages between Europeans and Native women were not always binding in the eyes of Christianity, they were however considered proper by the Indians as long as native customs regarding marriage were followed. And, according to native custom, marriage, as well as divorce, was a largely informal procedure. See Grant MacEwen, *Metis Makers of History* (Saskatoon: Western Producer Prairie Books, 1981), 2
During the seventeenth century French officials were in favour of marriage between native women and their countrymen because of their ardent hopes to "frenchify" the Indians, and in order to increase rapidly the population of New France.\textsuperscript{12} However, later on when more women of European descent were available for marriage in New France, officials began to disapprove of intermarriage.\textsuperscript{13} But regardless of what the Church's or the government's opinions on intermarriage were, these "marriages" played an important role in expanding the fur trade in Canada, largely because of the roles that these native women fulfilled.

Native women played a key role in the expansion of the Canadian fur trade,\textsuperscript{14} for essentially two reasons. First, as was previously mentioned, almost all Europeans came to Canada alone, without wives or families. Therefore relationships with native women fulfilled many of the basic needs of the trappers, including clothing, food, and other physical comforts.\textsuperscript{15} Second, because the native women were almost always very familiar with


\textsuperscript{13} Ibid., 137

\textsuperscript{14} For an excellent account of an explanation of women's roles in the fur trade, see Don McLean, Home From The Hill : A History of The metis in Western Canada (Regina : Gabriel Dumont Institute of Native Studies and Applied Research, 1987)

\textsuperscript{15} Hanison, 10
the area they were of immeasurable help to them in terms of trapping, and also because they could help their husbands become familiar with native customs, language, etc.,\textsuperscript{16} which was necessary when dealing effectively with native peoples.

In a social sense, historical accounts often define Metis as possessing the best characteristics of both sides of their ancestry. But in terms of certain elements it would appear that sometimes their two backgrounds merged positively, and other times somewhat negatively. Grant MacEwen offers this description:

"In many points of character, they were about intermediate between the whites and Indians as they could have been expected to be. They were less nomadic than the Indians, more nomadic than the whites. In their love of the hunt, they resembled the Indians more than the newcomers and were probably better marksmen than either. They were carefree, fun-loving, cheerful people, inclined to be improvident and, unfortunately, too easily the victims of the demon, alcohol."\textsuperscript{17}

One of the other most often cited characteristic of the Metis people is that they were fiercely independent. History would definitely show that "Never a group to be herded, channelled or manipulated, the Metis have constantly reaffirmed their independence."\textsuperscript{18} While the Metis had several characteristics which served them well socially, they also had several

\textsuperscript{16}Antoine S. Lussier & Bruce D. Sealy eds., \textit{The Other Natives: The Metis} Vol. 1 (Winnipeg: Manitoba Metis Federation Press, 1978), 16

\textsuperscript{17}MacEwen, 5

\textsuperscript{18}Hanison, 12
characteristics which served them well economically.

The individuals who were products of these inter-marriages were considered to be in both a unique and enviable position during the early years of the fur trade. This was the case because they were more often than not bilingual and bicultural, and therefore became indispensable in the fur trade.\(^{19}\) They quite frequently became invaluable as guides and as interpreters, who accompanied the European trappers, and in positions with both the Hudson's Bay Company and the North West Company.\(^{20}\) Their importance in the growth and westward expansion of the fur trade, and trading in general, is indisputable.

The importance of the Metis in the economic expansion which took place in the 1800's, as well as their growing numbers, began to set the stage for what would come to be known as the "Metis nation". The evolution of this "Metis nation", according to Sealy and Lussier, was encouraged specifically by two things: 1) the trade war which emerged between the Hudson's Bay Company and the North West Company in which both companies sought to control the fur trade; and 2) the establishment of an agricultural colony of

\(^{19}\)Lussier & Sealy, 3-4

\(^{20}\)The relationship between the Hudson's bay Company, the North West Company, and the Metis is actually quite complex, and will be discussed at greater length later in this section.
European settlers in the Red River Valley. These two elements and the feeling of nationalism that they spawned among the Metis were the catalyst for the evolution of the Metis nation.

The Hudson's Bay Company (HBC) and the North West Company (NWC) had been competing for control of trade in the West for some time when the NWC began to resort to violence against those who were associated with the HBC. At the same time Lord Selkirk, a Scottish Lord and a major shareholder in the HBC, sought to settle a number of Scots in the Red River region. The NWC was opposed to this land grant arguing that this type of settlement would disrupt the fur trade. In contrast, the official position of the HBC was that there were many advantages to the settlement including that the farms would provide a source of food for the trading posts, and the farms "...placed on land granted by the Company [HBC], would reinforce the Hudson's Bay Company claim that its charter gave it ownership of the land in the Northwest, or Rupert's Land." These positions on the issue would change after the settlements were in place.

The settlement brought with it a new series of rules which

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21D. Bruce Sealy & Antoine S. Lussier eds., The Metis: Canada's Forgotten People (Winnipeg: Pembinaan Publications, 1975), 33

22Sealy & Lussier, 34

23Ibid., 36

24Ibid., 36
sought to restrict the activities of the original peoples of the area, namely the Metis. On June 19, 1816 the Metis and the settlers clashed in a battle that would be come known as The Battle of Twelve Oaks, and would begin to focus the Metis nationalism that was developing in the face of the growing conflict. The Metis were the victors of this dispute and the settlement was abandoned by the Europeans. The trade war between the HBC and the NWC continued until 1821 when the two companies amalgamated, after the intervention of the British state, and used the name Hudson's Bay Company. When this occurred, it had a significant effect on the Metis because where there had been two trading posts in each area, now there was only one and thus the new company had a surplus of employees.

In order to compensate for this decline in employment the HBC relocated many Metis to the Red River settlement and provided its ex-employees with churches and schools, land grants, and other necessities such as clothing, tools, and ammunition.

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25These rules dealt with the trading practices of the Metis, and with certain hunting practices such as "running the buffalo". See Sealy & Lussier, 37

26Sealy and Lussier, 51; The Battle of Twelve Oaks (1816) is historically significant because it was after this battle that the Metis first began to call themselves a "nation"; see Gorham, 39.

27McLean, 45

28Ibid., 43

29Ibid., 44

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During this period the lives of the Metis living in Red River, and the surrounding areas changed greatly. Their lifestyles became much more "European" in nature, largely due to the influence of Christianity.\(^{30}\) And, because the HBC now had a monopoly on the economy in the area, "The Company was like a feudal landowner in Medieval Europe. The only difference was that the Hudson's Bay Company was not bound to provide any services to its tenants."\(^{31}\) Perhaps one element which concerned the Metis the most was the imposition of trade restrictions in and around the settlement. These restrictions caused significant unrest, and martial law was imposed on the settlement between 1846 and 1849.

The history of the Metis between 1850 and 1870 is quite complex, and in most of the literature is accounted in great detail. However, because it is what the outcome of the events was, rather than the details of the events themselves, that are of importance here, the events will be described with only limited detail. The 1850's brought free trade with the United States and therefore ended the monopoly of the HBC. In order to counteract the feared American influence that might result, the government at the time proposed to increase settlement of the West. However, the problems caused by an influx of Europeans, and of more modern ways of life, troubled the Metis who feared for

\(^{30}\) Sealy and Lussier, 57

\(^{31}\) Ibid., 60
the survival of their way of life. In the late 1860s the talks surrounding the transfer of HBC land to Canada was proposed, without any consultation with the Metis. This transfer would put the Metis under the control of the new Canadian government.

It was the year 1870 which was the most critically decisive for the Metis people. At this time it is important to note that in 1870 Metis made up approximately 82 per cent of the population of the Red River Settlement. The time between 1869 and 1870 came to be known as the "Red River Resistance" when the Metis resisted what they perceived to be their restriction and domination by the Canadian government. While again the events of this year are quite lengthy and numerous, essentially in 1870 this is what occurred: Canada acquired the Red River Settlement; the provisional government of the Metis leader Louis Riel fled; the dispersal of the Metis from the settlement began; the Manitoba Act was passed which was to "...ensure that the Metis would receive title to the river lots they occupied on the Red and Assiniboine [Rivers] and land for future generations." The lives of the Metis changed greatly after 1870.

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32Sealy and Lussier, 75
33Ibid., 73
34MacEwen, 4
35P. N. Sprague, Canada and the Metis 1869-1885 (Waterloo, Ontario: Wilfred Laurier Press, 1988), vii
After 1870 the Metis essentially followed one of these three paths: those who chose to settle with the Indians and joined them in the reserve system; those who became agricultural workers, took up permanent homesteads and became assimilated into white culture; and those who were basically "wanderers" who moved frequently, and who attempted to continue their lives as fur traders in the United States. The Metis would again clash with whites in 1885 in what would come to be known as the North West Rebellion. It was the concentration of Metis in one specific area, the Red River Settlement, and the fear they shared for there way of life as settlement and government control continued to move westward which galvanized Metis nationalism.

Sealy and Lussier characterize the Metis' role in the conflict between the HBC and the NWC as that of "pawns". In other words, both companies tried at one time or another to use the Metis to try to gain an advantage over the other. Also, the influx of European settlers to the Red River region also caused the Metis great concern. However, regardless of what the companies or the Canadian government gained from this tumultuous period, it can be argued that it was the Metis who were the true winners of these conflicts.

"The passions developed in the hearts of the Metis people during this period of history hastened their sense of nationhood, developed a sensitivity toward their rights as people who had a

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36 Lussier & Sealy, 24
37 Sealy and Lussier, 33
stake in the ownership of the Northwest and made them aware of their power when they worked together as a group."

This nationalism is based on the simple principle of a common foe and a common sense of the need to preserve their way of life.

This nationalism is also based on the fact that the Metis are proud of their mixed heritage. "And, that they gain strength from this mixed heritage and wish to remain distinct from both the Indian and white cultures.

"The desire to remain distinct from Indian and white worlds and to gain strength from both elements of their heritage has established a bond among some Metis, and their large kinship network has strengthened their sense of identity."

It is this "nationalism" shared by the Metis of the Northwest which sets them apart from those people of mixed blood in other parts of the country, such as those people who populated the Great Lakes region who were discussed previously.

Before concluding this section on the Metis, it is important to first briefly discuss what changes have occurred for the Metis in the Twentieth Century, and what their current goals are. The twentieth century, unfortunately has brought a number of problems for the Metis people. Sealy and Lussier provide a good explanation of the way that the Metis entered the twentieth

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36 Ibid.
39 Lussier & Sealy, v
40 Hanison, 139
century,

"The first half of the twentieth century did not belong to the Metis. They had neither the positive mental set of the immigrant nor a paternalistic government that felt a duty to protect, feed and educate them as it did the Indians. The mental state of the Metis was one of hopelessness, and a feeling that failure would be their lot no matter what efforts were expended." 41

This feeling of hopelessness was no doubt a direct response to the "marginalization" which came to characterize the Metis. In other words, because they did not belong solely to either the Indian or European worlds they often lived on the fringes of one or the other. This is perhaps most evident in the fact that on the prairies during the 1950s and 1960s the Metis frequently lived, geographically-speaking, on the edge of white communities, or on the outskirts of reserves, in either place without the comfort of services. 42 They were also plagued by discrimination, but despite this fact continued to be drawn in greater numbers into urban areas. 43

Today

Today's population estimates of the Metis are far from complete. In 1981 the Canadian census reported that there were 98,225 people who claimed to be Metis. 44 In the 1986 census

41 Sealy and Lussier, 144
42 Hanison, 124
43 Sealy and Lussier, 155

"as reported in Olive Patricia Dickason, Canada's first Nations : A History of Founding Peoples From the Earliest Time (Toronto : McClelland and Stewart Inc., 1992), 418; see also
report approximately 150,000 people reported to be of Metis origin. One thing is certain however is that the feelings of nationalism among the Metis are still strong today, and this will become evident in Chapter Four with the discussion of the organizations which represent Metis rights and concerns.

The goals of the Metis today primarily surround the issue of acquiring a land base. While this issue will be discussed in much greater detail in the next chapter, essentially because the Metis are not considered "Indians", and are not entitled under the law to receive the same rights to land that Indians are, at this time they have no land base to speak of. Instead, they are no more entitled, in the eyes of the government, to land than is the average Canadian. Therefore the primary goal of the Metis is to achieve recognition of their right to land, and the right to self-determination and self-government that that right entails.

One of the other related goals of the Metis surrounds the fact that they do not consider themselves to be simply another ethnic minority in Canada. Their claim, much like that of the Indians is based on the fact that "The Metis are the only charter group in Canada with a history of national political independence

Hanison.

45Canada : A Portrait (Government of Canada : Statistics Canada, Minister of Supply and Services, 1991), 42
before joining Confederation. In other words, since they are not immigrants to Canada, but rather were self-governing before Confederation, the Metis believe that they should be entitled to certain recognition and entitlement.

In conclusion, the Metis hold a special place in Canadian history.

"As an identifiable group who aspired to nationhood, the metis of Western Canada loom large in history books. The Metis were the principle determinants of Canada's expansion westward. They created a new province, were instrumental in the incorporation of the West into Canada...and until 1885 were the prime economic force in Western Canada." The importance of the Metis in Canadian history cannot easily be disputed. Their place in history however does not appear to be by chance. There appear to be some very important economic factors which played an important role in the expansion of the Metis population and the creation of the Metis nation. Don McLean goes so far as to say that "The Metis emerged as a brand new cultural, social, and historical entity as a direct result of the actions of the Imperial powers of Europe engaged in the extraction of the fur staple in North America." Whether or not this analysis is entirely true or whether the cultural and historical success of the Metis was due to the type of people that they were, is

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46 Harry W. Daniels, We are the Metis Nation : The Metis and National Native Policy (Ottawa : The Native Council Of Canada, 1979), 5

47 Sealy and Lussier, 2

48 McLean, 37

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debatable. However, what cannot be disputed is that the Metis did emerge as, and continue to be, a distinct group of aboriginal Canadians.

The Inuit

The Inuit who inhabit Canada's northern-most regions are a decidedly unique people, who live in decidedly unique conditions. The Inuit, until the later half of this century, lived lives that had remained virtually unchanged in most respects for hundreds and perhaps thousands of years. More recently however the lives of the Inuit have changed due the encroachment of others and to the advancement of technology. These people share very few characteristics with other Canadian native peoples, except perhaps related to their goals. However, these goals are also somewhat unique in substance, due to the unique circumstances which surround the lives of the Inuit.

The word "Inuit" which means simply "the people",\(^9\) inhabit an area which is larger than that of any other group in Canada, yet it is estimated that they have never numbered more than 100,000.\(^5\) The term "Inuit" is used today to describe these people, which the Inuit people prefer, instead of the traditional term "Eskimo". This discussion of the Inuit will center primarily

\(^9\)Richard Harrington, The Inuit: Life As It Was (Edmonton: Hurtig Publications Ltd., 1981), 18

on their history and on their lifestyles and goals, as did the other sections on the other two native peoples. Discussion of the legal situation of the Inuit will be covered in the next chapter, chapter three.

While the Inuit are native Canadians, they do not share biological or anthropological similarities with Indians. Instead they have much more in common with races in Asia, where the Inuit people are believed to have originated. There are essentially three classifications of Inuit: Eastern, Western, and Central, which refers to the region of the arctic in which they live.\footnote{Peter Freuchen, Peter Freuchen's Book of the Eskimos (Cleveland and New York: The World Publishing Company, 1961), 31}

Just as Indians are often classified as "North American Indians" rather than "Canadian Indians" or "American Indians", the Inuit, as a people, transcend international borders.\footnote{Bureau of Indian Affairs Indians, Eskimos and Aleuts of Alaska (Washington: U.S. Department of the Interior, 1966), 3} In the Canadian case, an Inuit is considered to be a "Canadian Inuit" if he or she lives within the borders of the Canadian arctic.

History

Not much is known about the history of the Inuit before they had contact with Europeans, largely because, as with the Indians, their traditional way of passing on history is oral rather than through the written word. What has been learned is that historically the Inuit have lived in conditions which were
very severe. "The traditional Inuit way of life was simple, harsh and very precarious. Only the strongest and most resourceful survived...Hard as they were, their lives were filled with dignity and joy." 53 Much of this severity had to do with the harshness of the arctic environment, which lends itself to a number of hardships related to the importance of shelter and clothing, as well as the scarcity of food.

Some specific things are known about traditional Inuit life. First, the Inuit are traditionally a nomadic people. 54 Also, the basic form of survival among the Inuit was to hunt and to fish. 55 The importance of hunting was not only to find food, but to also find the skins and fur pelts required for many other things such as for clothing and fuel. The traditional mode of transportation for the Inuit was the dogsled, 56 and as a people the Inuit really have no "enemies" as such but historically they have clashed with Indians. 57 The part of the Inuit history and profile which is largely a mystery has to do with their early social and cultural traditions.

In 1830 the first trading posts were established in the

53 Harrington, 13
54 Ibid., 46
55 Ibid., 58
56 Freuchen, 48
57 Ibid., 29
Arctic at Fort Chimo and George River, and this marked the beginning of European influence on the Inuit. With the introduction of large scale trading, the Inuit began to hunt and fish not only for subsistence but also in order to trade. As the fur trade moved into the Canadian north, the Inuit often played the role of guide and interpreter for those unfamiliar with the terrain and climate of the north. In the 1800s the whaling industry also began to move into the north and some Inuit found employment as crew members on whaling ships. Finally, gold was discovered in the north in 1896, and this discovery also caused an influx of people into an area which was usually extremely sparsely populated. Thus one of the largest influences that the Europeans had on the Inuit was that their coming changed the very basis of their economic system: from subsistence to trade.

The dawn of the twentieth century and the technology that it brought spawned a whole new influx of people into the Canadian north as travel became easier. At the turn of the century the effect of technology on the Inuit was becoming more and more apparent.

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59Ibid., 102
60Ibid., 106
61Dickason, 371-372
62Crowe, 169
"On the whole...the Inuit lived during the years 1915 to 1960 in a particular way which was half a return to the very old hunting way of life, and half a new lifestyle centered around trading posts."\textsuperscript{63}

The significance of the trading posts was not only that the Inuit would often find employment there in a number of capacities, but also because most large family groups would visit a trading post a few times a year to stock up on a range of modern items, as well as necessities that they would previously have hunted or crafted themselves. In the 1930s and 1940s trapping became increasingly important because of the fascination with fur that swept the rest of Canada and Europe. Because of the renewed importance of the trapping industry the Hudson's Bay Company relocated many of its Inuit employees on a regular basis to more fertile trapping grounds.\textsuperscript{64}

The end of World War II and the beginning of the Cold War increased the strategic importance of the north.\textsuperscript{65} Radar and detection devices were installed in various locations in the north, which in many cases interfered with the wildlife in the area. This new concentration on the north which began in the late 1940s brought a new awareness of the problems that faced the Inuit, including problems with education, nutrition, and health

\textsuperscript{63}Ibid., 117
\textsuperscript{64}Ibid., 116
\textsuperscript{65}Ibid., 174
care. "After about 1950 government interest in the north sharpened. An ever growing wave of people, things, and ideas from the south swept into the Arctic. The old Inuit life had been turned upside down and the modern period began." Since the end of World War II the lives of most Inuit have changed dramatically.

Today

Today in virtually all areas the Inuit live in settlements, which vary in size, and are increasingly dependent on government agencies and are having more and more contact with other Canadians. These settlements are however not to be confused with the "reserves" that Indians live on. Most Inuit in the Canadian north today live with most of the modern conveniences that other Canadians enjoy. Although there are some who still imagine that the Inuit still live in Igloos and drive dogsleds, in reality most Inuit live in wood-frame or log homes, with electricity, spring beds, washing machines, etc., and are close to schools, stores and medical centres, the first two being the primary centres of village life.

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66 Ibid., 175
67 Ibid., 120
68 Graburn, 224
69 Bureau of Indian Affairs, 4
70 Crowe, 209
71 Bureau of Indian Affairs, 4
Not all Inuit however have decided to remain in the more remote parts of the Arctic. Many have moved to major cities in the Arctic, including Anchorage, in Alaska,\(^72\) or to Canadian cities. However, it should also be noted that very few Inuit move out of the north altogether, unless perhaps if he or she marries someone from the south.\(^73\) Along with this migration to the cities and the encroachment of the people and technology of the south, has come a distinct deterioration of the traditional skills of the Inuit. Today instead of hunting in traditional ways with a harpoon or bow and arrow, the Inuit have much more highly developed techniques which make hunting and fishing much quicker and greatly increase their likelihood of success.\(^74\) However, it is also important to note that since the end of World War II the actual amount of hunting and trapping done by the Inuit has decreased steadily.\(^75\) This is largely the case because today fewer and fewer Inuit try to make a living from the land,\(^76\) and therefore most of the hunting and fishing done in the north by the Inuit is for sport, not for subsistence.

Other traditional skills have also deteriorated. Many of the traditional arts like the working of animal skins into elaborate

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\(^72\)Ibid., 3
\(^73\)Crowe, 236
\(^74\)Bureau of Indian Affairs, 4
\(^75\)Crowe, 183
\(^76\)Graburn, 229
outer-wear, and other needlework are practiced only by the elder women in the communities.\footnote{Bureau of Indian Affairs, 4} Today most clothing is not home-made but is purchased from trading posts or from mail-order catalogs.\footnote{Ibid., 4} But it is important to understand that not all of the traditional customs and skills of the Inuit are lost,\footnote{Crowe, 235} and the Inuit have for a very long time been trying to protect and preserve certain parts of their traditional culture and way of life.

As was noted earlier the face of the Inuit economy has changed greatly in the last one hundred and fifty years. Today one of the growing industries in the north is tourism, \textit{"...the brochures are full of pictures of skin-clad native people, dog-teams, and snowshoes - no one pays to see Indian and Inuit bank clerks."}\footnote{Ibid., 235} Another important industry which has sprung up which is related to the tourist industry is the selling of Inuit jade, ivory, and ivory carvings, which are famous worldwide.\footnote{Bureau of Indian Affairs, 4} Today despite what the tourist pamphlets might portray the people of the north have changed and evolved and so has the economy, just as it did years earlier in the southern regions of this country.
The goals of the Inuit people are specifically somewhat different than the goals of the other native groups discussed herein. The goal of government projects relative to the Inuit have been to improve health-care and education. And from the literature, it would appear that in many areas have been satisfactorily successful. Today the Inuit are concerned a great deal about wildlife preservation and rejuvenation, because development of the north for its resources has caused a great deal of damage to the environment of the Inuit. Also the Inuit have in recent years put pressure on the Canadian government for land rights and for the recognition of the right to self-government. With the establishment of the Nunavut territory, this goal has been partially, although not totally reached by the Inuit. The primary way in which the Inuit vary relative to their goals with the Indians is with regard to their "status" vis-a-vis the Constitution. This difference will be discussed at greater length in the next chapter.

In conclusion, it is evident that modern Inuit culture is much different from the traditional, and often stereotypical, culture of the past. In the 1986 census, approximately 27,000 people reported to be Inuit, and while it is unclear what the

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82 Crowe, 177
83 Dickason, 396
84 through the Nunavut Agreement.
85 Canada: A Portrait, 43
population trend of the Inuit will be, it is clear that for the most part the people of the north have no intent to leave their traditional lands, and intend to continue to fight for the right to those lands, and fight to preserve them from pollution and environmental degradation.

Conclusions

Native Canadians are not a homogeneous group, nor do they have a homogeneous history. However it is evident that some elements of their histories are shared. Each group led rather "primitive" lives by European standards when the new world was discovered. Each group was greatly affected by the influx of people and technology into their environment. Some would say that these changes were a negative change for the native peoples because many of their traditional ways and customs were lost. Others would argue that technology made their lives easier, longer, and better. One thing that cannot be disputed is that the increase in the number of people and the increase in the level of technology has had a substantial negative impact on the environment of this land that only natives used to inhabit.

Other changes were more particular to each group. The Indians were placed on reserves and were regulated to a greater degree than each of the other two native groups. The Metis, on the other hand, were arguably ignored by the government to a larger degree than each of the other groups. And the Inuit the
biggest change has come vis-a-vis the changes to their environment. While the goals of these three groups on the surface may appear to be alike, there are certain nuances of differences. It is clear that all three groups want independence from the government and want to be self-governing. The Indians have a particular obstacle in overcoming the Indian Act and the reserve system. The Metis have a particular obstacle in trying to gain recognition of their status by the government and getting a land-base on which they can govern themselves. And the Inuit, have a particular obstacle in trying to govern themselves in an area which is obviously very remote from the decision-making apparatus of Ottawa, and has unique traditions regarding "governance", or rather the lack of it.

This chapter was intended to provide some historical background into these three categories of native Canadians in order to illustrate the differences which characterize each group. The specific problems and circumstances of each group must be addressed separately by any government wishing to resolve native issues. It is because of this diversity that an agreement on native issues has not been reached. As was noted earlier, the governments have traditionally not recognized the diversity which characterizes native Canadians, an example being the mixing of different bands and tribes of Indians on the reserves or of the governments' refusal to acknowledge the fact the Metis are of Indian ancestry. The next chapter, will deal more specifically
with the legal differences between these three groups and what legal obstacles these three groups have to overcome.
Chapter Four

In the previous chapter differences between aboriginal Canadians were discussed from an historical perspective: the inherent differences of the three categories of aboriginal Canadians: Indians, Metis, and Inuit. These differences are traditional cultural differences. Today, however the most important divisions within the native community, appear to be legal ones. This chapter will address the differences between "status" Indians and "non-status" Indians by primarily focusing on the Indian Act of 1876 and its revision of 1951, and the impact of Bill C-31. This chapter will also discuss an example of the potential increase in tensions and division between status and non-status Indians, and will conclude with a discussion of one of the important results of this fragmentation.

In recent times the most important divisions between those who consider themselves to be aboriginal Canadians appear to be legal ones. The key word however is "appear". It is clear that the source of the differences between status and non-status Indians is the Indian Act of 1876. Many argue that these legal differences are only arbitrary, because they were devised by the federal government. However it is argued here that these legal divisions between status and non-status Indians have given rise
to two distinct, and often divergent, cultures and societies,\(^1\) which in turn has led to each group having different goals and obstacles to overcome.

Noel Dyck argues that while many view the terms "status Indian" and "non-status Indian" as having only nominal significance, in fact the differences between these two groups are profound.\(^2\) The central focus has to do with culture. But before delving into the issue of culture, it is important to quickly explain why Dyck believes that the labels "status" and "non-status" are not wholly arbitrary. Dyck argues that initially the enumeration of registered Indians was done on a voluntary basis: it was the choice of aboriginals to be treated or not to be treated as Indians.\(^3\) In other words, early on, it was up to aboriginal Canadians to determine whether or not they wished to be identified with the Indian community or not.

Returning to the issue of culture, Dyck argues that the socio-cultural differences which existed between those of native ancestry at the time of the initial Indian Act were,

\(^1\)A chief proponent of this theory is Noel Dyck. He sets out his theory in the article "Indian, Metis, and Native: Some Implications of Special Status", Canadian Ethnic Studies Vol. 12, No. 1, (1980), pp 34-46

\(^2\)Ibid., 35

\(^3\)Ibid., 38
"...exponentially increased thereafter by the system of reserve administration to which registered Indians were subjected." In other words, Dyck believes that the very existence of the institutional influence on status Indians, and the lack of institutional influence on non-status Indians, has shaped their cultures in different directions.

Finally, Dyck argues that while originally the categorization of aboriginals into status and non-status Indians is often perceived to be a product of the government, and not of the aboriginals themselves, "...if, as a result of reserve life, Indians...see themselves as being different and distinct from other people of aboriginal ancestry, then is this not an important consideration?" As a matter of course many often forget or ignore that fact that status and non-status Indians perceive themselves to be different from one another, not simply because the law tells them that they are different, but because they know that in many ways they are fundamentally different.

Before moving on to a detailed discussion of the Indian Act of 1876, it is important to recognize another of Dyck's arguments related to the classification of aboriginal Canadians. Dyck argues quite persuasively that the use of terms such as "native" to refer to all aboriginal Canadians "homogenizes" and

4Ibid.

5Ibid., 42
ignores the differences between the various groups who claim native ancestry. He argues that this trend is as a result of the fact that in general non-native Canadians cannot visually distinguish one group from another, and that because this is the case, aboriginal Canadians all face the same stigmas and discrimination, regardless of their status. For example it is obviously virtually impossible to distinguish whether an aboriginal person is status, non-status, or Metis simply by looking at him or her. This trend does seem rather inappropriate given that aboriginal Canadians do see themselves as being different from those in other groups, and obviously have had decidedly different experiences due to their status under the law.

The Indian Act 1876, 1951, and Beyond

The Indian Act of 1876, its subsequent revisions, most notably in 1951, and Bill-C31, have all played a primary role in determining the legal criteria by which Indians are granted status, and all that it entails, by the government. In this section the key points in the evolution of Indian Act legislation will be discussed in chronological sequence, along with the implications of the legislation and what the results of the legislation have been. Finally, the Indian Act as a whole will be evaluated from different perspectives.

6Ibid.
7Ibid.
The Indian Act, which was first put into law in 1876, is the principal document through which the federal, and in some instances provincial, governments have exercised legal control over native Canadians.\(^8\) It is Section 92(24) of the British North America Act which sets out that both Indians and the lands which are reserved for them, fall under federal control. The goal of the original Indian Act was essentially two-fold: first consolidation of all previously existing legislation which pertained to native peoples,\(^9\) and secondly, assimilation.

The first goal, consolidation, is relatively straightforward, and was an effort to simplify the governance of the Indians. The second goal, assimilation, was a bit more complex in nature. The underpinnings of this goal of assimilation could conceivably be the notion of "divide and conquer". Division of native peoples into those who were legally Indians and those who were not was an attempt to get each group to envy the other, thereby causing division. And, or, to simply divide up the total population so as to fragment and disperse it. The second goal, assimilation, would continue to permeate the

\(^8\) James S. Frideres, *Native People in Canada: Contemporary Conflicts* (Scarborough, Ontario: Prentice-Hall Canada Inc., 1983), 20

\(^9\) Ibid., 23; also, there was only very minimal Indian input into the creation of the original Indian Act of 1876: see also Frideres, 24
Indian Act and its subsequent amendments into the twentieth century.

In 1880, the first separate department of Indian Affairs was created, and subsequently the new department began to amend the Act to include further restrictions on Indian activity.\textsuperscript{10} Throughout the rest of the nineteenth Century more amendments to the Indian Act would follow. In 1906 came the realization on the part of the federal government that the sheer number of amendments and sections of the Indian Act was making it almost impossible to properly administer. In response to their problem in 1906, as it would subsequently do on four other occasions, the government of Canada consolidated all of the existing amendments and sections into a new Act which had a total of 195 sections.\textsuperscript{11}

In the 1920s two important amendments were made to the Indian Act. One, legislated in 1920, made it possible for the government to enfranchise Indians; the other, legislated in 1924, placed the Inuit peoples under the direction of the Indian Affairs Department, but as a people, they were not covered by the

\textsuperscript{10}In particular in 1884 amendments were made regarding the sale of ammunition to Indians, a law which, according to Frideres (24), was likely a result of the Riel Rebellion. Also, the amendments banned certain native celebrations like the potlatch.

\textsuperscript{11}Ibid., 25
definition of "Indian" in the Indian Act.\textsuperscript{12} In 1927 there was yet another consolidation of the existing legislation regarding native peoples.\textsuperscript{13}

The next substantial changes in the Indian Act occurred in the 1940s. It was in the second half of this decade that a movement began to make some serious changes to the far-reaching legislation which governed native Canadians. In 1946 the recommendations of a Parliamentary Committee on the subject reflected the need to revise the existing Indian Act.\textsuperscript{14} No doubt partially in response to the recommendations of the parliamentary committee, the native peoples of Canada saw the new round of revisions as a opportune time to have their voices heard regarding the Act. In particular, "Various factions of the Six Nations argued that they were a sovereign nation while representatives of the heredity chiefs demanded abolition of the Indian Act."\textsuperscript{15} Despite the attempts of various native groups to influence the drafting of the new Indian Act, native participation in 1951 remained very limited.

\textsuperscript{12}Ibid., 26; the definition of "Indian" under the Indian Act will be discussed later in this chapter.

\textsuperscript{13}Ibid., 29

\textsuperscript{14}For a Indication of what the mood was like at the time of the revision of the Indian Act see Martha Champion Randle, "The New Indian Act" \textit{Canadian Forum} Vol. 31, No. 3 pp. 272-274

\textsuperscript{15}Wayne Dougherty \& Dennis Madill \textit{Indian Government Under Indian Act Legislation 1868-1951} Section II (Ottawa : Department of Indian and Northern Affairs Canada, 1980), 68
At this point the discussion will turn toward identifying the key sections which were a part of the Indian Act of 1951. Section 12(1)(b) of the Indian Act essentially said that if an Indian woman were to marry a non-Indian man she lost her Indian status for herself and for any children they have. However, if an Indian man were to marry a non-Indian woman the woman he marries and any children they have gain Indian status.\textsuperscript{16} The sexism which is inherent in this double standard would be challenged in the 1980s by both women's groups and by native women's groups.

While the above example is clearly aimed at adding more restrictions and rules toward native conduct the following revisions in fact appear to grant more power to native institutions. Section 20(1) of the Indian Act allows Indian band councils to divide up reserve land for the individual usage of tribe members.\textsuperscript{17} Section 74 and Section 75 refer to election of band councils,\textsuperscript{18} and Section 81 sets out the powers of the band councils, which are primarily to make by-laws, etc.\textsuperscript{19} And Section 83 provides another list of by-laws which the band council may be allowed to legislate if the governor-in-council declares that the

\textsuperscript{16}Frideres, 10

\textsuperscript{17}Leroy Little Bear, et al., \textit{Pathways to Self-Determination: Canadian Indians and The Canadian State} (Toronto : University of Toronto Press, 1984), 188

\textsuperscript{18}Ibid., 185

\textsuperscript{19}Ibid., 186; see this page also for a complete list of the powers of the band councils.
band in question has reached an "advanced state of development", which largely deal with finance. These sections appear to give reserve Indian governments more power and more freedom in this particular area.

The Indian Act of 1951 did usher in a few important changes relating to the relationship between the governments of Canada and aboriginal Canadians. In particular, the Indian Act of 1951 emphasized a more precise definition of who was considered to be a "status Indian". It also provided much more structured criteria for facilitating enfranchisement, as well as giving more responsibility to local bands. However, it is debatable whether these changes were of a positive or negative nature, depending on whether one agrees with the amount of control still exercised by governments over native peoples when the Indian Act of 1951 became law.

While it is true that in some areas that the Indian Act of 1951 granted native Canadians more power than had previous legislation, it is also true that the new Act also granted governments stronger powers in some areas. For example, the revision of the Act provided for the granting of the power to

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20 Ibid., 187
21 Frideres, 30
22 Ibid.
regulate the sale of liquor to natives to the provincial governments.\textsuperscript{23} Also, despite the new powers granted to the band councils, which were discussed previously, the Minister of Native Affairs still had the power to "withhold approval", or arguably to "veto" a decision made by a band council.\textsuperscript{24} Therefore while the cause of native self-government and self-determination did realize some progress with the new Indian Act, most of the governmental controls that had plagued the Indian people for seventy-five years remained in place.

The legal aspect of the relationship between the governments of Canada and aboriginal Canadians did not exist in a completely static state throughout the 1950s and the better part of the 1960s. However, it was not until 1969 that national attention was again focused on this relationship. The White Paper of 1969 proposed some revisions to the relationship which were quite controversial. The White paper proposed that special "status" be abolished; that reserve lands be completely handed over to those native Canadians who lived on them; and that aboriginal rights would not be recognized and that existing treaties be terminated.\textsuperscript{25}

\textsuperscript{23}Kathryn Warden, "Indian Act : Permit To Control a Culture" \textit{Windspeaker} Vol. 11, No. 6 (June 7, 1993), pp. 8

\textsuperscript{24}Ibid.

\textsuperscript{25}Olive Patricia Dickason, \textit{Canada's First Nations : A History of Founding Peoples From the Earliest Time} (Toronto : McClelland & Stewart, 1992), 386
The drafting of this White paper did not involve any native participation, and the proposals were received by the native community with solid opposition. Dickason notes, "Amerindians achieved something approaching unanimity for the first time since the arrival of the Europeans, and probably for the first time ever." While at first glance it would appear that native Canadians should support rather than reject the abolition of status, the abolition of status also includes the stipulation that all existing treaties would be terminated, to which status Indians would be strongly opposed to. Non-status Indians would be opposed to the abolition of status, as it was proposed in 1969 because there would be no future negotiation of treaties, and therefore the rights of non-status Indians to land and other inherent rights would never be negotiated. The White Paper was retracted in March of 1971, and none of its recommendations were legislated.

In terms of legislated changes to the relationship between Canadian governments and aboriginal Canadians, one of the most recent came in the form of Bill C-31. Bill C-31 became law in 1985, and brought with it sweeping changes to the legal definition of who is a "status" Indian. Before discussing the actual provisions of the law and its ramifications, it is important to briefly discuss the origins of the bill. The issue behind Bill C-31 was the provision in the Indian Act relating to

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\(^{26}\) Ibid..
how intermarriage between natives and non-natives affected Indian status.

As was noted earlier, if an Indian woman with status married a man who was non-native or did not have status, she and any children the couple may have would not be considered to be status Indians. Conversely, if a man with Indian status married a woman without Indian status, not only did the man keep his status, but his new wife and any children they may have would be considered status Indians under the law. The sexism and unfairness of this law is obvious, especially when one considers that simply by marrying a native man, a non-native women is eligible to receive the various benefits that come with Indian status, as well as becoming subject to the various restrictions that come with Indian status, while in a situation where the gender roles are reversed, the same does not hold true.

The rules regarding how intermarriage affected Indian status had been law for some time and had been reasonably well accepted. However, "In 1981, the United Nations Human rights Committee decreed that "marriage-out" rules violated the U. N. covenant on civil and political rights."27 In other words, Canada's laws regarding intermarriage and Indian status were considered by the international community to be unjust. In response to this ruling,

27Patty Fuller, "Racism on Reserves" Western Report Vol. 20, No. 4 (November 8, 1993), 26
and no doubt also due to the potential threat of international pressure, as well as domestic pressure, Canada proposed the amendment to the Indian Act known as Bill C-31.

Bill C-31 became law on June 28, 1985, and was entitled An Act to Amend the Indian Act. The key elements of the bill were encompassed in Sections 6(1) and 6(2) the purpose of which were to prevent anyone from gaining or losing Indian status through the act of marriage.\(^\text{28}\) The goal of the amendment was to correct the "registration discrimination" which had been occurring for years based on the clause in the Indian Act discussed previously.\(^\text{29}\) While the changing of the legal definition of who is an Indian occurred with relative speed as far as the legal process went, the problems which this change in definition have brought with it bear mentioning.

Essentially the primary result of the new legislation was that suddenly thousands of people who had not fallen under the legal criteria to be a "status Indian" now qualified to be identified as such. In fact, Bill C-31 essentially "created" 90,000 new status Indians.\(^\text{30}\) A process for application and consideration of Indian status claims was set up by the federal

\(^{28}\text{Canada. Department of Indian and Northern Affairs. Communications Branch. Information: Bill C-31. February, 1989}\)

\(^{29}\text{Ibid.}\)

\(^{30}\text{Fuller, "Racism on Reserves", 26}\)
government, but a source of protest over the new incursion of status Indians came from what might be considered to be an unlikely source: from status Indians themselves.

Many of the problems stemmed from the fact that significant numbers of "new" status Indians sought to live on reserves and to receive the various financial assistance offered by the government that other status Indians did. As will be discussed at greater length at the end of this chapter the disagreements caused by Bill C-31 over both financial and cultural issues were numerous. However, despite these problems, the passage of Bill C-31 into law in a sense "created" a large number of status Indians, in the legal sense, and its primary goal was to end a prime example of discrimination which was inherent in the Indian Act. It also expanded the legal definition of who is a "status" Indian, and consequently also further defined who is a "non-status" Indian.

**Distinctions Under The Indian Act**

In the interest of providing a comprehensive summary of the important points which exist in current Indian Act legislation, the following definitions of key elements are provided. All of the following definitions, unless otherwise noted, are directly quoted from *Indian Act*, published by the Government of Canada.
In terms of who is legally considered to be an Indian under the Indian Act as it stands today, "'Indian' means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian."(2) This definition was, as was noted previously, greatly expanded with the passage of Bill C-31. The Indian Act also specifically sets out that it does not apply to the Inuit, "[Section] 4.(1) A reference in this Act to an Indian does not apply to any person of the race of aborigines commonly referred to as Inuit."(4)

In terms of their further classification, "[Section] 2.(1) In this Act, 'band' means a body of Indians a)for whose use and benefit in common, lands, the legal title to which are vested in her Majesty, have been set apart before, on or after September 4, 1951, b)for whose use and benefit in common, moneys are held by her Majesty, or, c)declared by the Governor in council to be a band for the purposes of this Act."(1) Other more particular references to bands and band councils, including the laws governing Band council elections are found in Sections 74 to 80 of the Indian Act.

With regard to the entitlement of those who have Indian status, "'Reserve' a)means a tract of land, the legal title to

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31Canada. Office Consolidation. Indian Act September 1989; the numbers in parenthesis which follow each definition refer to the page number in this publication, on which the definition is found.
which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band, and b) except in subsections 20 to 25, 28, 36 to 38, 42, 44, 46, 48 to 51, 58 to 60, and the regulations made under any of these provisions, includes designated lands." (3) And, "Designated lands' means a tract of land or any interest therein the legal title to which remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, otherwise than absolutely, released or surrendered its rights or interests, whether before or after the coming into force of this definition." (1-2) These are the two principal clauses in the Indian Act that deal with the subject of the control of native reserves in Canada.

**Differences: Status and Non-Status**

Under Canadian law, and in particular the Indian Act, status and non-status Indians, as has become apparent, are treated quite differently. Status Indians are entitled to certain things which may be considered to be advantageous, such as the access to tax-free land; almost unlimited rights to hunt and fish; and exemptions from federal taxes.\(^{32}\) These are some specific things which are granted to status Indians and not to non-status Indians,\(^{33}\) and they are the most obvious things which make up the identity of a

\(^{32}\)There are certain exceptions to each of these. See D. Bruce Sealy and Antoine S. Lussier *The Metis: Canada's Forgotten People* (Winnipeg: Pemmican Publications, 1975), 174-175

\(^{33}\)It is important to note however that not all reserves were granted to Indians, some of the reserve land in question was never ceded to the government in the first place.
status Indian, from a strictly legal perspective.

But who are the non-status Indians? They are not a uniform group as many perceive them to be. There are essentially three categories of non-status Indians: those who are enfranchised; those who chose or were forced to give up their Indian status; those who are Metis: who are recognized as a separate group of non-status Indians but who are also not defined as Indian under the Indian Act; and those who, because of mixed ancestry and despite Bill C-31 are not considered to be "Indian" under existing federal law. The common thread between each of these groups is that they are not recognized under the provisions of the Indian Act.

The differences between status and non-status Indians under the law are many, and therefore their goals have also been different. Non-status Indians have fought for the same rights that status Indians have. Perhaps the most important right for non-status Indians is the right to land. Under the Indian Act status Indians are granted rights to land on reserves; non-status Indians are not entitled to such grants. The question of land becomes most contentious during discussing of aboriginal self-government, largely because it is very difficult for a group to institute a process of self-government when there is no land base.
on which to do so. Similarly, calls for land for non-status Indians, most notably the Metis, have been based on the notion of entitlement to land, or on treaties which it is argued have not been fulfilled by the government.

The goal of status Indians, arguably since the inception of the Indian Act has been to achieve autonomy from government control. Most frequently this is embodied in the quest for self-determination and self-government. However, despite the fact that non-status Indians, and Metis, have this same long term goal, before this goal can be even begun to be sought after, the problem of recognition, and of acquiring a land base must be solved. Therefore, the immediate goals of status and non-status Indians differ: status Indians are actively seeking self-government through a variety of means, while non-status Indians and Metis are actively seeking recognition by the government and the land base which goes along with that recognition.

**Evaluations of the Act : Two Points of View**

The Indian Act, because of the amount of control it exerts over the lives of status Indians in Canada, has many critics. According to James Frideres, the Indian Act has "...structured inequality, poverty, and under-achievement among Natives,...it has seriously encroached upon the personal freedom, morale, and

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34See John Weinstein, Aboriginal Self-Determination Off a Land Base (Kingston, Ontario : Institute of Intergovernmental Relations, 1986)
well-being of Native people."

From a purely economic standpoint, Kathryn Warden writes, "...economically they [status Indians] have never recovered from the federal policies that stunted their agricultural efforts and stifled attempts at commerce." These criticisms are arguably well-founded, but what is the alternative?

Since the first inception of the Indian Act both individual native Canadians, as well as native Canadian organizations, have opposed, and called for the abolition of, the Indian Act. But if the Indian Act were simply to be repealed, what would be the consequences? One of the most interesting analysis of this subject is that of Noel Dyck who discusses the possible impact of abolishing "status" on status Indians.

Dyck asserts that "...it is hardly surprising that their legal and administrative status became a central feature of their social identity as well as the major component of the boundary between themselves and non-Indians." While here Dyck draws the distinction that the legal and administrative role that the government has played in the lives of status Indians has made this group socially distinct from non-Indians, it is also the case that because non-status Indians are not governed by the same

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35 Frideres, 32
36 Warden, 8
37 Dyck, 39
legislation as status Indians that this legislation has also fostered a social identity among status Indians which is also different from non-status Indians.

Therefore, if the Indian Act were simply to be abolished, what would happen to status Indians if indeed their culture and social identity have evolved around the Act? It is a point of view which is not often taken into account vis-a-vis restructuring or abolishing the Indian Act. If in fact one accepts the argument that status Indians and non-status Indians are culturally unique from each other, and have distinct social identities, then one recognizes that the division between status and non-status Indians is not simply an arbitrary legal distinction, but rather one with strong cultural and social roots.

Therefore it can be said that the Indian Act has been the embodiment of many of the problems which have faced native Canadians since the time the Act was legislated. It also can be said that the Indian Act may have, although unintentionally no doubt, fostered a strong sense of cultural and social identity among those whom it governed, and fostered a division between status Indians and those who were not governed by the Act, namely non-status Indians and the Metis.

The notation about these results of the Indian Act being
"unintentional" is based on the fact that the primary goal of the Indian Act was to assimilate native peoples into the greater Canadian milieux. And in fact, if one subscribes to Dyck's argument, the Indian Act has in many respects done the opposite because it has created even tighter cultural and social bonds among those who are governed by the Act, and galvanized many who are not to seek recognition of what they perceive to be their inherent rights.

The Indian Act however has not always had positive implications as far as bringing native Canadians together. In fact Frideres points out that "the distinctions between non-treaty and treaty Indians are particularly divisive: the two groups receive different privileges, different amounts of money from different sources, and different rights." These differences have at times caused rifts between the status Indian community and the non-status Indian community.

Rifts between native Canadians usually center around the notion of status, between those who have it and those who do not. This is primarily because these two groups have different immediate goals and on occasion those goals conflict with one another. One of the most recent conflicts has to do with the

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39 Frideres, 13
passage of Bill C-31, the provisions of which have already been discussed. The passage of this Bill has caused some conflict within the native community.

The uproar surrounding the passage of Bill C-31 has contributed to the growth of intolerance within the native community. Some of those who were considered to be status Indians before the passage of Bill C-31 are not accepting of those native Canadians who have been granted status by the Bill. Much of the conflict centres around the influx of new status Indians applying to the bands and to the reservations because of their newly granted status. This has certain leaders within the status Indian community concerned about a number of issues.

First is the question of whether or not these new status Indians must be allowed to be members of the band in which they claim membership. Chief Twinn "...believes that a first step towards self-government is a band's ability to determine membership," and was refusing to allow the new applicants to become band members. It would appear that many status Indian leaders feel that these new status Indians have been thrust upon them and they have been forced to deal with the situation.

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40 Patty Fuller, "Who is a Real Indian Anyway ?" Western Report Vol. 20, No. 27 (June 7, 1993) pp. 14
41 Ibid., 15
The second question is what effect these new status Indians will have on already financially strapped bands. There are concerns expressed by status Indian leaders vis-a-vis the further sub-division of band funds and reserve lands that these new numbers of status Indians will require.\(^4\) This concern, while primarily financial in nature, also encompasses the concern that the band will be able to continue to support its members. However there will be no doubt continue to be charges of greed leveled at those status Indian leaders who publicly express concern regarding the economics of incorporating these new status Indians into their bands.

The third question has to do with band culture. There would appear to be a strong concern on the part of status Indian leaders that the "new" status Indians will somehow negatively affect band culture. In fact some even go so far as to say that the concern is that the newcomers may "destroy" band culture.\(^5\) Whether this last concern will ultimately be legitimate or not, given Dyck's theory on the way in which "status" or "lack of status" has shaped the socio-culture of the two groups, this concern does seem to be quite a valid one as the two socio-cultures begin to mix.

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\(^4\)See Fuller, "Who is an Indian Anyway?"; and D. B. Smith, "DIAND Funds Bill C-31 Supporters" Windspeaker Vol. 11, No. 9 (July 19, 1993) pp. 1

\(^5\)Fuller, "Who is an Indian Anyway?", 26
The result of the growing concern about these new status Indians has led them to form groups through which their interests will be articulated. One of the groups in Western Canada is called the Bill C-31 Association of Alberta. Its goal is to establish urban reserves, as well as new land bases, so that the younger generation does not have to live on existing reserves."

It would appear then that it is not only the status Indian leaders who are greatly concerned about the existence of the "new" status Indians, but that the newcomers themselves are beginning to organize and to attempt to find solutions to the opposition that they, as new status Indians, are facing.

Conclusions

The distinctions between status and non-status Indians, while based on the legal definitions of the Indian Act, are in fact not wholly legal in nature. Status and non-status Indians have developed unique cultures due, at least in part, to the level of influence that the Indian Act has had on each of these peoples. Therefore the distinctions which exist in the Indian Act between status and non-status Indians are today not wholly arbitrary, but in fact have social and cultural bases as well.

The specific legal distinctions discussed in this chapter

"Dina O'Meara, "Bill C-31 Aboriginals Find A Political Voice" Windspeaker Vol. 11, No. 4 (May 10, 1993) pp. 2 101
are important because they are the way in which status and non-status Indians are most readily distinguished from one another. Today it is the legal definition of who is an Indian under the Indian Act which determines whether an Indian is treated as such, regardless of his or her appearance, culture, and in some cases, ancestry.

It is the combination of both of these types of distinctions, both socio-cultural and legal, which have caused the divisions between these two groups that are apparent today. These two types of distinctions have caused these two groups to have different problems, as well as different and sometimes divergent goals. As a result, status and non-status Indians are not always on the same side of a given issue, as was apparent in the discussion of Bill C-31. Because of these differences, status and non-status Indians do not always share a common voice when it comes to legislation which concerns them. These differences are of course, as has been said before, largely due to the level of institutional influence exerted upon a given group. These pressures, it is argued here, have played a role in dividing the native community, and that in the absence of these pressures, the native community may have been a more cohesive group.

This combination of both legal and socio-cultural divisions between status and non-status Indians has no doubt contributed to
the absence of a mutually agreeable settlement of native issues such as self-government and land claims. The fact that native people are split into these two categories, and have different and divergent goals means that their impact on the government is much weaker than if all native Canadians approached the government with one unified voice.

However, because native Canadians are not merely an interest group, in which levels of cohesiveness can arguably be altered, this lack of cohesion has become inherent. The roots of this lack of cohesion lie in the Indian Act of 1876 and its subsequent amendments. This lack of cohesion has arguably been an important impediment to achieving a mutually acceptable agreement between the native people of Canada and the governments of Canada.

In assessing the progress toward a mutually acceptable agreement between aboriginal Canadians and Canadian governments on the issue of aboriginal self-determination, it is clear that certain impediments continue to stand in the way of such an agreement. One such impediment, and one that may in fact make an agreement on this issue impossible, is the existence of innate diversity within the native community.
Chapter Five

To this point the notion of the differences among aboriginal Canadians has been discussed relative to their traditional tribal divisions and relative to the divisions caused by differing legal status. This final chapter will address a final type of difference, one which has essentially come about as a product of the first two differences, the existence of a number of organizations which represent native interests.

Fragmentation among native Canadians is furthered by the number of different native organizations which exist, as well as by the different mandates of each of these groups. There is not an organization which speaks with "one voice" for native Canadians. This fact however is not intended to be construed in a negative manner, because as has been illustrated thus far, the native Canadian community is highly diverse and it would seem only appropriate that this diversity is reflected in the number and mandate of these organizations.

However, the consequences of the existence of many different groups with differing and often contradictory mandates is that when dealing with issues of importance, especially those which involve dealings with the federal and/or provincial governments, the sheer number of different voices straining to be heard within the native community is not only confusing but also often times
extremely frustrating. This is the obstacle which has faced the federal government at each attempt to reach an agreement with native Canadians on Constitutional matters. Conversely, trying to have their voices heard in Constitutional matters has been equally as frustrating for many sectors of the native community.

This chapter will address the preceding issues in the following way. First, one of the underlying problems which face organizations will be discussed briefly, which is the problems that native organizations have in dealing with the Canadian type of bureaucracy. Second, a brief history of native political organizations will discuss the growth and evolution of these organizations in the Canadian context. Third, the groups which represent various sectors of native society on the national level will be discussed, including the goals of these different groups. Fourth, how this fragmentation has affected the performance of these groups will be discussed, with emphasis on the repatriation of the Constitution in 1982, the Charlottetown Accord of 1992, and Bill C-31 of 1985. Finally, this chapter will conclude with a discussion of how this fragmentation affects public perceptions of native issues, and of the organizations themselves.

Before delving into a discussion of the history of native organizations, it is first important to identify and briefly discuss one of the primary obstacles that native Canadians face when dealing with Canadian governments. The obstacle is
essentially that Canadian and native decision-making are quite
different in nature. Traditionally, native decision-making has
been characterized by "consensus". That is, a decision is only
made when all participants can agree and support the decision. In
other words, there are no "winners" and "losers". Decision-making
by consensus is based on Egalitarianism, on respect for the
individual, as well as on harmonious relations.¹ This tradition
is sharply in contrast to the Canadian tradition of decision-

The Canadian democratic tradition on the other hand is based
of course of the notion of majority support. This is not to say
that the Canadian democratic system does not have any regard for
the individual or for harmonious relations, but simply that
politics by consensus is not a practical alternative given the
size of the Canadian decision-making apparatus. Kathy Brock
points out that "Consensus decision-making operates best in small
communities where shared values, beliefs, and philosophies will
facilitate agreements."² It is evident that these criteria are
not attainable in the large Canadian political system.

Therefore one of the primary problems which have faced, and
which continue to face, native organizations is the dilemma of

¹Kathy Brock, "Political Leadership in the Aboriginal
Community" Canadian Public Administration Vol. 34, No.
2, pp. 227

²Ibid., 229
trying to operate within the structure of the Canadian decision-making apparatus. This task is particularly difficult because the system does not involve to any large degree the notion of consensus, and instead fosters an adversarial style of politics, in which many native organizations find it difficult to function. In conclusion then, in trying to examine, and to some degree, to assess, the evolution and operation of native organizations it is important to understand that many of these organizations continue to be, in some cases though not all, "fish out of water" as it were.

A Brief History of Native Political Organizations

The history of native political organizations is a long one. Even before the emergence of native organizations as they are categorized today,

"...there were many tribal organizations...closely tied to religious and cultural components of tribal life, and were directed inward, toward members of this group rather than outward toward society as a whole."¹

These organizations have been around for as long as native Canadians have felt the need to organize themselves for their own good, or in order to lobby a government over a particular issue. More often than not, native organizations tended to be tied to a particular issue or to a specific concern, and also generally

³Ibid., 228
⁴Ibid., 239
tended to have a membership which was geographically-based.⁵

There are several other characteristics which are common to virtually all native organizations which have existed or do exist today. First, the issue of land claims and the issue of treaty rights were by far the most common basis for the formation of native organizations in the early part of this century, and this is arguably still the case today. Second, membership in these organizations is generally a result of ascription; that is, one is a member of an organization by birth or by law, not by actively joining the organization.⁶ Finally, the goals of native organizations are generally to solve specific problems facing native Canadians,⁷ which will in turn help them to live in modern Canadian society. These characteristics are virtually universal in native organizations both past and present.

Very little has been recorded about the earliest native organizations largely because few were in existence for any substantial length of time. "In the nineteenth century, ...the

⁵James S. Frideres, Native People in Canada: Contemporary Conflicts (Scarborough, Ontario: Prentice-Hall Canada, Inc., 1983), pp. 233

⁶Ibid., 237; Frideres provides the example of the National Indian Brotherhood (which is now the Assembly of First Nations) to illustrate his point here: only status Indians are represented by the NIB/AFN, and therefore if one is a status Indian one is automatically represented by this organization. One does not have to join it, and it does not represent individuals who are not recognized as status Indians under the law.

⁷Ibid., 239
demise of these organizations was generally the result of suppression by the federal government and internal discord among natives themselves." During this period, once an organization was discovered by the government it was frequently disbanded or regulated out of existence. In the other instance as noted above, frequently disagreements among the members of these organizations over a particularly sensitive issue or, because consensus on an issue could not be reached, resulted in the dissolution of the organization.

According to Frideres, the earliest recorded organization was the Allied Indian Tribes of British Columbia, which was formed in 1915-1916." This particular group lobbied for land claims to a particular tract of land. It was during the earliest part of the twentieth century that native organizations began to emerge. At this time, native organizations existed strictly at local, regional, or as the above example suggests, in some cases at provincial levels. It can be argued that this was the case primarily because there had yet to be a move by native leaders to expand their organizations beyond these levels, and because, as was stated earlier the goals of these organizations primarily had to do with specific regional, not national, concerns.

The 1940s saw the emergence of a new group which had been

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8Ibid.
9Ibid., 236
formed from previously fragmented ones. The group was called the Brotherhood of Canadian Indians, and it represented non-treaty Indians. The significance of this group was that it was a national group. The mid-1950s, the period directly following the passage of the Indian Act of 1951, saw the emergence of groups which were more multi-faceted, and which had a much larger membership.\textsuperscript{10} Here the beginning of a trend is evident: when native Canadians are somehow treated in a way that they feel is unjust by the government, the direct result is that new and broader-based organizations begin to emerge. The evolution of this trend will become clear as this chapter progresses.

The next most significant period in the history of native organizations began in 1969, the year in which the federal government's famous White Paper was introduced. At the time that the White Paper was tabled there were fourteen fledgling native organizations.\textsuperscript{11} Two of these fourteen were national organizations: the National Indian Brotherhood (NIB) and the Canadian Metis Society (CMS). While they were separate organizations in their own right, they were known collectively as the National Indian Council (NIC). The National Indian Brotherhood represented status Indians, in other words, those who are recognized as Indians by the Indian Act. Conversely, the

\textsuperscript{10}Ibid., 235

\textsuperscript{11}Pauline Campeau & Aldo Santin, \textit{The First Canadians: A Profile of Canada's Native People Today} (Toronto, Ontario: James Lorimer and Company, 1990), pp. 139
Canadian Metis Society represented all other aboriginal peoples. Therefore, as a collective, the National Indian Council, for as long as it existed, was one of the few national native organizations which, in theory at least, represented all native peoples.

The tabling of the White Paper by the Trudeau government, and more specifically by then Native Affairs Minister Jean Chretien, represented a significant event in the history of native organizations. More specifically it created an unprecedented spurt in growth in the number of native organizations, and created some ethical dilemmas for other groups. Moreover, it caused native groups, at least in the beginning to set up a uniquely united front against the White Paper. In order to understand why this was the case, it is important to briefly discuss various portions of the White Paper itself.\textsuperscript{12}

First, the crux of the White Paper was that native organizations were to act as "conduits" for putting the government's plan into action.\textsuperscript{13} The reason for this proposal was that "Ottawa had a new proposal to sell, and the bureaucrats and politicians decided they needed strong provincial and national

\textsuperscript{12}For a more detailed discussion of the White Paper of 1969 please see chapter One of this study.

\textsuperscript{13}Campeau & Santin, 140
native groups to get the job done."\textsuperscript{14} Second, in order to facilitate this proposal the government offered funding to these groups.\textsuperscript{15} Because of this additional funding, the number of native organizations which had political mandates increased significantly after the introduction of the White Paper.\textsuperscript{16}

While the government's proposal did increase the number of native organizations, it also created somewhat of a moral dilemma for other organizations. "Native leaders...had to face the contradiction of accepting funding from the people or body that their groups lobby against."\textsuperscript{17} Here the fear of federal manipulation, a theme which still permeates many native organizations today, appears to have its beginnings.

Finally, because the provisions of the White paper were so strongly opposed by virtually all native peoples, its existence has been noted as having been responsible for uniting many native organizations in the same cause. "For what many researchers and historians believe was the first time, Indians across the country put aside their differing interests and united as one voice."\textsuperscript{18}

\textsuperscript{14}Ibid..
\textsuperscript{15}For a more detailed explanation of this, see Campeau and Santin pp. 140-144
\textsuperscript{16}Ibid., 141
\textsuperscript{17}Ibid., 142
\textsuperscript{18}Ibid., 143
This trend towards a kind of unity among both native leaders and native organizations in times of crisis with the federal government will be explored at greater length as this paper continues.

The White Paper of 1969 was eventually withdrawn by the Trudeau government, largely due to negative publicity and public opinion which was sparked by native protest of the proposals. While in a sense the withdrawal of the White Paper can be characterized as a success for native people because the proposals were not implemented, it can also be characterized as a success for another important reason. The unity among native organizations which was achieved in the face of a common "enemy" marked the beginning of what was to be a rather short-lived "golden era" of native organizations. During the period between 1969 and 1982 native organizations would band together as never before to pursue their over-reaching common goal: recognition of native rights.

The late 1970s brought a renewal of the federal government's interest in repatriating the Canadian Constitution. In trying to achieve this goal, however, the federal government would once again ignore the interests of native Canadians in a way that they could not ignore. It was the national native organizations, and certain provincial native organizations, which would take up the cause of native rights during this period of constitutional
reform. What is particularly significant about the action taken by native organizations during this period is the length to which they went to achieve their goals.

In the period between 1978 and 1982 the federal government of Canada began in earnest to attempt to repatriate the Canadian Constitution. When word of this intent reached the native community, many native leaders no doubt saw an important opportunity to improve the status of native Canadians under a revised and repatriated Constitution. During this period the National Indian Brotherhood (NIB) was arguably the most influential national native organization in existence. When the organization learned of the government's intentions regarding the Constitution, the NIB essentially had two demands: that the revised Constitution must entrench aboriginal and treaty rights, and that native Canadians must be involved in revision process.\(^{19}\)

In October of 1978 the National Indian Brotherhood was invited to send a delegation to the First Ministers Conference as "observers" to the meeting. Other native organizations, such as the Native Council of Canada, which represented Metis and non-status Indians and Metis, in contrast to the NIB which represented status Indians and the Inuit Committee on National Issues (ICNI) was also invited. This same invitation to observe

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\(^{19}\)Douglas E. Sanders, "The Indian Lobby", Vancouver: Faculty of Law, University of British Columbia, 1982 pp. 5
was again extended in 1979 for another First Ministers Conference on the Constitution. During this period, the NIB was the most outspoken of the national native organizations and began to take unprecedented action in order to get the government to address the two of its demands.

However, it is also important to note that one of the reasons that the NIB was so out spoken during this period was because it had chosen to work separately from other organizations like the Native Council of Canada. Sanders notes that "Their organizations had long seen the Metis as rivals, and...the General Assembly of the NIB resolved that the organization would work' alone on the Constitution'."

Because the NIB did not believe that the government was doing enough to involve native Canadians in the constitutional process it followed through on its intentions to petition the Queen over the issue of native participation in the repatriation process. While practically-speaking the initial attempts by native Canadians to lobby the Queen were wholly unsuccessful, according to Douglas E. Sanders the trip can be considered a success, largely because over two hundred Indians went to Britain, and it was the publicity generated by this trip which made it a success.

\[20\text{Ibid., 19}\]
\[21\text{Ibid., 7}\]
\[22\text{Ibid., 8}\]
By the fall of 1980, despite native attempts to become a part of the constitutional process, "Aboriginal organizations knew that they had been left out of the action and out of the constitution, and there was an aggressive response."23 This time, joining the NIB in the spotlight was the Union of British Columbia Indian Chiefs who, in September of 1980 initiated a lawsuit in Canada which called for a judicial declaration that the government of Canada required the consent of Canadian Indians in order for the Constitution to be patriated.24 This court case signalled the beginning of an international campaign to draw attention to the issue, which included lobbying in both Britain and at the United Nations.25

While both the lobby attempts in London and at the United Nations drew sympathy from those who heard the natives' case, little was accomplished with any binding legality. In reaction to unsatisfactory movement on the issues, other native groups took further initiatives. The NCC, the ICNI, joined the Native Womens' Association of Canada, the Dene Nation organization based in the Northwest Territories and the Council for Yukon Indians in forming the Aboriginal Rights Coalition. This group and the NIB staged protests in Ottawa over the deletion of a key amendment,

23Ibid., 15
24Ibid..
25Ibid., 19
Section 34, dealing with native rights. Across Canada on November 19, 1980, Indians demonstrated for the restoration of this amendment. In response to the growing pressure of the native lobby, the Premiers reworked the key section, but the outcome did not satisfy native leaders, and all three national native organizations were then unanimously against the constitutional package.

The non-consent of native organizations did not forestall the impending ratification of the new constitutional package when on April 17, 1982, the Queen gave Royal ascent to the new legislation, and native leaders declared this day to be a national day of mourning. However, despite the fact that native organizations were not ultimately successful in attaining their goals relative to patriation, it is important to note that the impact of native organizations on the political process grew immensely during this period. This is perhaps most evident both in the fact that political initiatives in the area of native issues came exclusively from native Canadians themselves, and

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26 The proposed Section 34, was as follows:
34.(1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

27 Ibid., 30

28 Ibid., 33

29 Ibid.,
because during this period there was a sense of unity among native organizations which would not be repeated. In other words, it is argued that the unity of native organizations reached its peak during the 1982 constitutional talks, and would slowly begin to disintegrate as the 1980s progressed.

The aftermath of 1982 brought a series of constitutional talks in which the level of native participation would increase over time. The events of this period will only be briefly touched on here because they have already been discussed at length in chapter one of this paper. The First Ministers' Conferences of 1983, 1984, and 1985 and 1987 saw some native participation, but were mostly directed by the federal and provincial governments. The Meech Lake Accord, ultimately defeated, was a success for native Canadians in the sense that it was killed essentially because of the opposition of a native Canadian, Elijah Harper. While this kind of participation was arguably not the kind that native Canadians might have preferred, the result was the defeat of an unsatisfactory proposal.

Finally, the Charlottetown Accord of 1992 involved native Canadians to an unprecedented degree. Native leaders had a seat at the constitutional table, and in many ways directed the discussions on native issues. The demise of the Charlottetown Accord was arguably at the hands of a disapproving public, but it was also at the hands of a disunified native community because of
the negative way that many native leaders dismissed the provisions of the Accord despite native participation.

The native organizations which rejected the Accord in whole or in part were many native women's organizations such as The Native Women's Association of Canada, the Inuit Women's Association, the Metis Women's Association, and the Professional Native Women's Association, as well as the Native Council of Canada.\textsuperscript{30} These groups launched high-profile campaigns against the Accord, for different reasons.

The primary reason that the native women's groups mentioned above did not support the Accord, stems from the fact that they were not invited to be part of the process, at least not directly.\textsuperscript{31} The opposition to the Accord by native women's organizations also sparked opposition among the non-native women's organizations, such as the National Action Committee on the Status of Women.\textsuperscript{32} However, as Mary Ellen Turpel notes, not all native women's organizations were opposed to the Accord; some groups, like the Ontario Native Women's Association supported the

\textsuperscript{30}Mary Ellen Turpel, "The Charlottetown Discord and Aboriginal Peoples' Struggle for Fundamental Political Change" in Kenneth McRoberts and Patrick Monaghan, eds.. The Charlottetown Accord, the Referendum, and the Future of Canada (Toronto, Ontario : University of Toronto Press, 1993), pp. 132 & 139

\textsuperscript{31}Turpel, 132

\textsuperscript{32}Ibid., 133
The other main reason that some native groups opposed the Accord had to do with the longstanding issue of distrust of the Canadian political system. There is a definite irony that native Canadians face: while they have been treated unfairly in dealings with Canadian governments for a very long time, it is only through an agreement with the Canadian government that they will be able to gain more of the freedoms that they seek. Taking this a step further, many native Canadians likely felt that those native leaders who sat at the negotiating table, and who were endorsing the Accord, had somehow been co-opted to some degree by the government.

Then there are those native organizations who opposed the Accord because they felt that recognition of the First Nations, and arguably native rights, under the Constitution was not necessary. Turpel points to the Iroquois Confederacy as an example of such an organization which perceives "...themselves as independent from the Canadian state and have decided to exercise their right of self-determination in a manner that allows for the greatest possible separateness from the institutions of Canadian society, if not complete autonomy." These organizations did not support the Accord because they did not see the need for such an agreement at all.

33Ibid., 133
34Ibid., 140
Therefore, despite the fact that native Canadians did not universally support or reject the Charlottetown Accord, their participation in its formulation and evaluation was significant. While the demise of the Charlottetown Accord is not directly attributable to the split in native opinion regarding the Accord, native groups either lobbied for or against the passage of the Accord to a previously unprecedented degree.

The Membership and Goals of National Native Groups

There are essentially three national native organizations which are part of the Canadian political canvas. However, there are also hundreds of other native organizations which operate at the provincial, regional and local levels. The three organizations which will be discussed briefly here are the Assembly of First Nations, the Metis National Council, and the Native Council of Canada. Each of these three groups have different membership criteria and therefore each group also has different goals.

The Assembly of First Nations (AFN) was created in 1982, from the remnants of the organization known as the National Indian Brotherhood (NIB). The NIB was formed in 1968 to represent status Indians, and the tabling of the White Paper in 1969 forced

35It is also important to note that there are other native organizations which lobby at the national level which the scope of this study does not address, including the Inuit Tapirisat of Canada.
the NIB into a leadership role in response to the proposals.  
During the 1970s the NIB became a national organization, with a headquarters in Ottawa and a full-time staff.  
In 1980 the NIB began to turn away from its leadership-oriented role, and began to focus more on influencing federal policy as lobbyists. This new focus on policy first had an impact on the constitutional discussions in 1981 and 1982.

The NIB disintegrated in 1982 as a result of internal problems within the organization. These problems dealt primarily with the financial aspect of the organization, and particularly the fact that the NIB was in debt to the tune of 3.6 million dollars. In 1986 the RCMP launched an investigation into the NIB, the purpose of which was to look into alleged fraud an illegal conduct regarding the management of finances between 1982 and 1985. The result of this investigation would be that former national chief David Ahenakew and six others were charged with kickbacks from various government grants to pay for former Minister of Indian Affairs John Munro's bid for the Liberal Party

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36 Frideres, 242
37 Ibid.
38 Ibid.
39 Ibid.
40 See articles in the popular press, such as Wendy Smith "RCMP Investigates Assembly Ledgers" The Calgary Herald Thursday, January 9, 1986 pp. A10

122
leadership in 1984. The fact that these charges were laid in the first place, appear to indicate the existence of some definite internal problems within this organization.

However, in 1982, certain elements of the NIB were reconstituted into the AFN. The representation of the AFN is the same as the NIB, the organization solely represents status Indians. The role of the AFN would become much more public in nature than the NIB had been, but the lobbying power of the organization would remain strong.

The Assembly of First Nations, while it is certainly not the only native organization which is heavily dependent on federal funding, is often seen as being very close to the federal government because it has become institutionalized to a certain degree. A good explanation of the relationship between the AFN and the federal government is that the AFN "...is a nationally representative institution that reflects aboriginal traditions and acts as a liaison between the federal and provincial governments." The Grand Chief of the AFN currently is Ovide Mercredi, a charismatic leader who has become widely recognizable not only in the native community, but also in the non-native

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"See articles in the popular press, such as Jack Aubry, "Native Leaders Set For Dogfight In Race To Choose National Chief" The Montreal Gazette Sunday, May 5, 1991

"The unpublished one page summary of the organization of the AFN, "A Description of the Assembly of First Nations". 123
community as well. Under his leadership the AFN has moved further into the political limelight.

Membership in the AFN is not a conscious decision because the AFN represents all status Indians. Therefore anyone who is considered a status Indian by law, is represented by the AFN. Currently the AFN represents approximately five hundred thousand status Indians, in six hundred and thirty-three native bands. The goals of the AFN are numerous, and sometimes varied, but in general deal with concerns specific to status Indians, such as the amendment and/or abolition of the Indian Act, and with concerns common to all native peoples, such as discrimination and social problems.

The AFN is a highly structured organization, which is designed to be a forum for the views of various First Nations, on a variety of issues,\(^\text{42}\) and one need only peruse its numerous publications dealing with various issues to grasp the breadth of the group's interests.\(^\text{43}\) As the number of issues affecting

\(^{42}\)According to the AFN in the unpublished one page summary of the organization of the AFN, "A Description of the Assembly of First Nations.", these various areas include : Aboriginal and Treaty Rights, Economic Development, Education, Languages and Literacy, Health and Housing, Social Development, Justice, Taxation, Land Claims, the Environment, etc.

native Canadians has grown, so too has the AFN.

The Native Council of Canada represents those native Canadians not recognized by the Indian Act at the national level, that is the interest of both Metis and non-status Indians. The organization of the group consists of Metis and non-status organizations at the local level, and a second tier of provincial and territorial groups. The NCC is essentially a "federation" of these groups. The NCC has spoken for the rights of the Metis since 1971,^44 and "the council takes the position that aboriginal title is ancestral or hereditary in nature and cannot be tied to an artificial definition of who is and who is not an Indian as defined by the Indian Act."^45 It also contends that "the artificial definitions of "Indian" has generally affected the relationships among native people and Canadian society in general."^46

The goals of the Native Council of Canada are to ensure that non-status Indians and Metis are involved in the negotiation and settlement of aboriginal title, and also to ensure that both groups are given funding in order to "catch-up" with status


^45The Forgotten People Vol. 5 No. 1
Ottawa: Native Council of Canada, 1976

^46Ibid., 2

125
Indian in terms of the funding they receive in a number of areas.\(^7\) The NCC is also heavily involved in housing programs and social issues such as substance abuse.\(^8\)

Recently the NCC has undergone some type of metamorphosis into a new organization called the Native Congress of Canada. At this time the extent and ramifications of this change is unclear, because the organization is still in the process of reorganization.

**How Fragmentation Has Affected Performance**

The 1980s and the early 1990s signaled a new era of Canadian awareness of the plight of native peoples and of their desire to have their inherent rights recognized, but a concrete agreement on native issues has yet to be reached. Beginning in 1983 and continuing until 1985 three First Ministers conferences were held on native issues.\(^9\) In 1985 the passage of Bill C-31 and its implications had a seriously divisive effect on the native community. In the late 1980s and early 1990s, the Meech Lake Accord and the Charlottetown Accord were negotiated, with each of them failing, at least in part, due to the non-consent of native leaders and organizations. However, in the case of the

\(^{47}\)Ibid..

\(^{48}\)Ibid..

\(^{49}\)The particulars and results of this conference are discussed in detail in chapter two of this paper.
Charlottetown Accord it can be argued that disagreements between native organizations over the details of the agreement caused the native community not to support the agreement, despite native participation in the drafting of the Accord.

**Bill C-31**

The principle behind Bill C-31, titled simply *Amendments to the Indian Act*, is to right some old wrongs - to recognize those native Canadians who had unfairly been denied recognition of their status. While Bill C-31 arguably did right some of these wrongs, it also has generated some divisions within the native community. Bill C-31, because it involved the re-establishment of Indian status for a significant number of native Canadians, caused some rifts within the native community. Among some of those who had already been "status Indians" there was the fear that an influx of "new" status Indians on the reserves would destroy band culture. Others worried that intolerance in the native community would escalate as a result of Bill C-31. One Chief "...believe[d] that a first step towards self-government is a bands's ability to determine membership." It can be argued that Bill C-31 takes away a band's right to determine its own membership. Hard-feelings between two groups of people, especially when one group is perceived by the other to be "outsiders" or "interlopers" often leads to intolerance.

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"Fuller, "Racism on the Reserves", 26
"Fuller, "Who is a Real Indian, Anyway?", 15
But intolerance is not the only way that Bill C-31 has caused disunity within the native community. The other way involves the creation of what can be described as a distinct cleavage in the native community. This is perhaps most evident in the fact that new organizations which represent those native Canadians covered under Bill C-31 have emerged. One such example is the Bill C-31 Association of Alberta. This group is specifically concerned with those issues facing the group of native Canadians who have regained their status under Bill C-31. The goal of the organization is to establish urban reserves and new land bases in order to accommodate the younger generation, instead of having them live on traditional reserves.

This organization, and its goal, indicates a movement toward even greater fragmentation of the native community, especially if it comes about that traditional status Indians are housed on what are considered traditional reserve lands, and the Bill C-31 status Indians are housed separately on urban reserves. Whether self-imposed or not, there may be a trend toward segregation within the native community. This trend will likely lead to the strengthening of divisions within the native community.

The Charlottetown Accord

The Charlottetown Accord marked a period of unprecedented native participation in policy-making. Native leaders, including
Ovide Mercredi, were present during all major negotiating sessions, and even had representatives at sessions which did not directly involve native issues. When Mercredi was first elected Grand Chief he enjoyed a kind of unity which other leaders had been unable to foster. However, the unity fostered by Mercredi would fizzle out during the Charlottetown talks.

The dissolution of this unity can be explained in one or both of two ways. First, one cannot dismiss the fact that perhaps native Canadians and other native leaders simply did not agree with Mercredi on the appropriateness of the concessions reached. When Mercredi openly advocated the Accord other native leaders came out against the Accord, and against Mercredi. Alberta's Beaver Lake Chief Al Lameman "...warned against the 'trap' of entrenching self-government rights."52 Other Chiefs openly chided Mercredi for "sitting down at the table" with the Federal government, and Mercredi continued to defend himself by saying "We have the opportunity to be full participants, to be part of the decision-making...We never had that before."53 Other native leaders charged that Mercredi had overstepped his mandate in negotiating with the Federal government.54 This open conflict between native leaders surely did nothing to inspire the

52Glenna Hanley, "Chiefs Wary of Self-Government Proposals." Windspeaker Vol. 10 No. 1, April 13, 1992 pp. 1
53Ibid., 1
54Dudley
confidence of native Canadians relative to the Charlottetown Accord.

However, the dissolution of unity also appeared to stem from the fact that to many native Canadians it appeared that Mercredi, and arguably the AFN, had been co-opted by the federal government. In other words, native Canadians were accustomed to seeing their leaders push for the various components of native issues from outside of the policy process. They were accustomed to having their leaders be at odds with the federal government over these issues, but Mercredi was working with the government at Charlottetown. And, rightly or wrongly, this perception of comradeship, even though Mercredi was certainly publicly not a "yes man" for the Federal government, arguably made native Canadians suspicious. And, the fact that ultimately the Aborigianl proposals which were presented in the final draft of the Accord were "watered-down" versions of what was initially proposed, certainly contributed to the perception that Mercredi had been co-opted.

The results of the referendum indicate that Mercredi's attempt to negotiate directly and publicly with the Federal government over native issues did not sit well with many native Canadians. This is apparent in the low native turn out at the
After the referendum many questioned Mercredi's leadership during the negotiations saying that the "...obsequious behaviour of the AFN leadership during the Premiers meetings was an embarrassment," and charged that the whole process of discussing the Charlottetown Accord without the widespread consent of the First Nations was undemocratic. Many saw the rejection of the Accord as a rejection of Mercredi as leader of the AFN, and speculated on what the future of the AFN would be.

It would appear then, that in some ways native organizations are faced with a kind of irony today. In 1982 they were lobbying hard to be allowed to participate in constitutional negotiations, believing that if they could have a voice, they could improve their status in Canada. In 1992 native Canadians did participate to an unprecedented degree the constitutional talks of the Charlottetown Accord. Yet in the end, disunity among native leaders and organizations was greater than ever.

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55 Doxtater

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57 The fact that Mercredi went ahead and endorsed the Charlottetown Accord, even though there was not unanimous support for it, appears to go against the purpose and structure of the AFN, which is to be a forum for the views of the First Nations surrounding a number of issues. Because Mercredi continued to publicly advocate the Accord even when it became clear that many other native leaders were against it, this does lend weight to the argument that his decisions were "undemocratic" in terms of the purpose and function of the AFN.

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Conclusions

In conclusion, the existence of numerous native organizations, each with specific mandates, has resulted in a certain amount of fragmentation within the native Canadian community. While the goal of these various groups is not to fragment the native community, it can certainly be argued that this has been the result in many cases. While it is unrealistic to imagine that one organization or association could possibly represent adequately a community as diverse as the native Canadians, it is also unrealistic to imagine that organizations with different mandates, different goals, and different members can all be heard by the federal government in the case of dealing with aboriginal issues.

This is proven by the results of the Charlottetown Accord. If native Canadians had approached the accord with a certain amount of unity, there would likely have been greater support for the Accord, and Mercredi's leadership would likely not have been called into question the way that it was. Similarly one might argue that if other native groups had played as significant a role in the Charlottetown negotiations, then perhaps proposals which a wider number of aboriginal Canadians could have accepted would have resulted.

Returning briefly to the passage of Bill C-31 and the new organizations which the bills' passage have fostered, it is
apparent that these organizations have also further fragmented the native Canadian community. As was discussed earlier, the goal of Bill C-31 was to right old wrongs, and ostensibly to return those native Canadians who were entitled to be called status Indians to their rightful place on the reserves. However, it would appear that while Bill C-31 may have mended some legal divisions in the native community it has also created some political divisions in the native community.

Finally then, it is argued here that because of the fragmentation that these groups are both a result of, and continue to foster through their own behaviour, an agreement on constitutional matters related to native issues has not been reached. From the government side, it is practically impossible to satisfy the demands of the native community when those demands are so diverse, and when they are articulated from a large number of sources. From the native Canadians' side, many of the divisions within the native community are the result of government intervention,\(^59\) and because of these government-related divisions and/or the natural divisions which exist among certain segments of the native community their interests cannot adequately be represented by one organization. In conclusion, the diversity and the fragmentation within the native community, and among its organizations is one reason why an acceptable agreement

\(^59\)For example, the legal separation of native Canadians into status and non-status Indians, and the placement of native Canadians on reserves, etc.
between native Canadians and the federal government have not been reached.
Chapter Six

In assessing the progress toward a mutually acceptable agreement between native Canadians and Canadian governments on the issue of aboriginal self-determination, it appears that diversity within the native community has been an impediment to such an agreement. That is not to say that this diversity is at "fault" or is to "blame" for the fact that such an agreement has yet to be reached, but simply to say that this diversity has fostered an array of different and sometimes conflicting interests and approaches relating to the issue of aboriginal self-determination. In turn, the diversity of these interests, and the organizations which represent them, can account at least in part for why a mutually acceptable agreement between aboriginal Canadians and Canadian governments has yet to be reached.

This diversity can be characterized as being both "historically-based" and "legally-based" in nature. The difference between the two is that historically-based diversity deals with elements of native Canadian culture which in some cases pre-date Canadian influence such as tribal divisions, geography, and historical experiences. Legally-based diversity deals with elements of native society which are directly related to the application of Canadian laws governing native Canadians, such as the Indian Act and related legislation.
Chapter Three of this paper set out to provide proof of the notion of historically-based diversity on which this thesis is based. Proof of this diversity was offered in the form of detailed histories of the three key elements of native Canadian society: the Indians, the Metis, and the Inuit. Each of these groups have unique internal differences, such as those related to tribal origins of North American Indians. Differences between the groups also exist along geographic lines, relating not only to where they originated, but also how their physical environments have helped to create and shape unique cultures, as in the case of the Inuit. Further differences between the groups deal with historical experiences involving issues like attempts at rebellion or involving social repression, as in the case of the Metis.

It can be concluded from Chapter Three that this historically-based diversity deals with a range of elements such as culture and experience which are intangible, but which have had a tremendous impact on different native Canadian societies. These divisions and differences were provided as proof of the existence of historically-based diversity in the native Canadian community, and also in order to provide a solid foundation for the discussion of the legally-based elements of diversity following in Chapter Four, which in many ways are based on the historically-based diversity.
Chapter Four of this paper set out to prove that the notion of legally-based diversity existed within the native community. In order to prove this diversity exists, the chapter addressed the difference between status and non-status Indians, and how these legal differences have led each of these groups to have different interests in many areas. The proof offered herein was based primarily on the Indian Act, and on Bill C-31, and some of the impacts these two legal documents have had on the native Canadian community.

More specifically, chapter four dealt with differences between status and non-status Indians which exist relative to land, treaties, official recognition and other benefits. Because of the "have" and "have not" elements of this diversity, status and non-status native Canadians generally do not have the same interests in all cases. For example, the issue of land rights has different significance for status Indians who may already be entitled to reserve land, than for non-status Indians who do not yet have land rights.

Based on the effect which the Indian Act, and its subsequent amendments, may have had on the level of diversity within the aboriginal community, chapter four also suggested that there is a relationship between the lack of cohesion between status and non-status Indians and the application of the Indian Act. That is to say that the formal legal differentiation between status and non-
status Indians under the Indian Act may have served to widen the divide between the two groups, by creating or furthering different interests for each of the two. However, no concrete proof was discovered for this theory, and it remains simply a theory.

It can be concluded from Chapter Four that legal differentiation within the native community based on status, or lack of status, is an important factor in analyzing the issue of diversity within the native Canadian community. It is today one of the most significant ways in which the interests of a given individual or group of aboriginal Canadians will be delineated. Together with the other type of diversity discussed in Chapter Three, legally-based diversity has manifested itself in very significant ways.

These two types of diversity, historically-based diversity and legally-based diversity, have manifested themselves in a variety of ways, not the least of which is in the formation of native organizations which represent the varying interests of a diverse native Canadian society. In effect, these groups were partially conceived because of competing interests. That is not to imply that different native organizations are constantly in conflict. Rather, in a political system where interests are represented by "interest groups", and in many cases where the loudest and clearest voice is recognized, the different
interests of different segments of native Canadian society must be represented by some kind of organization in order to command attention.

These organizations have appeared at the national level, as well as at the provincial and regional levels. Chapter Five discussed the Assembly of First Nations and the Native Council of Canada as specific examples of these types of organizations, and hypothesized that these groups have, in certain ways, mirrored the diversity which exists with the native community by serving as the voices for differing interests. Because these organizations have become a forum for different interests they also have unique agendas.

Chapter Five also hypothesized that because of the divergent interests within the native Canadian community, governments find it very difficult to deal with the array of interests and agendas which face them in the course of attempting to find a mutually acceptable agreement on the issue of aboriginal self-determination. As proof of this claim, examples of aboriginal negotiations with the federal government were discussed, with particular emphasis placed on one of the most recent attempts, the Charlottetown Accord.

In this instance, reaction to the Accord was fragmented along several lines including gender. Again, it is recognized
that not all interests can be met at one time, but even in a case like the Charlottetown Accord, where native Canadian leaders participated in the process of constitutional reform as never before, an agreement was not satisfactorily reached.

Therefore, it can be concluded from Chapter Five that if an agreement between native Canadians and the federal government is to be reached, the federal government must recognize the diversity of the native Canadian community. Of course in a system of brokerage politics, it is impossible to address the interests and concerns of all voices, but in can be concluded that any future proposals for agreement put forward by the government must be multi-faceted.

This paper has attempted to show that diversity within the native Canadian community has had a significant impact on the process of trying to achieve a mutually acceptable agreement between aboriginal Canadians and the federal government on issues which are important to aboriginal Canadians. The existence of diversity within the native community was shown to exist along two different, and somewhat reinforcing lines: historically-based and legally-based. This diversity was also shown to have manifested itself in the interests and agendas of the organizations which represent native Canadians.
Further, it was shown that because of the diversity of interests which exist in the native Canadian community, agreements are difficult to fashion. That is to say, it may be difficult, and perhaps impossible, to satisfy a majority of the needs and concerns of aboriginal Canadians in one agreement. The existing diversity within the native Canadian community has been one of the reasons why a mutually acceptable agreement between aboriginal Canadians and Canadian governments has not been reached on aboriginal issues.
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146

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