
by

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To Rita and Mom and Dad

with love
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I. LIBERALISM, GROUP RIGHTS, AND CANADA'S ABORIGINAL PEOPLES: AN INTRODUCTION

The ideology which dominates democratic theory and practice in Canada is liberal individualism. Basic to this ideology is the conviction that society is inhabited by discrete individuals whose interests are aggregated, and when in conflict adjudicated with those of others, in pursuit of conditions that make for individual self-fulfillment. Consequently, the tendency within Canadian political practice is to ascribe rights only to individuals. Questions regarding the status and rights of groups as such, although central to some, are conceived by liberalism's proponents as inimical, unimportant, or at best marginal. Generally, liberal theory treats groups as aggregates of individuals whose political and legal status is derived not through reference to unique qualities possessed by the group, but through the particular rights and interests of the individuals who compose the group.

Without downplaying the importance of individual rights, it is possible to suggest that liberal theory has neglected the status and claims of groups at some risk to the integrity and consistency of political justice. I will argue that persons are not atomic and detached as liberal theory supposes. Rather, much of life is characterized by group activity wherein groups constitute irreducible units and, precisely
in their being such, are able to provide their members with unique horizons of meaning and foci of identity. By implication then, group claims are not always reducible to the individual claims of its constituent members. Often groups lay claim to rights which exist distinct from and transcend individual claims precisely in order to maintain and perpetuate a group's unique irreducible character. The important political question becomes whether or not groups ought to be treated as fundamental in given political arrangements and whether or not the rights they lay claim to ought to be treated as basic. The significance of this question cannot be overemphasized, for what is at stake here are not merely matters of what may be the case, but also matters determining the agenda for Canadian politics rooted in notions of what is ultimate and basic in human life.

In what follows I will seek to show that group claims for rights are compelling on both ontological and normative grounds. Claims to group rights are compelling ontologically because groups are an essential and basic part of human existence. That is, groups constitute an irreducible mode of reality and therefore ought to be recognized and protected as such. If a group experience of life is basic then normative questions come to the fore. For if basic, it becomes important to consider a group's claim to sustain, develop, and perpetuate the working out of those ingredients
central to the group's existence. Thus, my point will be that insofar as liberal theory interprets group claims in terms of the individual claims of the group's members, it wrongly abrogates an essential dimension of political (and more basically, human) life.

The above does not mean, however, that all group endeavours deserve protection and promotion. But then liberals recognize that not all individual projects are worthy of protection either. Nevertheless, acceptance of this latter point does not mean that legitimate individual claims to rights are also abrogated. What I do appeal to is the need for a fundamental theoretical shift away from the liberal ideology as it currently shapes the Canadian political agenda. Only then can group claims to rights be incorporated as basic alongside those of individuals. Political practice thus informed I believe, will be better equipped to handle the frequent cases of conflict between individual and group claims. The rights of both individuals and groups can then be adjudicated through a balancing process in which political judgements are made about the relative urgency and importance of all claims central to the issue at hand. Developing these arguments will constitute a major focus of this thesis.

Although foundational to political practice, political theory alone does no more than clarify the general principles which ought to and do regulate political life. Theoretical
arguments can be buttressed I think, if it can be shown that a theoretical reorientation actually serves to enhance specific legitimate claims and interests of groups currently constrained by the rules of liberalism. Examining a few key instances where differing ideological orientations have hampered federal government-Indian relations in Canada since 1969 will serve as my illustration of how such constraints are operating. I say since 1969 because the principles of individualism over against maintenance of a group identity implicit in this historical relationship have assumed central significance in the development of Indian public policy in the contemporary era.

The issue of group rights for Canada's aboriginal peoples was posed specifically by the Government of Canada's Statement on Indian Policy (1969). This policy involved the imposition of an highly individualistic conception of civil and political rights upon a people who defined themselves as (a) group(s) and who based their resistance to the proposed law on a defense of their Indian "nationhood". At issue here were varying perceptions of what it is to be "Indian", what was meant by "treaties", "aboriginal title", and "aboriginal rights". Federal initiatives were clearly embedded in liberal preconceptions which served to frustrate the effective expression of Indian group interests. What resulted was federal policy hopelessly unsuited to meet demands of a group concern. The point is that development of a theoretically
compelling argument for recognition of group rights as basic may have made it possible for Indian claims to be understood on their own terms.

Today the terms of this debate seem to have shifted significantly. Generally speaking, group rights appear to have become a familiar part of Canadian political arrangements. Consider the new Charter of Rights and Freedoms (1982) for example. Although chiefly an individualist document wherein stresses on individual rights, freedoms, equality measures, and protection from discrimination engender the most interest, there are important concessions to group rights as well. For example, there are provisions which constitutionally entrench and enlarge English and French language rights in regards to both education (sec.23) and government (sec.16-22), traditional rights to denominational education (sec.29), multicultural rights (sec.27), disadvantaged groups (sec.6.4 and 15.2), and aboriginal peoples (sec.25, also 35,37). In addition, if the "Meech Lake Constitutional Accord" is ratified by all provincial legislatures then the "distinct society" clause regarding Quebec's status will also serve notice that Canadian politicians recognize Quebec to be a group entity. These gains are significant and would seem to imply that group interests have forced Canadian liberalism away from an exclusive and unalterable preoccupation with the individual.
The above does not necessarily mean however, that governments view groups as basic and their claims to rights as normatively compelling. It remains plausible to argue I think, that governments and various societal groups continue to hold irresolvable views about the interpretive importance and status of groups in Canadian society. That this is so becomes evident if we examine public policy initiatives such as those relating to aboriginal peoples since 1982. It is true that aboriginal peoples were able to have their "existing aboriginal and treaty rights... recognized and affirmed" in the new constitution (sec.35(1)). This is no small concession. But in the ensuing discussions regarding the definition of those rights, governments both sympathetic and adverse to aboriginal claims tended to interpret these rights from within a liberal framework. Although not stated as a clear objective, the general strategy adopted by most governments was "accommodative" wherein the ideals of liberalism continued to be advanced, but were done so subtly and in ways which attempted to satisfy or at least do as little as possible to affront the constitutional agenda of Indians based in group claims. Practically, this meant that if Indians argued for an arrangement on the basis of a group claim which could also be justified from within liberal individualism, governments accepted the claim with minimal adjustments. In cases where conflicting orientations made reconciliation impossible, the superior
strength of governments, rooted in liberal preconceptions, prevailed. Rather than reject these latter claims outright however, governments did offer alternate strategies more consistent with liberal individualism in an attempt to at least meet the basic thrust of the Indian claim.

This attempt to "accommodate" Indian claims is an inherently more constructive approach than that pursued by the federal government in 1969. This time at least governments were willing to attempt to satisfy the basic goals of Indian proposals. Yet, as I hope to show, the "accommodative" strategy poses fundamental problems as well. Most important is that the ideological constraints imposed by liberalism continue to threaten numerous elements which are most basic to Indian claims. Constraints of this sort for example, are certainly one of the influences which shape current discussions between governments and Indians regarding the possible nature and scope of political rights relating to Indian self-government powers. At heart then the issue remains one of widely diverging viewpoints regarding the function and status of groups in society. Indians seek a variety of provisions they believe necessary to maintain and perpetuate their unique "group" experience of life. Governments on the other hand, although willing to "concede" a number of these powers, insist they be exercised subject to individualistic constraints. This thesis will examine the effects of these constraints. By
focussing on a number of the more important developments in Indian policy from 1969 to the present I hope to show that government initiatives which fail to conceive of group rights as basic result in public policy poorly suited to meet claims characterized by a group concern.

Here then is the structure of the thesis. In the following three chapters I will seek first to address liberalism and its bias in favour of individualism (Chapter II); then as counterpoint develop an argument for a group rights theory (Chapter III); and finally contextualize the above discussion by arguing that current Indian claims to rights are understandable only when conceived in "group" terms (Chapter IV). Having thus set the theoretical framework, Chapters V and VI will embark upon an analysis of current Canadian Indian policy. Chapter V will focus exclusively on the 1969 Statement on Indian Policy. Chapter VI will focus on the changing terms of the debate as exemplified in the post 1982 "aboriginal rights" discussions. The thesis will then conclude with a theoretical assessment of the issues raised in Chapters V and VI. Here the question will be, how has the example of Indian policy served to elucidate the central problem of the status and rights of groups in liberal theory as interpreted in the Canadian context.
Endnotes

1 I say dominant because there are other ideologies which shape Canadian political practice. Among these conservatism, socialism and nationalism along with liberalism are the most important. For an interesting discussion of liberalism and its relation to the other leading Canadian ideologies see W. Christian and C. Campbell, Political Parties and Ideologies in Canada, second edition, McGraw-Hill Ryerson Limited, Toronto, 1983, especially Chapters II and III.

2 By marginal I mean in the sense that liberals occasionally grant "group rights" as provisionary measures to those groups whose members require special provisions to gain parity (whether economic, social, or otherwise) with their fellow citizens. Various affirmative action programs for women or other disadvantaged groups would be an example of this.

3 As taken over from the Constitution Act 1867, Section 93.

4 Although Section 25 stands within the Charter, Sections 35 and 37 do not. The latter two sections are contained within Part II of the Constitution Act 1982 entitled, "Rights of the Aboriginal Peoples of Canada". The explanation for the existence of two distinct provisions regarding aboriginal rights is as follows. Section 25 does no more than shield existing aboriginal and treaty rights from possible constraints that the Charter might impose. It does not constitutionally recognize the existence of aboriginal rights as such. The provisions of Section 35 in Part II serve to signal such constitutional recognition. Section 35 however, does not specify what the aboriginal rights which the constitution recognizes, actually are. Thus the need for Section 37. Through a series of constitutional conferences between First Ministers and representatives of the four major Indian organizations the specific terms of Section 35 were to be defined. These conferences were held in 1983, 1984, 1985, and 1987. Although many substantive issues were raised, concrete development of definitions defied final resolution. The reasons for this are numerous and will be explored in Chapter VI.

5 At the time of writing ratification of the "Meech Lake Constitutional Accord" is in some doubt. Currently, the federal government (with the support of both opposition parties) as well as eight of the ten provincial legislatures have endorsed the Accord. The remaining "hold-out"
provinces are Manitoba and New Brunswick. Both provinces have expressed some trepidation in regards to certain provisions of some clauses. Concerns range from minority-language rights (in light of Quebec's use of the "notwithstanding" clause to pass Bill 178 allowing English on signs inside stores only, itself a response to the Canadian Supreme Court ruling Bill 101 unconstitutional), to the possibility that federal power will be weakened, and Senate reform will become impossible under a new amending formula. Given these concerns and the fact that the Accord must be approved by all provinces no later than June 1990, the security of the Accord's future is, to say the least, in doubt.

I use "governments" in its plural form deliberately. Constitutional provisions provide that "Indians and land reserved for Indians" comes under "the exclusive Legislative Authority of the Parliament of Canada" (Constitution Act 1867, Sec.91(24)). Thus, historically, the development of Indian policy was an exclusively federal matter. With the constitutional recognition of "aboriginal rights" however, the partners in the policy debate have shifted. Given Indians seek a constitutional amendment describing the actual terms of their rights in the highest law of the land, provinces cannot help but be involved. For the constitution stipulates that any amendment to its body requires the consent of at least seven provinces constituting fifty per cent of Canada's population (Sec.38(1)). By implication, this means that the provinces become party to all debates seeking constitutional amendment including those relating to Indian policy.
II. LIBERAL INDIVIDUALISM

To understand why liberalism privileges individual rights to the virtual exclusion of all other potential rights forms, it is helpful to review the essential ingredients of the liberal world view. For at the heart of liberalism lie a number of fundamental assumptions about human nature and the social world which, in turn, underpin and shape liberalism's political vision and so, its conception of rights.¹ By liberalism I will mean what George Grant describes as "a set of beliefs which proceed from the central assumption that man's essence is his freedom and therefore that what chiefly concerns man in this life is to shape the world as he wants it" (Grant 1969:114). Elucidation of the beliefs connected to this assumption then, will provide us with the proper context for discerning why individual rights attain a status of central importance in liberal discussions.

In what follows, I will frame my discussion of liberalism in terms understood and articulated by Pierre Trudeau. I do so because during Trudeau's Prime Ministership the first significant Canadian cases on aboriginal title were litigated; a number of important legislative reforms affecting Indians were proposed by the federal government; and the new constitution came into being which included a recognition and affirmation of aboriginal and treaty rights. Being an articulate and trenchant proponent of liberal individualism, Trudeau's philosophical orientation in relation to the above
developments serves as a specific example of how liberalism treats group claims more generally.²

A) The individual, liberty, and equality

A central tenet underpinning Trudeau's philosophical and practical articulation of liberalism is his preoccupation with the individual. Trudeau's basic assumption is that the individual is primary and thus constitutes the fundamental starting point of society (Trudeau 1968:159). This means that in every respect the individual is considered more "real" and thereby intrinsically more important than any societal creation, whether structure or institution. Morally, individuals come before society in every sense (Arblaster 1984:15).³

The core attribute of individuals is the ability of each to think and act rationally (Radwanski 1978:8). In principle, Trudeau holds that rationality is the universal possession of all human beings. In practice however, Trudeau argues that many act according to the inferior motivation of passion (Trudeau 1968:182-203). Unbridled passion is based on an unprincipled emotional appeal lacking in rational restraint. Principled action results when passion is held in abeyance and directed instead by enlightened (rational) thought.⁴ In an individualistic society, rational action results from the ability to make considered and enlightened choices on the basis of individual self-interest.⁵
Unhindered pursuit of self-interest in turn, drives each individual towards the ultimate goal of self-fulfillment (Whitaker 1980:18). Driven by self-chosen values, each individual pursues the goal of self-fulfillment within a competitive environment, wherein each interacts with others. Competition in turn, propels individuals towards attainment of their personal goals and in so doing, creates a better society (Hiemstra 1983:16).

If rational individuals are to pursue their respective self-interests in an unhindered manner, questions of liberty and equality come to the fore, so raising the important matter of rights. Although Trudeau understands freedom to be the inalienable right of each individual, the integrity of each individual's freedom to act must be protected from societal constraints. For freedom is the necessary condition required by each person if all are to fulfil themselves.

The liberal notion of freedom embraces two components. First is its positive quality. Freedom functions as a positive instrument whereby conditions are created so that all may rightfully exercise the opportunity for self-realization (Gray 1986:57). On occasion, this may encompass more than possessing the legal right to act. If persons are lacking certain resources, powers, or abilities without which self-fulfillment would be impossible, these may be incorporated as part of freedom also (Gray 1986:58). Second,
is freedom's negative element. Freedom to act requires as a condition that persons have the right not to be compelled, restricted, interfered with or pressurized (Arblaster 1986: 56). Freedom so understood is usually construed as areas of non-interference from social structures, particularly the state. Maintaining the individual's right to choose means the state nor any other structure may control, restrict, or interfere with the free movement of any person in any way unless desired by that person.8

Closely related to the liberal emphasis on individual freedom is the idea of equality. Essentially, the exercise of freedom is possible only within a condition of equality. Equality, like freedom then, serves to emphasize the liberal respect for what it views as the inherent value and dignity of each individual human being (Arblaster 1984:64). Equality is not meant to serve notice that individuals possess similar abilities. For Trudeau, equality implies that "the opportunity for similar treatment and consideration be made available to all individuals" (Hiemstra 1983:13).9 What this means in political terms is that the state is obliged to uphold and protect, without discrimination, each individual's right to freely pursue their own self-fulfillment strategies. Thus, political provisions incorporating individual liberty, framed within conditions of similar treatment, stand as the most fundamental notions requiring protection as rights in liberal theory.10
Beyond these universally established rights of liberty and equality however, justice becomes a procedure of resolving conflicting individual demands according to criteria minimally acceptable to all actors in the process. Individuals compete in a variety of ways to further their respective self-fulfillment strategies. The rules of procedural justice "...are both to set constraints upon the bargaining process, so as to ensure access to it by those otherwise disadvantaged, and to protect individuals so that they may have freedom to express and, within limits, to implement their preferences" (MacIntyre 1988:337). Aside from the "rational" criteria of liberty, equality, and the centrality of the individual then, determination of justice necessarily precludes any prior acceptance of a moral end for society. Rather than an "End" for society, there can only be individual "ends" demonstrated to be such when they are actually demanded. For if justice is the resolution of competing demands based in varying values, then dedication by the community to one particular moral end necessarily abrogates the values of a number of others and thus, upsets the procedural fairness of the liberal political order (Whitaker 1980:10).

Implicit in Trudeau's articulation of liberalism is the view that all persons are essentially the same (Christian and Campbell 1983:71). It is the individual which is of intrinsic value and on that basis all individuals are of equal worth. In addition, all individuals are capable of
rational action (although not all choose to act rationally) when assured a condition of liberty and equality. Ability to act rationally in turn implies that individual strategies of self-fulfillment are equally legitimate provided that these strategies do not infringe on the self-fulfillment processes of others. Differences due to language, culture, or religion are incidental for these are deliberately chosen by rational actors to aid in their self-fulfillment process. The importance of this implicit assumption of Trudeau's in terms of group rights will become clear further on in this thesis.

B) The Liberal State

Trudeau's basic liberal assumption concerning the primary importance of the individual sets the context for understanding his ideas regarding the nature of the state and society. Regarding the state, provisions for freedom and equality stand as ideals whose realization occurs only when embodied in laws and institutional arrangements. It is the state's task to create mechanisms ensuring these ideals are realized. In carrying out its task however, the authority of the state remains limited.\textsuperscript{12} For Trudeau the state is a human creation whose authority rests in its being brought about by an act of collective wills. As such, the state is society's servant the purpose of which is to create a context whereby individuals can actualize self-fulfillment (Trudeau 1968:139). Quoting
Trudeau, "Men do not exist for states: states are created to make it easier for men to attain some of their common objectives" (Trudeau 1968:18). Obedience to the state's exercise of power then, is dependent upon its carrying out the tasks for which it was willed into existence. Specifically, these tasks include the articulation and protection of fundamental core rights (liberty, equality) and the determination of the common good.

As alluded to earlier, in liberal democratic states the common good is not defined in terms of some perceived single notion of "Good". Liberals hold that humankind does not enjoy access to ultimate and universal truths to which all individuals are subject. Rather, the liberal conception of the moral life is individualistic wherein persons choose values for themselves in reference to their own self-interest. Determination of the common good then, becomes a procedural matter of aggregating the variety of interests held by all citizens into a form workable and acceptable to all (or at least most). It is conceivable under this model that any one idea of one or more citizens might turn out to provide the best answer to a question facing society and thus gain popular appeal (Dacks 1984:10). In this sense, politics becomes "a competition among ideas and interests competing on the freest basis possible" (Dacks 1984:10).

Aggregation of individual opinion requires at least two political measures. The first is that of universal
suffrage. If citizens are to determine the goals of the society of which they are a part, they must participate directly in the process where these "directional" decisions are made. The mechanism of universal suffrage recognizes the inherent equality and rationality of all individuals by ensuring that all citizens are given an opportunity to be party to these discussions. The second requirement is that of the majority convention. The majority convention allows for the aggregation and assimilation of various individual demands into a form workable and understood as the common good (Hiemstra 1983:38). If, as Trudeau assumes, the population of a state is essentially the same, the majority convention ought to be able to assimilate various individual interests into a form representative of the wishes of all. If, on the other hand, the state is divided into different communities whereby some communities constitute a minority opinion, it is conceivable that the majority convention may not be sufficiently flexible to provide adequate opportunity for such minorities to practice their way of life (VanDyke 1977:360).

C) Groups in Liberal Theory

A logical extension of the above arguments is that for liberals, societal groups, like the state, are secondary rather than primary phenomena. The individual stands alone possessing an essential existence independent of all else.
As a result, societal groups attain secondary status, being no more than "logical fictions, possessing no existence beyond that of the individuals who collectively compose them" (Arblaster 1984:38). Having no independent existence of their own, groups are formed solely to facilitate furtherance of individual self-interest. Quoting Trudeau, "Societies exist precisely in order that, through mutual help, cooperation and division of labour, people may fulfill themselves better than if they lived apart" (Radwanski 1978:110). Secondary group qualities like language, religion, or race for example, do not function as legitimate interests themselves, but merely as mobilization devices (Svensson 1979:425). Group selection and participation then, is a matter of personal choice. One participates in group activity only for so long as the group contributes directly to an individual's self-fulfillment.

Because groups arise in liberal theory to facilitate pursuit of self-fulfillment, the normative group of liberalism is the voluntary association. Having different self-interests, individuals choose to form coalitions with other individuals if one's own project can be furthered in the process. What is foremost in the liberal view is that in the forming of these coalitions, individuals always remain free to pursue other interests if they so desire. This requires that the individual remain free to determine her membership or nonmembership in the groups she chooses to join. In no case must a group constrain individual freedom by requiring irrevocable devotion.
To control a situation then, ability to "master" the group by dictating the terms by which a person will join, is central. It is this element of individual choice which lies at the heart of liberal notions of pluralism. A variety of groups, all vying for individual's attention, offer differing notions of what constitutes the good life. Multiple choices ensure that a vast and heterogeneous source of cultural material exists by which one can form new associations and attain new values. In this respect, the value of the group rests in the fact that it serves as a possible instrument for the achievement of meaning by free individuals. The liberal onus then, is on protecting plurality of choices rather than the plural visions of life which constitute the ground by which choices can be made in the first place.\textsuperscript{13}

An important critique of this liberal notion of pluralism is offered by Clifford Orwin.\textsuperscript{14} Commenting on the world of Nozick (a libertarian individualist)\textsuperscript{15}, Orwin states "...the only thing that reason unconditionally respects is freedom. The right to choose overrides the claim of any and every life to be the one supremely worth choosing" (Orwin 1984:7). Still, as important as choice may be, the ability to choose does not in itself provide a person with a way of life. Orwin argues that it is only in pursuing a life strategy headlong (such as being involved in various groups for example), that a way of life is actually constituted. That is, devotion to something other than choice is required if life is to attain any distinctive
qualities. But what the liberal does by declaring that all groups ought to remain open to an individual's choice at all times is to say no group is particularly compelling. This means that the liberal must claim he is devoted to no particular way of life since acting as one pleases always comes before devotion to a community. In effect, the exclusive liberal devotion to freedom (and equality) is itself a way of life, although one largely devoid of meaning. For in the liberal world, if all communities are required to respect certain rights as fundamental in reference to themselves, choice among distinctive communities seems to disappear and instead, all become just duplicate versions of one another (Orwin 1984:8).

Given the liberal understanding of the nature of groups, it makes little sense in liberal theory to speak of "group rights". No group can claim status equal to that of individuals for no group is more basic or important than the individual members which make the group up. Indeed, it is precisely when groups attain a more-or-less fixed quality and demand rights for the legal protection of their existence, that liberals believe groups pose a significant danger to the individual and society. The danger groups pose is of three types. First, groups possess an inherent totalitarian quality for they curtail the interests individuals are free to pursue by demanding allegiance to the constraints of group structure and devotion to group primacy. Second, groups emphasize what liberals deem to be secondary interests (culture, religion,
language) at the expense of primary ones (liberty, equality, enlightened self-interest). And third, by creating group alignments, misguided tensions between competing groups are created thereby inhibiting the free flow of individuals across group boundaries on the basis of self-interest (Svensson 1979: 426). It is precisely these criticisms which lie at the heart of Trudeau's vehement opposition to Quebec nationalism.17 Dangers of this sort then, which potentially jeopardize the priority of the individual, require within liberal theory that the individual be viewed as the only legitimate claimant of rights.

But is the individual prior to the group? Trudeau's understanding of humankind as rational individual free choosers of groups certainly implies individual self-sufficiency. It could also be argued however, that group situations are not always freely chosen as Trudeau describes. For instance, Garet argues that although volunteer associations constitute the normative group of liberalism, they do not match many of the groups about which we care most and are most salient in our lives.18 Many of the groups we care about most are neither voluntary nor associative, families, religious communities, and tribes to name a few. In these cases, group situations are determined for people. We find ourselves situated in groups quite apart from choice by being born into states, tribal communities, and families for example. It is within the context of groups like these that the most important human
functions are accomplished. Trudeau ignores the fact that in everyday experience individuals tend to perceive themselves as embedded in group realities (e.g. as a son, an Indian, a citizen). The development of individual personalities, talents, worldviews, and perhaps existence itself may depend on the groups of which an individual is a part (Van Dyke 1982:29). Thus, the constraints groups impose on individuals may not be as dehumanizing as liberals suppose. Indeed, the formation of human character may depend on the furtherance of groups' existence. Recognition of these group realities would certainly help explain the vast heterogeneity of humankind.

Yet, Trudeau views the individual in abstraction from group realities. For him, the only "real" constants are separate rational individuals pursuing self-interest in an environment of liberty and equality. In effect, this view of the individual allows Trudeau to "construct myths about the liberal homogeneity of Canadian society" (Hiemstra 1983:73). A striking example of Trudeau's "homogenization" tendency is found in the 1969 Statement on Indian Policy. Herein we find the view expressed that if Indians remain bound in their parochial culture, thereby resisting entry into mainstream society of the liberal state, they will be rejecting an opportunity to maximize their individual self-fulfillment. What Trudeau fails to recognize is that by requiring individuals to accept the notions of the primacy of the individual, rationality, liberty, and equality, he too requires a community
dedicated to a shared way of life; a community which in the Canadian context he believes forms the majority. To stress the primacy of the individual in a democracy is "to fight the battle of the liberal community that happens to be a majority, meaning those in the majority community can decry any differentiation based on language, race, or religion, knowing this formula assures their dominance" (Van Dyke 1982: 40). That the liberal community tends to be destructive of all other minority communities within it is nowhere better exemplified than in the policies proposed in the 1969 Statement on Indian Policy. Before I examine this document however, I need to establish an argument for group rights, a subject to which I will now turn.
Endnotes

1 The word "right" is usually used to identify one of two situations. First, a right to something may imply a moral right (or what I will call a substantive claim) which is "a claim or entitlement that ought to be honoured if justice is to be done or the good promoted regardless of the attitudes and actions of any government." Second, a right to something may imply a legal (or positive) right, which is a claim or entitlement positivized in law and thus under the government's obligation to uphold. See Vernon Van Dyke, "Collective Entities and Moral Rights: Problems in Liberal Democratic Thought", in The Journal of Politics, vol.44, no.1, (Feb.) 1982, pp.21-40.

2 Leaving room for personal idiosyncrasies and unique applications in light of Canadian political circumstances (i.e. in regards to Canadian federalism and Quebec nationalism), I think it is fair to say that Trudeau's understanding of liberal is largely consonant with the major themes of liberal thinkers like John Rawls, Ronald Dworkin, and Robert Nozick. Reginald Whitaker for example, remarks that Trudeau's reflections on politics hardly constitute an original contribution to political philosophy, but rather, stand solidly within the liberal tradition, "sometimes illuminating insights into the strengths and weaknesses of liberal-democratic thought". Thus, examining Trudeau's thought gives us an insight not only into how liberalism functions in Canadian politics, but also how liberalism more broadly conceived treats groups generally. See Reginald Whitaker, "Reason, Passion and Interest: Trudeau's Eternal Liberal Triangle", in Canadian Journal of Political and Social Theory, vol.4, no.1, (Winter 1980), p.6.

3 See both John Rawls and Robert Nozick on this point also. Rawls writes for example, "Each person possesses an inviolability founded on justice that even the welfare of society cannot override...". Similarly, Nozick says, "Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for achieving of other ends without their consent. Individuals are inviolable". See "Introduction" (Rawls) and "Moral Constraints and Distributive Justice" (Nozick), in Michael Sandel's (ed.) Liberalism and its Critics, New York University Press, N.Y., 1984, pp.3 and 103.

4 Like Trudeau, Rawls also perceives the principles of rational choice to be the deliberative criteria by which persons
ought to plan their lives. For both, the priority of rationality is taken as an unquestionable assumption. Moreover, Isaiah Berlin notes that the superiority of reason over the baser "instincts" of "desires" or "passions" forms an important theme in much liberal writing. See Isaiah Berlin, "Two Concepts of Liberty" and John Rawls, "The Right and the Good Contrasted", in Sandel, op. cit., pp.22-25 and 48-50.

Given the central importance of the individual for liberal theory, reason cannot be characterized in its Greek form wherein reason seeks to discern ultimacy or the end to which persons and the state tend. Instead, although remaining the universal possession of all, reason is exercised subjectively. That is, within liberalism the onus is on the individual to exercise reason in reference to herself in order to make enlightened choices which she believes will lead to her self-defined sense of fulfillment. Thus, one's purpose or end is not defined in terms of a referent beyond oneself but rather, in terms of ends individually revealed by one's own light of reason.

According to Whitaker, the market economy is a necessary structural precondition if individuals are to attain self-fulfillment in the liberal world. Liberals equate successful exercise of rationality with attaining what one desires in the market. Quoting Whitaker, "Indeed the equation of rationality with market rationality or reason with calculation is so pervasive in the contemporary literature as to make their disentanglement difficult indeed". For Trudeau also, self-fulfillment is clearly linked with an individual's ability to calculate and gain in the market economy those items important to one's perceived notion of self-interest. See Reginald Whitaker, op.cit., p.18, also, Ronald Dworkin, "Liberalism", in Sandel, op.cit., pp.66-67.

Regarding Trudeau's understanding that freedom is an inalienable right of the individual, he says, "Freedom is a free gift, a birthright that distinguishes man from beast". As quoted in George Radwanski, Trudeau, Signet, New American Library of Canada Limited, 1978, p.108.

That liberty forms a core right in all liberal discussions more generally is undisputable. Rawls for example, states that it is a matter of common sense that claims of liberty are always given priority, indeed absolute weight, over questions relating to social welfare. Whether priority is given to issues of positive or negative liberty however, remains an open question to some. For an interesting discussion relating to tensions implicit in the co-existence of these two streams of liberty see, Isaiah Berlin,

9 A similiar principle of equality is held by Rawls and Dworkin. Rawls for example, in describing principles of justice determined in the "original position" states, "In justice as fairness...persons accept in advance a principle of equal liberty and they do this without a knowledge of their more particular ends". Similarly Dworkin, commenting on the founding of a hypothetical state, offers the following principle of rough equality; "resources and opportunities should be distributed, so far as possible, equally, so that roughly the same share of whatever is available is devoted to satisfying the ambitions of each". See John Rawls, "The Right and the Good Contrasted" and Ronald Dworkin, "Liberalism", in Sandel, op.cit., pp.41 and 65.

10 That liberty, coupled with equality provisions, attains highest importance in liberal democracies is confirmed by the Canadian Charter of Rights and Freedoms (1982). As the supreme law of the land to which all individuals and legislatures are subject, the Charter's primary function is to protect a number of fundamental individual liberty and equality rights. Liberty rights include; freedom of association and expression (sec.2), democratic freedoms (sec.3), mobility freedoms (sec.6), and educational freedoms (sec.23). Equality rights include provisions for equal treatment under the law (sec.11-14), provisions which protect against discrimination (sec.15), and a provision which ensures that all Charter clauses apply equally to male and female persons.

11 For further development of this "moral relativism" theme see "Introduction" (Sandel), "The right and the Good Contrasted" (Rawls), and "Liberalism" (Dworkin), in Sandel, op.cit., pp. 1-4, 40-41, and 64 respectively.

12 Robert Nozick says in this respect, "The minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights". See Robert Nozick, "Moral Constraints and Distributive Justice" in Sandel, op.cit., p.106.

13 For an important articulation of choice as the individual's priority in their relation to groups see Part III (Utopia) of Robert Nozick's Anarchy, State, and Utopia, Basic Books, New York, 1974.

Nozick is a libertarian individualist because he makes liberty an absolute priority as a kind of interpersonal transaction. The only restriction Nozick places on liberty is that in its exercise, it must not interfere with similar liberty for others. Few provisions are made for the disadvantaged in this scheme. They cannot appeal to a principle of distributive justice for example, as a way to meet their basic needs. Nozick's orientation is usually contrasted with that of Rawls. As an egalitarian, Rawls insists on fairness as the pre-eminent principle of justice. Everyone must gain fair access to core resources whatever these resources may be.

At the level of the state Trudeau does recognize the right of a group (i.e. a national entity) to exist. For example, it is taken for granted that a state has the right to settle its own affairs without intervention from foreign powers. In addition, a state can impose taxes, require school attendance, and conscript a person and send him into battle. Such rights are original to the state, not derived from individuals, for individuals never had such rights. Thus, a group right is recognized by Trudeau at the level of the state. Trudeau is unwilling to recognize groups existing within the state as potential rights and duties bearing units however, due to his tendency to view society as homogeneous. See Vernon Van Dyke, "Collective Entities and Moral Rights: Problems in Liberal Democratic Thought", in The Journal of Politics, vol.44, no.1, (Feb) 1982, pp.21-40.


III. GROUP RIGHTS: THEORETICAL CONSIDERATIONS

An important dimension of the preceding chapter's argument is that in an attempt to shape political practice in line with its central organizing ideas, liberalism "has neglected the rightful sphere of authority, the unique structural identity and the special task of such societal groups as family, church, association or tribe" (McCarthy 1980:4). That is, by stressing only the individual and provisions which make for her liberty and equality, liberals simplify the world and generally participate in what Michael McDonald calls a "naive political reductionism" (McDonald 1987(a):1). It is not enough to develop a theory of rights purely for the individual. A theory which seeks to create and preserve an humane and heterogeneous society, must consider "certain kinds of groups and include them among the kinds of right-and-duty-bearing units whose interrelationships are to be explored" (Van Dyke 1977:344).

In what follows I wish to make a modest contribution towards this theoretical project by advancing some considerations in favour of group rights. It is not my intention to develop an ontology of groups or an exhaustive argument for group rights. Rather, my project will be restricted to demonstrating that groups and their claims to rights are not always reducible to the individual claims of their members. Establishing this should be sufficient grounds for concluding that
liberalism's individualist starting point for society is unduly limited.

A) **Groups as Irreducible**

Let me begin by indicating what is meant by "group" for the purposes of this discussion. By groups I mean the vast and heterogeneous array of social structures which typically populate any social environment and through which individuals generally live and act. Here I have in mind groups such as the following: associations, churches, political parties, trade unions, cultural groups, business enterprises, public advocacy groups, schools, families and ethnic groups (e.g. Indian nations or groups formed around languages) (Marshall 1988:20).¹

Liberals maintain that social structures such as these are reducible to their individual members and therefore must never obstruct provisions for individual liberty or equality. For within liberalism, groups derive value from the fact that they are aggregates of individuals grouped together around shared characteristics for the purpose of some mutual benefit. In some instances liberals even talk of such groups having certain rights but they do so only in the sense that the rights go to individuals in their capacity as group members and not to the group as such (Van Dyke 1974:728). For example, the group of Canadian citizens over the age of 65 have a right to a government pension. The right of the group members
to a pension does not adhere from some quality of the group however, but from the fact that each individual, on merit of being 65 or older, is entitled to a pension. Thus, an apparent group right is in actuality an individual right, for a legitimate claim to the right emulates not from a "group" quality but from a personal quality which all hold in common (being 65 or older). In this respect, any acting or benefitting on the part of the pensioners as a group is "simply shorthand for the actions or benefits of typical members" (McDonald 1986:120).

It is my contention however, that although composed of individuals, many groups possess an irreducible core. That is, there is something essential to the corporate experience of acting and sharing in groups which is neglected if reduced to the aggregate of the experiences of each individual member. And, it is precisely this irreducible core for which many groups seek legal protection, over against both individuals and society at large. What is required then, is a fuller view of groups than liberalism typically allows. Let me indicate what is at stake here by means of a few examples.

When we think about language rights we imagine the right of individuals to speak or have government services in the language of their choice (i.e. either French or English). But this is not the whole picture. There is an inerradicable group component to language rights as well (Marshall 1988:17). For if a language is to be maintained, a community of shared
understanding is required. Language rights serve little purpose if not exercised within communities of conversation where all speak and understand one another similarly. Quoting MacMillan, "...it is unthinkable that one could speak of a language in the absence of a community of individuals with whom the language is shared. The existence of the language group is thus an essential precondition to the meaningful assertion of language rights" (MacMillan 1986:5).

Similarly, if a political party is to maintain its identity as a distinctive entity, it will require certain group rights. For example, the Liberal party of Canada must be able to grant membership to professed "Liberals" only. If it could not the distinctive features of the party would be jeopardized. The survival of the party therefore, hinges on the group's right to exclusion. Individual rights to non-discrimination in such cases, will require limits.

A family's right to its kinship structure is also "groupist" in nature. Referring to an individual right in matters relating to kin simply eludes the core meaning of the right in question. Kinship structures are not possessed by individuals and since this is so, individuals cannot rightly lay claim to them. If anything, kinship structures constrain an individual's environment and do so rightly, even if that individual might wish it otherwise. Children cannot choose their families for example, nor can they alter the terms of their family membership. Rather, children are born into families and
therefore are constrained by kinship structures which they cannot discard. Says Garet:

Kinship rules constrain my understanding of my kin; they perform definitions and selections for me. For this reason a group's right to maintain its kinship structure is not at all the same thing as my right, as a group member and an individual, to define and select my kin. On the contrary, the group right and the individual right here seem if anything to be opposed to one another. The more able the group is to maintain its kinship structure, the less able I am to inhabit a world of self-created kin categories (Garet 1982/83:1049).

With respect to these three examples then, it is clear that a group's right to maintain its structure is distinct from and therefore not based upon such individual rights as freedom of association and self-determination. The rights of groups and their individual members in these cases are qualitatively different.

The threat posed by individualism to language groups, political parties, and families, is generally applicable to most forms of group associations. Corporations take over other corporations, unions engage in collective bargaining, armies go to war, universities are advised to exercise fiscal restraint, Indians wish to exercise self-governing powers, and juries deliver verdicts. None of these actions are entirely reducible to individual actions. It is the jury as a group for example, which possesses the right to rule the accused guilty or not guilty in a criminal trial. Clearly, members of the jury take part in the decision-making process. But it is with the jury as a corporate unit that the power to
render the verdict rests. To conceive of the jury otherwise is to misunderstand the nature of its structure and task (McDonald 1987(a):4).

What these illustrations suggest is that in certain instances the actions of groups are distinguishable from those of their members. Groups act and benefit from certain courses of action in ways their members do not. In this respect, the actions of groups are indivisible; they are exercised jointly rather than severally. Or as McDonald puts it, there is an inherently social or shared core to such group actions (McDonald 1987(a):5). To be sure, group actions can generate counterpart individual benefits. Every Canadian Indian under treaty for example, is able to claim an annual annuity from the federal government. But Indians argue that they claim this right derivatively. Indians say the right is claimed not on the basis of a specific quality they possess (such as Canadian citizenship), but because the government negotiated treaties with Indians as groups (nations), one benefit of which includes an annual sum to all registered members.

In summary then, my point is that although the interests of groups and their members are intertwined, these interests are nevertheless distinguishable in the ways named. By implication, it is plausible to argue that if groups are to carry out their unique functions as groups, they may require rights both distinct from and not reducible to those of their individual members.
B) Models of Pluralism

It is one thing to illustrate by way of examples that certain groups may possess an identity worthy of protection. It is quite another however, to indicate which features of these groups mark the groups' unique identities. Given the heterogeneity of societal groups, it is clear that for many groups these features would be very different. An adequate representation of such features would therefore, require an ontological analysis of the varying societal groups. Whether "the yachting club sailed regularly this past summer" has an irreducible group meaning for example, or is better understood as actions undertaken by individuals, is unclear until the structure of the yachting club is itself examined. As Garet points out, there is no skeleton key to such analysis (Garet 1982/83:1005). The structures of the various types of groups must be considered one at a time.

Despite theoretical difficulties, a small but significant written tradition which recognizes and begins to explore the ontological status of groups does exist. Generally describable as the "pluralist tradition", these writers all ground their discussions of society in firm opposition to the reductionistic "individual autonomy" model of liberalism. A major premise of their social analyses is that individuals are social creatures and therefore can be analysed fully only when considered in terms of the associations they keep. In their view, an
In the paper, the following points are emphasized:

1. The authoritative analysis of human individuality must be rooted in the persistent "pluralist" experience of everyday realities.

2. What then follows in most of these analyses is an attempt to demarcate and describe the inner "logic" and normative import of the respective "spheres", "structures" or "groups" that constitute human experience. What results is a societal ontology of one kind or another, which, importantly for our purposes, recognizes and emphasizes the unique structural identity and special task of various societal groups.

3. As with all written traditions however, the pluralist tradition has contained within it a variety of viewpoints relating to basic definitions, strategies of analysis, and structural interpretations of society. For example, there is no consensus within the tradition on what is meant by "pluralism." This difficulty in turn, leads to sharp divergences in opinion as to which societal structures are basic or nonreducible. Given these theoretical difficulties, I will not attempt to summarize the literature of the field here. Rather, I will offer a broadly generic meaning of pluralism so as to offset it as clearly as possible from the theoretical orientation of liberalism. Then, with this generic meaning in hand, I will consider by way of example the more systematic models of society developed by two pluralist thinkers, Michael Walzer and Herman Dooyeweerd. Neither offer a complete or entirely satisfactory model of societal groups. Nevertheless, their work constitutes an
important theoretical start. For in both is contained the argument that societal structures perform tasks and are regulated by norms uniquely their own, not reducible to those experienced by individual members.

As mentioned earlier, a basic tenet of the pluralist positions is that humans are by definition contextual beings. To be human is to be socially rooted, standing always in a plurality of social relationships (McCarthy et al. 1981:18). Accordingly, pluralists argue that individuals cannot be analysed as autonomous or "abstract" beings. Rather, individuals are encountered and therefore can be analysed only in relation to those social structures which form an integral part of their reality. For essentially, individuality is defined by and comes to expression within the context of persons in association (McCarthy et al. 1981:18).

Because associations constitute a core component of human experience, pluralists argue it is important that these multiple associations receive official recognition. By recognition they mean not of the derivative sort granted by liberalism. Rather, pluralists argue for a recognition of a kind which grants full and meaningful status to associations in their own right. For within associations many pluralists perceive a structural coherence which transcends the discrete activities of individuals. Each "sphere" of human activity possesses a unique identity and integrity to which persons relating in that "sphere" are subject. By
"subject" is meant that the configuration of a sphere's identity places certain kinds of necessary demands on a sphere's participants. That is, participants are subject to or regulated by the identity of the sphere which in a healthy interrelation might be called the sphere's regulating norm. So, with respect to schools for example, some pluralists would say that parents exercise legitimate authority by choosing schools for their children which best suit their values. Once chosen however, parents must refrain from attempting to control the internal life of the school. For the school's unique structural identity and legitimate sphere of authority means that parents and their children are subject to choices made by educational leaders with respect to the development of curricular programs and school policy (McCarthy et al. 1981:19,20).

In the above and like cases, the actions undertaken are irreducible for they are of a kind which could only be performed by the association as a whole. For this reason pluralists will argue for the ontological status of groups and their right to be protected. Thus, more generally pluralism "regards society as embracing a plurality of identities, a plurality of associations or institutions, each functioning in its own distinct sphere of influence" (McCarthy et al. 1981:19). For pluralists then, persons embedded in associations or groups stands as the basic principle by which societal life is structured.
Michael Walzer's book, *Spheres of Justice: A Defense of Pluralism and Equality*, serves as a useful entry point into the contours of the pluralism debate. Walzer's point of departure is to critically engage with liberal thinkers who theorize about persons and society in reductionistic terms. He begins by focusing on questions of distributive justice, taking issue with the liberal vision of "simple equality". As a general principle of justice, "simple equality" states, "rational persons must be granted equal access to resources in making choices for themselves in shaping their society." Walzer rejects this notion of equality because he believes it ignores the way people are actually found and misrepresents the way particular goods are understood. Historical reality "displays a great variety of arrangements and ideologies" which simply cannot be served by a single principle of distributive justice (Walzer 1983:4). Instead, Walzer proposes to develop a theory of justice consistent with the diversity found in reality already reflected in the existing "wide range of distributions and distributive principles" (Walzer 1983:5).

As counter to the liberal "simple equality" principle, Walzer calls his account of justice a theory of "complex equality" (Walzer 1983:17,19). Rooted in the premise that society is pluralistic and therefore justice ought to be also, this notion of "complex equality" incorporates two key propositions.
The first is Walzer's argument that political communities and, derivatively, groups within them, not individual members, are the source of values (Walzer 1983:6-8,28,29). Moreover, because political communities vary, the "goods" that are socially valued will also differ from community to community. And, examination of any one particular community itself, will typically reveal that there are a plurality of social "goods" valued in that community. So, for example, membership, need, money, work, education, and love may all be valued, but Walzer points out, they are valued in an unordered fashion for no good is primary or most important (Walzer 1983:8-9).

Political communities and their corresponding internal groups in turn, develop self-identities through creating, possessing and employing the social goods at their disposal.

The second proposition contained within Walzer's notion of "complex equality" is that relating to distributive norms. According to Walzer, each discrete good within a society is regulated by its own distributive norm, in turn contained within the community's shared understanding of that good. So, if society determines a certain level of security and welfare to be a need, adequate distributive mechanisms must be put in place so as to ensure these needs are met (Walzer 1983:9,64-68).

From these propositions two consequences for justice follow. First, given that political communities and the social goods they value vary, standards of distributive
justice across various communities will also vary. For Walzer then, there is no single cross-cultural principle of justice. Instead, justice is "relative to social meanings", gauged in reference to whether a community lives "...in a way faithful to the shared understandings of its members" (Walzer 1983:313). So, quoting Walzer, "Just as one can describe a caste system that meets (internal) standards of justice, so one can describe a capitalist system that does the same thing" (Walzer 1983:315).

Second, related to the plurality of distributive norms regulating social goods, Walzer hinges justice to concerns of "autonomy" and "domination". Regarding autonomy, Walzer argues that every social good occupies a distributive "sphere" qualified by a set of rules or norms which regulate the manner in which the good is used. What justice requires is the autonomy of these "spheres". Says Walzer:

...complex equality means that no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other social good... No social good x should be distributed to men and women who possess some other good y merely because they possess y and without regard to the meaning of x (Walzer 1983:19-20).

So for example, need, not wealth, is the normative criterion for distributing health care; talent, not blood or money, is the criterion by which political office is merited; and basic education is available to all, not the hereditary few. In all, Walzer names eleven "spheres of justice" implicit in the social understanding of American society. In each case
his point is to identify the unique distributive criteria which marks each sphere as autonomous from the others.

A corollary to Walzer's identification of the internal principles of justice unique to each sphere, is his more general principle that power held in one sphere should never serve as means to domination in another. By dividing the spheres of control, it is Walzer's intent to describe a society in which no one social good can function as a means of domination. This will ensure that wealth for example, cannot be translated into opportunity, power, or reputation (Walzer 1983:xiv,12). Or, those talented enough to hold political office would not therefore also be entitled to hold special privileges in other spheres. What results then, is a system of "complex equality" for although some will possess greater power in one sphere, this will always be offset by countervailing inequalities experienced in others (Walzer 1983:17-20).

In the end, Walzer's vision of pluralistic justice provides a unique insight into reformulating principles of social equality. Because his approach focuses on the real social world as we find it rather than on hypothetical individuals connected through abstractly conceived principles of liberty and equality, assumptions relating theoretical insights to social possibilities appear less strained and more integral to our experience of social life. In this respect, Walzer's distributive principle of, "different goods to different companies of men and women for different reasons and in
accordance with different procedures" appears a good starting point for reconceptualizing principles of social justice (Walzer 1983:26).

In addition, the varying components of Walzer's pluralist theory help provide a useful start towards the development of an argument for group irreducibility. Through his work we are moved beyond a preoccupation with individuality to a realization that persons and the values to which they adhere, are rooted in communities. Moreover, we are introduced to the reality that society is inhabited by a plurality of distinct "spheres", all separate from one another and all regulated by distinct distributive criteria.

What Walzer's theory fails to tell us however, is how societal groups are connected to the spheres of justice. For example, are groups custodians of social goods in ways individuals are not? Or, do groups form the nuclei of the respective societal spheres and thereby determine the distributive principles within each? Walzer leaves questions such as these largely unanswered. Connections between groups and spheres are implied throughout Walzer's theory though, as in the case of the state and political power, schools and education, families and love, churches and divine grace. For a substantive explication of the possible relationships between societal groups and spheres however, we must turn to a source other than Walzer. For this reason I wish to consider the social theory of dutch legal philosopher, Herman Dooyeweerd. 8
Like Walzer, Dooyeweerd's political reflections on principles of justice appropriate to the structural identity of society take issue with the major theoretical orientations currently held towards politics. Dooyeweerd's criticisms were numerous but two in particular are pertinent to our purposes. First, along with Walzer, Dooyeweerd was extremely critical of rights theories which placed priority on individuals considered in abstraction from social realities. In Dooyeweerd's view, a responsible theory of rights must be shaped in reference to the numerous conflicting claims as they actually occur in the social world. Here he had in mind not only individuals in their concrete relations, but also the plurality of organizations which populate every social environment.

Dooyeweerd's second criticism stemmed from his rejection of his contemporaries' view that authority for law-making rested solely with the state. In their view, organizations such as churches, schools, business enterprises, and families legitimately exercise internal regulations but they do so in subjection to any and all legal rules imposed by the state. In this respect, the power of the state was perceived to be all-embracing, circumscribed by no substantive limitations (Marshall 1985:122). In contrast to this position, Dooyeweerd developed a theory in which many societal organizations or groups make laws governing their own internal functions quite apart from the legal competence of the state. Called "sphere sovereignty", Dooyeweerd based his argument upon the conviction
that societal structures are grounded in the fabric of reality and therefore possess their own authority immediately, in
distinction from that exercised by or "derived" from the state. It is at the heart of these two criticisms and his
own positive, ethical perspective that Dooyeweerd's argument for the irreducibility of societal groups can be found.

The theoretical foundation of Dooyeweerd's theory of
group rights is summarized in his notion of "juridical
sphere sovereignty". Although the principle of sphere
sovereignty encompasses a number of claims about the structure
of reality, it is Dooyeweerd's argument with respect to what
he calls "individual totalities" that is most important for
our purposes. By "individual totalities" Dooyeweerd has in
mind individual entities, events, acts and societal relationships
(including family, state, church, school, industry, etc.)
which constitute the reality of everyday experience (Dooyeweerd
1979:44). In Dooyeweerd's view, a responsible analysis of
reality must recognize not only that these various "totalities"
exist, but also that they are mutually irreducible.

Dooyeweerd argues that the unique irreducible function
of each "individual totality" is clarified through a process
of historical differentiation. That is, in the process of
historical development each individual totality attains its
own distinct identity, a key feature of which Dooyeweerd
calls its "qualifying function". Although each individual
totality is composed of various features, it is the "qualifying
function" which is particularly important with respect to identifying the totality's irreducible nature. For the qualifying function is that feature which serves to guide the internal life of the totality in question. So with respect to social entities for example, he says that whatever governments may do, their function is qualified by legal concerns. Similarly, although businesses may engage in various tasks, their primary function is qualified by economic questions, families find their activities to be qualified by moral concerns, churches are preoccupied with questions of religious conviction and so on.

In each of the above cases, the social entity named is irreducible because the function by which its activity is qualified is uniquely its own and therefore nontransferable. In this respect, no one social group can claim authority in a sphere where it possesses no competence. Rather, each entity is sovereign in its own sphere because it is irreducible. So, schools cannot rule over churches in matters relating to faith, states cannot rule over families in matters relating to love, nor individuals rule over tribes in relation to tribal tradition (Marshall 1985:127). Each group possesses the right to develop and pursue its unique task in ways consonant with its internal structure. The qualifying function and therefore task of the state adheres in the norm of justice. To it belongs the task of both ensuring the provision of rights to all groups in matters relating to
their unique responsibilities and regulating the external relations of groups through a just procedure of adjudication (Marshall 1985:128). 14

It is within the theoretical account of sphere sovereignty then, that Dooyeweerd's argument for group rights emerges. Discussing rights within the framework of law, Dooyeweerd's position regarding the irreducibility of groups in relation to their spheres means the state is not the only societal entity which exercises law-like powers. Rather, each societal sphere possesses both the competence and right to exercise self-regulatory powers with respect to their own area of jurisdiction. Preserving the right of each sphere to internal self-regulatory power was in Dooyeweerd's view, the primary condition on which the existence of a truly plural society depended (Marshall 1985:122). 15

Sphere sovereignty also marks a clear departure from liberalism's reductionistic individualist theory of rights. Individuals no longer stand autonomous as the sole legitimate claimants of rights, but must exist honouring the rights of churches, businesses, the state, and families as well. In this respect, the rights of groups and individuals exist distinct from and are not reducible to, the rights of one another.

An individualist interpretation of marriage for example, might argue that marriage is a contract wherein strict individuality is maintained and the arrangement dissolvable
whenever one or the other partner believes they are no longer being served. Similarly, individualists might view families as a framework within which the rights and abilities of each member is developed (McCarthy et al. 1981:16). Dooyeweerd's argument with respect to groups such as these however, is that their rights cannot be reduced to the aggregate of the experiences of each member. Instead, individuals are subject to qualifying norms which the group exercises rightfully. So in the case of families, moral love and trust between parents and children is foremost, because the moral aspect is that which qualifies family activity. It is this emphasis on moral love then, and not preoccupation with the development of individual ability, which marks the normative guiding function of family life.

At the same time, Dooyeweerd's emphasis on the rightful sphere of authority of societal groups does not cause him to neglect the importance of individual rights. For him, individual rights comprise those areas in which persons exercise legitimate responsibility and authority in regards to themselves. The important point for our purposes however, is that Dooyeweerd's conception of sphere sovereignty provides a unique theoretical avenue for departing from individualism by relating the rights of persons and groups in a way which avoids reducing the rights of one to the other (Marshall 1985:129,138).

Although much could be said in critique of Walzer and Dooyeweerd, here I will limit myself to one comment. It is not clear with respect to both their theories that the social
world can be so neatly divided into these spheres that each names. In Walzer's case, it could be argued that the boundary between "welfare" and "commodities" as two distinctive distributive spheres may vary not only from community to community, but also from person to person. In a similar vein, it is often difficult to demarcate the rightful authority of specific groups in concrete situations in Dooyeweerd's scheme (Marshall 1985:137). Do parents have the right to decide what (if any) the devotional practices of their children will be in school for example?

Despite shortcomings however, the pluralist models of Walzer and Dooyeweerd remain original and thought-provoking. Within both there is a clear effort to break away from reductionistic theoretical models by placing the discussion of what constitutes a just society solidly within the arena of everyday life. And in this context, "detached" notions of individualism are left behind, leaving in their stead a rights discussion in which social groups take their proper place, as legitimate claimants of rights. In this respect, both Walzer's and Dooyeweerd's pluralist theories stand as important contributions to our coming into clarity about the proper substance of our political life.

C) Groups of Natural Association

Using Walzer and Dooyeweerd as our theoretical backdrop, it is now possible to take the next step in our argument.
For having articulated a theoretical perspective which asserts the irreducible reality of groups, it becomes clear why the issue of group rights attains normative importance. The issue of rights is raised when groups which cherish and wish to retain their identities, have these concerns raised in political contexts. In what follows then, I will seek to identify the political substance of group claims and then illustrate this discussion by referring to rights claimed by groups of natural association.

As distinct from individual rights, a group right is a right "which is either or both, a) held or exercised by the group per se, i.e. the group acts as a claimant of the right (e.g. with the option of exercising the right), and, b) for the intended benefit of the group itself" (McDonald 1987(c):10). Interesting to note here is that while group rights are not reducible to individual rights in this formulation, they are nevertheless of the same "logic" or, as McDonald puts it, "they are but two species of the genus" (McDonald 1987(c):11). For if groups are to be legitimate claimants and beneficiaries of rights, like individuals, they must be capable of benefiting from and exercising the particular rights claimed. The distinction rests in the fact that through claims, groups aim to perpetuate the continuation of their existence by securing intrinsically group benefits.

Group benefits are determined both by the nature of the group and by the corporate decisions it undertakes. So for
example, a "benefit" most religious groups need is a place of worship. Likewise, a "benefit" most Indian minorities require is a landbase if they are to maintain their distinctive ways of life. What marks the group benefit is the fact that it is an "inherently participatory public good" (Reaume 1988:9). That is, the benefit is inherently indivisible for the nature of the good claimed adheres in the fact that it must be enjoyed in a shared way. Relating this to a society Reaume says:

This structural condition (indivisibility) better explains why there is no individual right to a cultured society. I have said that a cultured society is a complex package of goods. But the package has a core upon which all other aspects of a cultured society are dependent. These core aspects of culture are such that each individual needs others in order to enjoy them... By far the greatest value in a cultured society inherently involves the presence of others who have similar interests and with whom one can interact and share that culture. Such goods (participatory goods) involve activities that not only require many in order to produce the good, but are valuable only because of the joint involvement of many (Reaume 1988:9,10).

Upon this irreducible core of group "goods" then, rests the normative argument for a group claim. Groups seek to substantiate and protect those vital communal elements which constitute the heart of the group's experience.

That the inerradicable features of groups necessarily lead to political claims for intrinsically group benefits is best illustrated by means of an example. As Dooyeweerd has said, society is composed of many irreducible groups, any one of which could serve as an illustration. But because I want to focus on Indians in the next chapters, the groups to which I am going to refer are those of "natural association". By
"natural association" I mean that choice does not form a crucial element of the group's constitution. A person is usually born into these groups and remains a member for life. Here I have in mind families, churches,\textsuperscript{18} ethnic groups and states. Often these groups are distinguished by fixed qualities such as race, kinship, and language as well as a shared set of beliefs, tradition, and culture which, when taken together, usually form a common consciousness of some kind (Van Dyke 1975:607). In what follows I will briefly describe a few features common to all these groups and then name intrinsically group oriented claims which flow directly from these features.

An organizational feature which qualifies groups of natural association is that their identity coheres in an "internal recognition of some significant commonality" (McDonald 1985(b):37).\textsuperscript{19} That is, group members do not define their membership purely through instrumental criteria, but do so also in reference to group features that are simply the case. So, in groups of will or choice someone might identify with a group because it offers adequate assurance that through corporate means a satisfactory settlement on wage parity or environmental protection can be reached. In groups of natural association however, group identification may be based in the recognition that someone is Indian, a daughter, or Christian. In the latter cases, the group's character is largely determined by the members' recognition that they share a commonality grounded in a common existence. Thus, although membership
in both choice and natural based groups matters to those members as *groups*, criteria for membership remains distinct.

Referring to Indians, McDonald puts it this way:

...the fact remains that like families native bands cannot be viewed simply as means to ends. They are in some respects ends in themselves, that is, viewed by their participants as worth preserving for their own sakes. They cannot then be viewed as simply more or less replaceable instruments by which to secure given ends, such as economic prosperity, land-management, and social welfare. Various aboriginal and treaty rights-like hunting, fishing, and land-use rights-play to some extent both an instrumental and non-instrumental role here. They are instrumental to the extent that they make possible a form of life recognized by its participants as worthwhile. They are non-instrumental to the extent that they instantiate that worthwhile way of life (McDonald 1985(b):40).

What the above points to is that particularly with reference to groups of natural association, there is a condition of interdependence between group and member. The identity and well-being of such groups and their members are inextricably bound up together. Members of these groups identify themselves in terms of their membership in the group and "their well-being or status is in part determined by the well-being or status of the group" (Fiss 1976:5). So, persons perceive themselves not foremost as "individuals" but as members of families (as mothers or daughters), churches (as communicant members), or tribes (as Indians with treaty rights). And "individual" well-being is in turn dependent upon a group's ability to safeguard its own internal structure; i.e. a person cannot be a responsible parent if public measures safeguarding the parent's right to nurture children are not put in place.
What makes groups of natural association so important then, is the pressing sort of reality they yield for their members; a reality Garet calls ontological, on par with that of personhood (Garet 1982/83:1071). For it is within groups such as these that a shared sense of community based on a common self-understanding which is relatively fundamental, important, and enduring to all group members is accomplished (McDonald 1985(a):15). A sense of the "we are" develops as well as a sense of the "we/they" for in the minds of group members their identity or culture or destiny is clearly distinct from the identity, culture, or destiny of others. Within the context of the shared understanding of such groups personalities are developed, notions of what constitutes ultimacy imparted, well-being and pride generated, and security and support offered and sustained. For these reasons groups of natural association represent a necessary component of human life for not only do they satisfy the basic human need for community, but they also establish a reference point by which members can identify themselves and explain, in part, who they are (Van Dyke 1982:39).

Where groups of the sort named constitute a minority in a "majoritarian" culture, a basic group benefit claimed will always involve the right against extermination, involuntary assimilation and marginalization (McDonald 1987(b):15). Given that international law provides protection for groups through international covenants prohibiting extermination of
minorities however, the more obvious threat to a minority's identity is assimilation by the majority. Assimilation poses a threat because it eliminates a group's defining characteristics (whether lingual, racial, ethnic, religious) by incorporating the group into the fabric of the majority's identity.

Closely related and a key point is the idea of non-discrimination for minority group members. As a political ideal, all discriminatory measures which inhibit the full participation of minority members in society must be eliminated on the basis that these measures are unjust. What often occurs however, is that all features which distinguish the minority from the majority are deemed discriminatory also and so "differentiation tends to be thrown out along with discrimination, in spite of legal, social, and possibly moral reasons for retaining it" (Svensson 1979:428). The idea that persons, because they deserve equal treatment, ought not to be differentiated on the basis of race, gender, or group qualities thereby confuses two issues and may in the case where a group is seeking conditions for its continued existence, actually hasten the group's demise (Garet 1982/83:1059). What results is a new form of discrimination, "a refusal to distinguish the needs, rights, and interests of communities with rights-claims against the dominant policy-making components of individualized society" (Svensson 1979:428).

Although important, claims for protective measures against
extermination and assimilation are not in themselves sufficient to secure a group's distinctiveness or realize the shared goods around which a group is formed. What is required in addition is a "right to standing or recognition as a political and legal agent" (McDonald 1987(b):7). Invariably this right is connected to the group's need for appropriate institutions. If for example, Canadian Indians are to have self-governing powers, they require political institutions capable of performing governmental duties. A crucial component of this Indian claim then, rests on recognition of an institution central to Indians' ability to enjoy a potential right (self-governing powers). Furthermore, McDonald notes that institutions may be necessary as a means to secure certain distinctive shared goods. Schools for example, "are crucial for the continuation of a language, belief-system, or culture into the next generation" (McDonald 1987(a):7). Finally, the existence of institutions themselves act as a way for groups to gain standing in law thereby incurring recognition from other (perhaps dominant) social groups (McDonald 1985(a):7).

The character of groups is such that they seek to exercise rights in relation to and over against a larger society of which they are a part. As a result, groups often exist as "pocket" minorities in large majorities and thereby seek rights so as to maintain their existence in this context. What this amounts to is the minority group demanding that the dominant group "create a distinct normative space in its
shared understanding for the shared understanding of the subordinate group” (McDonald 1985(a):26). At minimum this requires that actions pivotal to the group’s identity not be inhibited by legal or other prescriptions by the dominant group. In effect, a duty of non-interference must be imposed on the dominant group’s members.

Practically however, an area of non-interference can be difficult to attain, particularly when the core good exercised by the minority appears to threaten a majoritarian core good. Think here of liberalism’s sacrosanct status for individuals. Liberals have difficulty justifying group rights at all because in certain instances groups may fail to respect individual rights. A group’s ability to exercise and enjoy language rights for example, may mean that a member’s individual right to use a language of choice must be abrogated. Hence, we have the liberal charge that exercise of group rights leads to totalitarian or tyrannical consequences.

Both theoretically and practically this charge of tyranny is difficult to respond to for in it rests a core of truth. For the sake of group preservation an individual claim may need to be overridden. On the other hand, we have seen that the liberal tendency to treat group rights as a function of individual rights paints a wrong picture of reality. For groups are as much a structure of existence as is personhood. It therefore seems plausible to argue that the liberal charge of tyranny is largely exaggerated. Because groups are not
perceived to be basic in the liberal world, any and all group right claims, whether justified or not, will appear tyrannical. The purpose of this section however, has been to suggest that it is a mistake to "adopt a normative view that treats individuals apart from their groups" (McDonald 1987(c):25). Clearly, individual and group rights must not circumvent one another. The political problem then, is to achieve a balance between the two in which the clear contribution of the group to human life is broadly recognized (Svensson 1979:436).

One final political question remains. How are substantive claims to rights by groups to be adjudicated and positivized? Criteria for adjudicating the substantive claims of groups are not so clearly apparent for groups vary widely in character as do the sorts of rights groups demand. What is possible is to deal with the substantive claims of groups according to their type and in terms appropriate to the specific characteristics of each group. Whether groups have a plausible case or legitimate claim would depend in large part on the nature of the group and the relative importance the group holds for its members. In what follows I will outline the main contours of the Canadian Indian claim both to illustrate its features as a group right, and correspondingly also to indicate why it is vitally important that governments respond to these claims in group terms. For as we shall see, lack of positivization of substantive group claims or, as more frequently occurs within the context of liberalism, meeting group claims with individual rights, inevitably leads to a situation which jeopardizes a group's survival.
Here I use "group" in distinction from "collective" if by collective is meant the collection of all individuals which when taken together, exercise certain rights. Collective thus conceived is synonymous to "society" or in certain instances, the state. Rights typically exercised by the collectivity or society include the right to be protected from external military threat or the right to be protected from dangerous criminals. Collective rights then, are rights all share in common by virtue of being a member in a given society. In this respect, collective and individual rights are two sides of the same coin for it is in a condition of a secure state for example, that individual rights can come to expression and be protected. Group rights on the other hand, do not have this overarching character, but refer to rights that groups within society exercise in relation to and over against the remainder of society. It is to groups of this sort that I will direct my attention.


3 Paul Marshall for example, notes that the meaning of pluralism varies significantly both between disciplines and within any one particular discipline. In political science Marshall identifies four distinct meanings:
   a) Federalism, which concerns the division and distribution of political power according to geographic areas within a state.
   b) Separation of powers, which is the allocation of particular political functions to discrete institutions within a state structure.
   c) Diverse centers of power within a country--that is, that the power to initiate and shape social change is distributed among different types of institutions--political, economic, confessional and so forth. No institution has a monopoly of socially formative power.
   d) The co-existence within one political jurisdiction of people with publicly important different beliefs and ways of life. Quoted from Paul Marshall's, "Liberalism, Pluralism, and Christianity: A Reconceptualization", in Fides et Historia, forthcoming.
Here I will follow closely the orientation taken by McCarthy, Oppewal et.al., in Society, State and Schools, op.cit., pp.30-50.

Here Walzer is engaging particularly with John Rawls' notion of the "original position" as the starting point for developing criteria relating to distributive justice. Walzer claims Rawls' theory of just distribution cannot be maintained because it is based on hypothetical choices of ideally rational persons. Once placed within the context of everyday experience and rooted within particular traditions, it is scarcely conceivable to Walzer that individuals would make the same choices as Rawls' rational actors do. Unlike Rawls then, Walzer promises to provide "a map and a plan appropriate to the people for whom it is drawn, whose common life it reflects". See Michael Walzer, Spheres of Justice: A Defense of Pluralism and Equality, Basic Books, New York, 1983, pp.5,26.

Walzer's "relativist" position with regards to principles of distributive justice means he cannot offer us normative procedures by which social criteria demarcating distributive spheres are to be established. For he appeals only to our shared social meanings claiming distributive principles are justified when they meet these. In effect, Walzer's position prevents us from taking critical distance from our tradition in order to ask, what normative views we ought to hold in the first place.

This is not an exhaustive list for Walzer invites his readers to name others. The eleven spheres analysed are: membership in the community, security and welfare, money and commodities, office, hard work, free time, education, kinship and love, divine grace, recognition and political power. See Walzer op.cit.

What follows relies heavily on Paul Marshall's summary of Dooyeweerd's notion of sphere sovereignty found in his article, "Dooyeweerd's Empirical Theory of Rights" in McIntire's (ed), The Legacy of Herman Dooyeweerd, University Press of America, Lanham, 1985, pp.119-140.

It should be noted that Dooyeweerd is not a contemporary of Walzer. Dooyeweerd's major work, A New Critique of Theoretical Thought, was first published in his native Dutch in 1935. Still, the writings of both on social justice issues are not dissimilar. One explanation for this may be because both write in critique of neo-Kantianism and related justifications for liberalism; Dooyeweerd in relation to the neo-Kantian revival in Germany and Holland in the late nineteenth and early twentieth centuries, and

Contemporary schools of law with which Dooyeweerd was engaged included those of neo-Hegelian, neo-Kantian, positivist, and historicist traditions. See Marshall's "Dooyeweerd's Empirical Theory of Rights", pp.121-125.


In the background of Dooyeweerd's notion of "qualifying function" is his analysis of the "irreducible modes of being". It is clear that for Dooyeweerd, irreducibility encompasses two interrelated meanings. The first is modal which expresses the diversity of reality through a pluriformity of discrete aspects such as number, space, organic life, emotional feeling, social interaction, law and faith. The second level is that of concrete entities through which the various modes of being are experienced. The point is that the modal aspects are not tangible entities as such, but rather, form the functionary matrix through which the experience of concrete entities is qualified. It is this second level of irreducibility with which we are principally concerned.

This is, in part, a normative statement for groups can and often do claim competence in areas outside their jurisdiction. States can force the production of "state art" for example, or require that everyone attend church. Dooyeweerd's point however, is that unless an artist's work is motivated by aesthetic considerations first, it will not be a genuine work of art. Similarly, only when a person attends church for religious reasons, will church attendance ever be an act of faith. In this respect, states cannot force action in spheres where it possesses no competence and expect that the action will be genuine. See Marshall's "Dooyeweerd's Empirical Theory of Rights", p.127.

Commenting on Dooyeweerd, Marshall notes that spheres are sovereign only in relation to their particular area of competence. Sphere sovereignty does not mean a societal
group can do anything. Business corporations cannot demand prescribed religious practices of their employees, nor schools, children of highly intelligent parents only, for example. In such instances the state has the right to control the activities of groups outside their legitimate sphere of influence. See Marshall, "Dooyeweerd's Empirical Theory of Rights", op.cit., p.128.

For an elaborate though highly complex explication of the modal aspects and "totality structures" of society, see Herman Dooyeweerd, A New Critique of Theoretical Thought, Presbyterian and Reformed, Philadelphia, 1955 and 1957, volumes II and III.

For Dooyeweerd's analysis of classical liberalism and its corresponding preoccupation with individualism see, Roots of Western Culture, pp.162-170.

Walzer assumes that a community-wide consensus exists on criteria relating to distributive spheres within political community. It is equally plausible to argue that far from consensus, much that marks political activity are attempts to reconcile disputes relating to distributive questions. It seems to me that Walzer's belief in shared meanings takes insufficient account of social diversity within political community and thereby also provides no method for resolving political conflict.

Although persons can leave or join churches, there is an important sense in which churches are non-voluntary as well. In some cases parents confer church membership on their children through church baptism without having gained prior approval from the child for such actions. Indeed, the whole point is that parental authority prescribes parents the right to nurture their children in their chosen faith until such time or level of maturity places children in a position to make these choices for themselves.

This paragraph relies heavily on Part III (Conceptual Issues) of Michael McDonald's paper, "Indian Status: Colonialism or Sexism?", presented to the Collective Rights Symposium, University of Ottawa, March 1985, pp.36-44.

As quoted in Michael McDonald's, "Indian Status: Colonialism or Sexism?", p.42.
IV. GROUP RIGHTS: THE CANADIAN INDIAN EXAMPLE

As we have seen, rights which flow out of a group emphasis "are cast in a different world view than rights grounded in individualism" (Svensson 1979:438). The substance of rights then, are determined by those factors which various political actors consider basic in their normative worlds. In the previous sections I argued that the normative world of liberal theory is reductionistic, for in being preoccupied with the individual, liberalism unjustly forecloses the legitimate claims of many groups to rights. Yet, even while liberal theory forecloses certain group right options, "world views" cast in a group emphasis are becoming increasingly assertive and articulate in their demand for group rights.

One such assertive group is Canada's Indian population. Conscious articulation of Canadian Indian group claims began in 1969 and had reached a level of maturity by the mid 1980s. Given the amorphous quality of "group rights" when considered in theoretical abstraction from any one example, it serves us well at this point to examine the particular claims of a specific group. I choose Canadian Indians because their claims graphically illustrate the tensions and constraints implicit in individual versus group right controversies discussed in the earlier theoretical section. Actual policy examples of this dialogue will be reserved for Chapters V and VI however. The intent of this chapter is to explore
the character of Indian claims in their groupist formulation
and, closely related, to determine the essential political
ingredients which make the Indian self-understanding as a
group entity, normatively compelling.

A) A Multidimensional Group Claim

Important to keep in mind is what Svensson calls the
"multidimensional" character of the Indian group experience.
That is, unlike churches or families whose groupness adheres
in a few key elements (religion and child nurturance for example),
"Indianness" flows out of "many interlocking dimensions or
facets shared by group members...including language, religion,
ethnicity, race, and historical experience" (Svensson 1979:434).
The interlocking dimensions in turn, provide Indians with a
comprehensive "fabric of communal bonds...through which members
express virtually all of their social identities" (Svensson
1979:434). Communal comprehensiveness such as Indians experience
does not imply that Indians automatically possess a weightier
claim to group rights than do families or churches however.
Churches can also be "comprehensive" in their own limited
sphere and are thereby perfectly justified in claiming rights
necessary to the maintenance and perpetuation of its internal
qualifying elements. In the case of Indians however, group
claims transcend specific institutional boundaries. The
experience of being "Indian" is not determined by religious
factors alone for example, but by a whole series of factors
which when taken together, constitute a way of life. For this reason Indian group claims are comprehensive in nature. It is not enough for Indians to seek protection for specific groups such as Indian schools or Indian social agencies. Rather, Indians seek more broadly to protect the Indian experience of life out of which these Indian institutions flow and from which they gain their meaning.

Although it may be fair to say that Indian group claims are all of one genus, it is incorrect to suppose that they are all essentially the same. Here two distinctions need to be made. First, Indian claims vary. Claims encompass demands from the very specific, such as renegotiating or clarifying clauses of certain treaty provisions, to the very general, such as negotiation of self-government powers. And even among the broadly based claims, important distinctions bear emphasizing. Claims to aboriginal title, aboriginal rights, and self-government powers, although closely related, are not duplicate versions of one another. Second, the character of a group claim may vary depending on the aboriginal group in focus. There is no official Canadian Indian body for example, from which a definition of "aboriginal rights" can be elicited. Rather, the Constitution defines aboriginal peoples as consisting of three distinct groups; Indian, Innuit, and Métis (Asch 1984: 26). Each group is further sub-divided into tribes, bands, coalitions of "nations", and communities, many with their own unique histories, languages, religions, and so on. Thus, in
respect to self-government for example, models developed by the Métis may be significantly different than those developed by Indians given the distinct complexity of the various communities in question.

Even though the distinctions between aboriginal groups and their corresponding claims are important, in what follows I will not draw special attention to these distinctions except where unavoidable. Rather, I will focus on one aboriginal group; reserve based status Indians in southern Canada, drawing parallels to other aboriginal groups wherever feasible. For as we shall see, although the various aboriginal groups do speak with different voices, there is virtual unanimity among them all concerning the meaning of aboriginal rights, title, treaties, and self-government in any regard (Asch 1984:27). Agreement coheres in the importance all aboriginal groups place in remaining distinct peoples within Canadian society. All have rejected assimilation. Instead, aboriginal peoples desire a restructuring of aboriginal-government relations founded on the above principles. For implicit in the recognition of these principles aboriginal peoples believe, is the possibility for themselves to develop and flourish as distinct peoples within the Canadian context. I focus on status Indians when distinctions become necessary only because they represent as well as any other aboriginal group the difficulties implicit in a group's attempt to forge political room within a liberal democracy for its shared understanding based on irreducible
group constituting norms.

B) **Features of an Indian World View**

An important theme stressed by Indians is that their distinctive history and corresponding world view separates them from the way of life pursued by most "white" Canadians. Indians possess distinct values, laws, customs, beliefs, and practices which, when taken together, constitute a unique "way of being in the world". It is in the context of this distinct total vision for life that Indian claims for group rights must be understood. Indians seek provision that would ensure their survival and prosperity as a distinct and comprehensive cultural entity. At the same time however, these protective provisions must be developed in juxtaposition to, and if granted, held over against, an alternative way of life; liberalism, which in the Canadian context is considerably more powerful than the Indian one. As a result, in debates with governments surrounding Indian rights, a basic "ideological" conflict is operative in which both groups bring different conceptual apparatus to bear on the negotiations. Given the superior strength of liberalism, it is conceivable that in this context basic group claims will be reinterpreted in an individualist light. For this reason it is imperative that we identify a number of the core components of the Indian world view, particularly insofar as they give rise to and shape Indian claims. For this will allow us to see what is at stake in the
way Indian claims are formulated and why, when faced with liberal constraints, Indians are so unwilling to compromise on what they perceive to be a number of fundamental group principles.

Before proceeding with our discussion of various components of the Indian world view however, it is important to realize that not all Indians uniformly and consistently practice these traditions in precisely the form named here. Much of what I name is rooted in Indian society prior to European influence or functions as a "charter myth" by which Indians perceive a "good society" might be attained. Still, despite cultural differences and the influences of modern Western civilization, many traditional Indian values persist and appear to do so in relative harmony with the effects of modernity. Moreover, in recent years there is a strong cultural nationalist movement among Indians, which is intent on rediscovering and integrating into the fabric of modern Indian life, traditional values, customs, religion, and so on. In this respect, the Indian world view I articulate is not currently operating in a developed, fully integrative sense. Rather, it functions as an ideal type or vision towards which Indians wish to direct their communities and according to which they eventually wish to be judged.

Against the qualifications named above then, a number of constant themes emerge in the identification of Indian cultural distinctiveness which Indians wish to preserve and develop into
The future.\footnote{5} The first relates to the Indian view of the person and society. Unlike the "homocentric" liberal view wherein society is conceived of as an aggregate of individuals each pursuing their own self-interest, the Indian view of society can be termed "cosmocentric" (Boldt and Long 1985:166). That is, society is not explained in terms of its individual divisible human parts, but in reference to the "whole" which when taken together, constitutes the cosmic order. Human life, both individually and communally, is lived out in subordination to the whole of which it is a part. Subordination flows out of the Indian experience that all of life is interrelated (human, animals, plants, the land), thereby requiring that each part fulfil its unique role in the context of the whole if the cosmic order is to survive (Boldt and Long 1985:166). In this context, social interaction is not merely that which occurs between human beings, but also encompasses the reciprocal relations of all constituent members which comprise the cosmic order.

Central to the interrelatedness of the cosmic order is the Indian view of the land. Indians describe themselves as belonging to the land and being indivisibly bonded to it. Consider the following statements of Indian leaders for example.

Being an Indian means being able to understand and live with this world in a special way. It means living with the land, with the animals, with the birds and fish, as though they were your sisters and brothers. It means saying the land is an old friend and an old friend your
father knew, your grandfather knew, indeed your people always have known... To the Indian people our land is really our life. Without our land we cannot—we could no longer exist as a people. If our land is destroyed, we too are destroyed. If your people ever take our land you will be taking our life (Richard Nerysoo).

The land is our blood. We were born and raised on it. We live and survive by it. (Joe Betsidea).

To us it is like a mother that brought her children up. That's how we feel about this country. It is like a mother to us. That's how serious it is that we think about the land around here (Isodore Kochon).

This relationship to the land and environment is the central means by which Indians are linked into the cosmic order. As such, this link is sacred or religious and constitutes the foundation by which Indians view themselves as distinct peoples or nations.

Because Indians define themselves in terms of their relationship to the land and its corresponding place within the cosmic order, Indians place a greater emphasis on responsibilities than they do on rights. Of primary importance is that each, in being part of the whole, fulfil her responsibilities to those with whom she is in social relation (whether person or thing). In this sense rights become the right to perform one's unique obligations within the cosmic order of which one is an integral part (Boldt and Long 1985: 166). On this cosmic harmony and balance depends. Regarding land, this requires land be viewed as an "entrustment" given to all creatures for their mutual benefit and enjoyment. By implication no individual or group can own or buy and sell land for "land is given to all collectively by the Creator
to use, not to own" (Plain 1985:34). Indian responsibility rests in what they perceive to be their sacred obligation to protect the land and use its resources wisely. The land is to be protected communally, Indians serving as its custodians, thereby providing them with the ability to determine their unique form of life.

Closely related to the Indian cosmocentric view of reality is the priority Indians place on community. In every respect the "responsibilities of individuals toward the community are stressed over the claims of "rights" that individuals are viewed as having against the community in Anglo-American society" (Svensson 1979:431). Community responsibility is stressed because individual interests and tribal survival are held to be inextricably intertwined. Hence, say Boldt and Long, "the social relations which give rise to individuality did not exist in tribal societies. Rather, quoting Laslett, to apprehend the individual in tribal society...we have to peel off a succession of group-oriented and derived attributes as if they were layers of an onion-skin. The individual turns out to be a succession of metaphorical layers of group attributes that ends up with nothing remaining" (Boldt and Long 1985:167). Although a bit overstated (for at the very least a corporal physicality remains), the point is that individuals thus understood, produce a society wherein the reality each member experiences is understood in terms of the contact he has with others. Every dimension of one's life is integrated and
developed in reference to the experience of the entire community. Members "share not only a language and a history but all conceivable social purposes and a sense of spiritual brotherhood" (Boldt and Long 1985:157). Because the community defines the parameters of one's experience of reality, members are expected to take responsibility for engaging in community functions. Refusal to participate is equivalent to withdrawing from the community (Svensson 1979:431).

It is in the context of the interrelation between Indian communities and their unique placing within the cosmic order, that the irreducible nature of group constituting norms evolve. Here a few examples will need to suffice. Regarding government, political authority was not vested in any one individual, but in the tribe as a whole. All members participated in the decision-making as a group for the benefit and welfare of the group. Governmental structures served as the mechanism by which such communal decision-making was made possible (Ponting 1985:3). Economically, hunting and trapping possess an essential groupist component. Typically, Indians use cooperative and collective forms of labour, when for example they trap in pairs, or herd caribou or moose toward a particular kill-site (Asch 1984:19). More important however, is that the continuing practice of distributing country food among community members maintains the traditional custom of sharing. This in turn allows hunters to identify themselves with their local communities and their local communities with the surrounding
lands harvested by their ancestors for generations (MacRury 1984:152). As to family life, child-raising responsibilities were often dispersed beyond that of the immediate family. Child nurturence became a community event, from elders teaching children of traditional Indian custom to hunters teaching of skillful ways to harvest the wildlife of the land.

Taken together, political, economic, familial, and other cultural dimensions of Indian life were spiritually integrated into a social order through acquiescence to tribal custom (Boldt and Long 1985:168). It was through custom that the various spheres of Indian life were governed and regulated. Perceived as a gift from the Creator, custom was thought to represent "the Creator's sacred blueprint for the survival of the tribe" (Boldt and Long 1985:338). As such, conformity to custom was a matter of religious obedience for on this the health of the tribe depended. Religious ritual confirmed customs both by linking customs to their divine origin and by historically tracing customs through, as they were passed from one generation to the next (Boldt and Long 1985:338). The essential ingredients of custom are among the examples we have already discussed; assuming one's proper place within the cosmic order, having respect for and taking proper care of the land, placing priority on the community, sharing and cooperation as the essential requisite to authentic social relations.

It is cultural themes such as these that Indians wish to
develop and perpetuate into their future. Being groupist, they are at variance with the central tenets of liberalism in every respect. At no juncture is priority placed upon the individual. Were individual rights to be stressed, Indians would perceive them to operate contrary to their group interest. For as bearers of rights, individuals are abstracted from and set over against the community and thereby jeopardize not only the integrity of the community, but also the individual's place within it. For this reason Boldt and Long note that Indians are currently asking the question, "Of what value...are individual rights when they threaten collective and individual existence?" (Boldt and Long 1985:169).?

C ) The Political Substance of the Indian Claim

It is against the background of the constituent components of the Indian world view as just described, that Indian claims gain their meaning. Most fundamentally, claims are predicated upon the Indian desire to attain a new political arrangement within Canadian confederation which would ensure the continuation and development of Indians as a distinct cultural entity with a group identity. Given the all-encompassing coherence of the Indian world-view, this requires not only a secure land base but also, "a separate social system with corresponding networks of social institutions that are congruent with their historical tribal arrangements and that are based on their traditional identity, language, religion, philosophy, and customs" (Boldt
The challenge for Indians is to formulate their claims in ways acceptable to government (given it holds the power), while at the same time refusing to compromise their fundamental groupist orientation. In essence, Indians must do no less than carve out a protected political space within the current "monopolistic" Canadian liberal democratic order for the practice of its unique shared understanding. Whether this is possible is the question we will consider in Chapters V and VI. At this point I wish to consider the inner logic of the claims themselves. Systematic development and articulation by Indians of their claims began in 1969 in response to the federal government's Statement on Indian Policy. In what follows I will consider Indian claims in their current configuration however, for in these we see the maturation of the political orientation first taken by Indians in 1969.

If a minority is conceived of as an integral or desirable component of a dominant tradition, it is likely that any claim posed by that minority, however distinct, will be reinterpreted in terms consistent with the ideological orientation of the dominant tradition. It is precisely this however, which Indians wish to avoid. Thus, in an attempt to circumvent the potential reinterpretation of their claims within the ideology of liberal individualism, Indians have posed their claims over against the liberal tradition not as a minority, but as a distinct political entity with an agenda of its own. In essence, Indians argue that meaningful negotiations of
claims must be predicated upon mutual recognition that two distinct groups are party to the discussion and thus a type of comprehensive social contract in which two ways of life are honoured must be the eventual goal of claims settlements. In this respect Indians view negotiations not as a process in which governments determine which, if any, group rights Indians may exercise but rather, as an exercise in which Indians are to be incorporated as free and equal partners into the fabric of Canadian confederation.

Indians predicate their arguments for distinct political status and corresponding rightful claims on the fact of "original sovereignty" (Asch 1984:29). By this Indians mean that their communities were established and functioning prior to and apart from any external authority (Tennant 1985: 324). In other words, Indians exercise political authority not through rights granted to them by the British Crown but by right of their own authority as historically viable and independent political units. Indian claims are further substantiated in their view, by the fact that the sovereignty Indians originally enjoyed has not been extinguished "through the subsequent occupation of Canada by settlers from Europe and other parts of the world" (Asch 1984:29). This could only have occurred if Indians had knowingly given up their claim to occupancy and ownership of the land. And as far as Indians are concerned, treaties were based on the principle that colonial law recognized that Indians retained a legal
right in and control of the land (Plain 1985:35).

In this context, Indian claims appear more as an appeal to the redress of historical injustices than as a minority claiming minor power readjustments as the outcome of a creative political deal with the majority. For Indians view the history of "white"-Indian relations as a story of unjust dispossession of land and abrogation of political and other forms of authority by an invader. The injury done Indians was a corporate one for in seizing lands, introducing diseases, and diminishing tribal autonomy, the identity of Indian peoples as a distinct entity was threatened (McDonald 1985(b): 44). Thus, claims are advanced by Indians on behalf of the community. Claims are intended to procure political measures for Indians to allow them to recover a sense of themselves as distinct peoples and allow them to evolve and adapt to changing circumstances according to their own as opposed to the government's will.

The substance of Indian claims evolves out of and is tightly interwoven into the fabric of their world view. Essentially, Indians say they are claiming the right to exercise those rights which they exercised on their own authority in the past (Ittinuar 1985:47). Traditionally, these rights flowed from the Indian religious belief that their way of life was a gift from God encompassing the concomitant responsibilities accruing to it, including the responsibility to hold the land in common and look
after all life on earth (Lyons 1985:19). Proper exercise of rights then, meant Indians fulfilling the purpose for which they were placed on the earth by the Creator. The Assembly of First Nations (AFN) Declaration summarizes the spirit of this view succinctly. It reads:

**A Declaration of First Nations**

We the Original Peoples of this Land know the Creator put us here.

The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind.

The Creator gave us our spiritual beliefs, our language, our culture, and a place on Mother Earth which provided us with all our needs.

We have maintained our freedom, our languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

Upon these principles the Indian view of aboriginal rights rests. As potential political claims however, these principles are vague and lack substance. What is required then, are substantive claims which would create salient political measures allowing Indians full control of all facets connected to their distinct existence. The Indian solution has been to develop claims for both property and political rights (Asch 1984:26).
All aboriginal groups seem to agree that preservation and enhancement of their distinct identity requires a restructuring of the Canadian political system. Measures deemed necessary in their view include aboriginal jurisdiction over aboriginal land and exclusive legislative authority over all facets connected to the unique experience of aboriginal life (Asch 1984:35). Traditionally, Indians argue, these two measures were combined. Indians used to be self-governing on land which they also governed (Ahenakew 1985:24). Thus, whereas Canadian legal tradition creates distinctions between property rights such as aboriginal title and political rights such as self-governing powers, for Indians these rights are so closely related as to be virtually indistinguishable. Generally understood as "aboriginal rights", it is these rights which form the heart of the Indian claim against the Canadian government.

Since much of what characterizes Indian life as distinctive flows out of the unique relationship Indians possess with the land, aboriginal rights demands begin with a claim to aboriginal title. Indians must be recognized to own and control the lands they occupy if the viability of their way of life is to be sustained. Land ownership then, forms the prerequisite and founding condition on which all other aboriginal rights are based. Moreover, Indians argue that European sovereigns could not lay ownership to land possessed by Indians simply through "right of discovery", or extinguish aboriginal title through
treaty. Instead, Indians claim that all descendants of the original occupants retain aboriginal title because treaties were based on mutual consent to shared occupancy in which Indians would retain legal rights in and control of certain lands (Plain 1985:35).

From aboriginal title flow political rights. For in the Indians' view, the right to occupancy and use of land is hardly efficacious unless Indians are also able to control activities occurring on the land. In recent years the various political demands of Indians have been subsumed under the general rights category of self-government. It is this claim which has become the pre-eminent, overarching Indian group claim for through self-government Indians could possess the right to corporately own communal property and control the destinies of their own communities. The current position of Indian leaders on self-government was most clearly stated at a series of First Ministers' Conferences on Aboriginal Rights completed in March 1987. At the 1983 conference the AFN produced a draft proposal to amend the constitution which included among other things the following political rights:

1. The right of the First Nations to their own self-identity, including the right to determine their own citizenship and forms of government.

2. The right to determine their own institutions.

3. The right of their government's to make laws and to govern their members and the affairs of their people...

4. ...Their right to exemption from any direct or
indirect taxation levied by other governments.

5. **The right to move freely within their traditional lands regardless of territorial, provincial or international boundaries.**

Taken together, these powers are meant to go beyond the right to control and practice typically ethnic functions such as culture, religion, language, or custom. Instead they focus more generally on the protection and perpetuation of a distinct way of life that "integrates languages, economies, social organizations, political organizations, religions and other values into a total culture" (Asch 1984:37).

Institutionally, accommodation of Indian claims would require a significant realignment of current Canadian institutional arrangements. Aboriginal proposals on this score vary. The Inuit of Canada's north have proposed a public form of government for example, whereas status Indians in Canada's south envisage "the replacement of the present binary division of powers with one based on a tripartite set of jurisdictions" (Asch 1984:35). In the latter case Indian governments would exist alongside their federal and provincial counterparts assuming responsibility for all matters relating to the survival and development of Indian communities.

Finally, the point needs to be made that in seeking recognition of self-government powers, Indians are not advocating the territorial dissolution of the Canadian polity. Rather, consistent with traditional custom, Indians envisage a sharing of the land and its resources based on mutual respect
and the co-existence of jurisdictions. As far as Indians are concerned then, current debates regarding the nature and scope of Indian self-government powers are exercises in negotiating the details by which two discrete jurisdictions representing alternate ways of life are to manage the terms of their co-existence.

In sum then, Indian rights claims can be described as encompassing a full spectrum of mutually supporting and interlocking social, cultural, economic, religious, and political rights. Of these, it seems that a land base with a distinct political jurisdiction is vital. Indian justification for such rights emanates from the argument that their communal and comprehensive experience of life is incommensurate with liberal individualism in every important respect. Thus, if their way of life is to be protected, Indians insist they be granted exclusive jurisdictional authority to shape the future direction of their communities in terms consistent with their own group constituting norms. Naturally, realization of this possibility demands Indians be granted far-reaching powers. In essence then, Indians are espousing a pluralistic model wherein one community with distinct beliefs and ways of life is given the required political room to co-exist with another larger community within the rubric of one overarching political jurisdiction (Canada). Whether this is theoretically or practically possible within the constraints of Canadian liberalism as currently practiced will be the topic of the following two chapters.
Endnotes

1 Think here of the functions churches typically perform and the rights which correspond to those functions, e.g., the right to worship in freedom, the right to discipline members in matters relating to adherence to church doctrine and rules, the right to excommunicate recalcitrant members and so on.

2 Here I have in mind the political controversy generated by discussion regarding the legal superiority of statutes such as the Migratory Birds Act over against treaty provisions relating to hunting and trapping rights. Then the question becomes, do treaty rights override provincial and federal statutes when the two rights forms come into conflict or is it the other way around? Questions of this sort tend to be adjudicated on a case by case basis in terms of the specific interests at stake.

3 Regarding Indians, the Indian Act (federal legislation enacted pursuant to Section 91(24) of the Constitution Act 1867 designed to regulate Indian communities on Indian reserves) makes a further distinction between status and non-status Indians. Persons registered as Indians under the Indian Act based on band and general lists held by the federal government are known as status Indians. Those who fall outside the scope of the Indian Act are called non-status Indians. The long history of Indian segregation in this manner has given rise to complications relating to the determination of aboriginal rights. Generally speaking, it is status Indians who have remained linked to band and tribal associations as well as reserve arrangements so central to the cultural survival of Indians as distinct peoples. Non-status Indians on the other hand, face the more imminent question of their potential status as Indians and whether readjustment in relation to this matter entitles them to land rights and self-government provisions in the same sense as that currently being negotiated by status Indians.

4 For an example of how the "benefits" of modernity have integrally meshed with traditional Indian life thereby maintaining a distinct Indian lifestyle see Michael Asch, Home and Native Land, Methuen, Toronto, chapter 2 and, Hugh Brody, Maps and Dreams: Indians and the British Columbia Frontier, Douglas and McIntyre, 1981.

5 The following discussion relies heavily on two articles written by Menno Boldt and J. Anthony Long, "Tribal


It should be pointed out that the Indian emphasis on groups and their claims to rights does not imply that Indians harbour a lack of respect for individuals. Rather, it is precisely in the act of an individual's assuming proper place within community that individual dignity and self-worth adheres. Through obedience to customs for example, communal harmony is generated thereby ensuring for each individual equality, self-worth, justice, and fraternity. Applying this politically, individual dignity is affirmed in the act of communal decision making, for decisions must emerge as a consensus, incorporating the will of each in the final corporate decision taken by all.

On a superficial level, the Indian focus on separateness based on racial criteria has the appearance of a form of apartheid. Both Indian proposals and apartheid rest on the foundation of racial distinctiveness. Yet, this similarity is in itself not enough to ensure that both institutional arrangements are the same. Gurston Dacks suggests Indian claims differ in that:

a) The structures sought by the claims are being sought by the subordinate ethnic groups for their own protection rather than being imposed on them, and

b) It is the indigenous people who will govern the institutions. Thus, whereas Indian claims are meant to create structures to protect native peoples, apartheid was created to exploit and control "subordinate" races. See Gurston Dacks, A Choice of Futures: Politics in the Canadian North, Methuen, Toronto, 1981, p.78, and Michael Asch, op.cit., pp.100-101.

The AFN (Assembly of First Nations) is a national Indian organization which represents the national interests of most status Indians at the highest levels of government in Canada.

Cited in Michael Asch, op.cit., p.125.

For an interesting and diverse interpretation of Indian rights by various Indian leaders, see the articles by
Oren Lyons (status), David Ahenakew (status), Fred Plain (status), John Snow (status), Peter Ittinuar (Innuit), Clem Chartier (Metis), and Bill Wilson (non-status) in Boldt and Long's (eds.), *The Quest for Justice*, op.cit., pp. 19-68.

12 Cited in Michael Asch, op.cit., p.28.

V. THE GOVERNMENT OF CANADA'S STATEMENT ON INDIAN POLICY (1969)

Having established the disparate interpretations liberals and certain groups tend to invest in group right claims, I will now explore how a liberal democratic state has managed the specific claims of one particular group. Given the criteria established earlier for what constitutes a proper understanding of groups our answer will be, not very well. The Canadian government's proposed Indian policy of 1969 serves as a particularly graphic illustration of this for here, much more so than in current Indian policy, the ideological lines of the debate were sharply drawn.

On the one side was a federal government wishing to eliminate all legal provisions protecting historically constituted Indian special status. The government justified these measures on the supposition that special status was equivalent to a legal and administrative form of discrimination serving to impede individual Indian's ability to attain self-fulfillment. On the other side were Indians who insisted not only that their special status be retained, but also that this status be developed so as to create conditions whereby their distinct way of life might become viable and given the opportunity to flourish. Exploring these two positions is important for they serve as backdrop against which current negotiations by Indians for group rights are taking place. For even though no government official holds explicitly to the 1969 federal position today, many of the
same themes continue to emerge, although much more subtly and under quite different guises.

Elucidation of the above themes will occur in the following manner. The substance of the 1969 Indian Policy emerged as a logical extension of government initiatives pursued until 1969. Thus, it serves us well to briefly consider the major policy thrust of government for Indians till the 1969 policy's release. This will be followed by a close analysis of the 1969 Indian Policy itself. I will then close the chapter by examining the official Indian response to the government's policy, Citizens Plus.

A) Historical Context

Discussion of current Indian policy ought to begin with the realization that special legal and administrative rights setting Indians apart from other Canadians, have existed in one form or another since well before confederation. Equally important to recognize however, is that despite Indians' best intentions, these rights were never intended by government to serve as protective measures in order to ensure the continuation of Indians' distinct way of life. Rather, in their initial phase, rights were intended to serve the narrower, self-interested colonial purpose of freeing up land occupied by Indians for white settler expansion. By moving Indians onto "isolated" reserves through treaty, and creating a special Indian Affairs Branch (IAB) to administer and regulate
Indian life, it was the government's intent to render Indians powerless to interfere with the orderly progression of white settlement.

With land safely secured, the federal government's initial policy of strict separation between Indians and settlers gave way to what government considered a more benevolent policy of gradual assimilation. Legal and administrative separation of Indians from white settlers continued however, for it was deemed desirable to protect Indians from the "worst" elements of a white expansionist community. From the secure position of administrative protection under the Indian Act and IAB and geographic isolation by way of reserves, it was anticipated that Indians would with time and proper guidance, naturally integrate into white settler communities. Treaty rights such as protection of Indian lands from "foreign" encroachment and protection of hunting and trapping rights were considered transitory; concessions to an inferior lifestyle which would become expendable once Indians had been assimilated into the superior European civilization.

Protection by way of control in the case of the Indian Act was so stringent however, that the ultimate goal of Indian assimilation inadvertently receded into the background. For example, the Indian Act called for a federal government agent to control reserve land holding and transfer, taxation, local Indian governments, education, wills and estates and
band membership (Weaver 1981:18). Such stringent control, coupled with the relative distance of many reserves from white communities, dictated against a successful resolution of assimilationist policies. Instead a condition of Indian dependence on federal government sources for their livelihood was generated, often resulting in poverty conditions. Federal government's concern over the increasing cost required to maintain an acceptable standard of living for Indians, coupled with a public attack on the Indian Act and the IAB as being unduly paternalistic was cause enough for an Indian policy assessment in the late 1960s. Under the Liberal government of Pierre Trudeau the process of developing a new and far-reaching Indian policy began.

In 1968 discussion of Indian policy occurred in two contexts. The first was public. Over the course of a year 18 meetings were held wherein Indians discussed possible legislative changes to the Indian Act with the minister and other officials from the Department of Indian Affairs and Northern Development (DIAND, formerly IAB). The second forum was private, unknown to the public, in which only senior government officials and ministers began to develop a new Indian policy (Weaver 1981:53). From the outset these two forums examined the need for a new Indian policy from widely divergent perspectives.

The Indian position began with the presupposition that legislative change must be rooted in the retention of their
special legal and administrative rights. For contained within these rights were core ingredients Indians believed crucial to the continuation of their distinct way of life. Treaties for example, protected Indians' right to communal land ownership and their distinct economic practice of hunting and trapping. The Indian Act, although highly problematic, nevertheless legally defined who was an Indian and thereby served the crucial function of protecting Indian status. Even DIAND played an important role for it signified that Indian needs were sufficiently distinct from those of other citizens to warrant the creation of a separate government department. Thus, in the Indian Act consultation meetings Indians made it known that they desired both to have the existing structures and rights retained, and transformed in problematic areas so as to better protect Indians' distinct status. This meant Indians wanted the Indian Act rewritten so as to remove its heavily paternalistic overtones and create greater room for Indian control of Indian affairs. Indians wanted the federal government to view treaties as legally binding and thereby called for settlement of land claims outstanding since treaties had been signed. Finally, Indians wanted the federal government to consider "aboriginal rights" claims made by Indians in areas of Canada where no treaties had been negotiated (Weaver 1981:64). Poorly maintained special legal and administrative status already seriously jeopardized Indians' ability to maintain healthy,
vibrant, distinct communities. If their cultural integrity was to survive, Indians believed their special rights were in desperate need of transformation.

The federal government's position rested on different presuppositions. Bearing in mind liberalism's basic theoretical difficulty with group rights, the government began to view special legal and administrative provisions for Indians as discriminatory. Insensitive to the fact that group rights made cultural survival for a minority such as Indians a possibility, the government accused itself of driving artificial wedges between individuals so causing unnecessary conditions of Indian apathy and poverty.

The obvious alternative in the minds of governmental officials was a new policy based on the principle of individual equality. Only with the removal of the special status provisions which separated individual Indians from the rest of Canadian citizens, would the goal of Indians' full and equal participation in Canadian society be attainable (Weaver 1981:112). To continue granting Indians special status not only prejudiced but also limited the criteria by which individual Indians could participate in mainstream Canadian life. So convinced were government officials that individual equality ought to form the basis of the new Indian policy, that there was a general feeling such a policy objective could be developed to the mutual satisfaction of Indians and government alike (Weaver 1981:117).
Government officials certainly lacked appreciation for the strong attachments Indians had to their treaties and land, their special rights and special relationship with the federal government. In essence, the federal government's position rested on the questionable assumption that Indians valued their "Indianness" only because it was their sole remaining alternative given their exclusion from the benefits of white society. The federal government was convinced that Indian focus on their ethnicity was a negative response to exclusion and not a positive feature in its own right.

B) The 1969 Government of Canada's Statement on Indian Policy

Though released as a white paper, the Government of Canada's Statement on Indian Policy had a resolute tone which left no doubt that the government believed the policy was the right course of action. In what follows I will briefly highlight some of the White Paper's more salient themes.

The assumption which underpins the entire policy is that human life is experienced in individual terms. This theme comes to the fore in two ways. First, the policy repeatedly discusses "Indianness" as an individualized experience. To be "an Indian is to speak different languages, draw different pictures, tell different tales and rely on a different set of values developed in a different world" (White Paper 1969:3, emphasis mine). According to the policy,
the value of possessing these "Indian" qualities rests in the fact that "a cultural heritage provides a source of personal strength" important because, "success in life... requires a strong sense of personal worth--a real sense of identity" (White Paper 1969:8,9). Sensitivity to the fact that "Indianness" derives meaning and comes to expression within a publicly shared "Indian" way of life is passed over by the policy. Instead "Indianness" is reduced to a personal or private quality able to generate personal pride, a necessary possession if one is to attain "self-fulfillment" in a "constantly changing world" (White Paper 1969:5,9).

Because the experience of being an Indian is abstracted from the group context wherein "Indianness" gains its meaning and sustenance, the White Paper is able to speak of individual Indians in the same breath as that used for the rest of Canada's citizens. This brings me to my second point.

Consistent with the tenets of liberalism, the White Paper expresses the experience of being human as essentially the same for all individuals. Moreover, this same individual experience of life is assumed to come to best expression through the core values of liberalism. Thus, the White Paper assumes Indian society can be understood and discussed within the same terms as white liberal society. For example, "the needs and abilities of men" including Indians are assumed to be knowledge (understood as technical or other skills required to be successful in a competitive society),
dignity, self-confidence, distinction, individual identity, freedom and choice, all experienced individually in the process of self-fulfillment (White Paper 1969:3,5,6). These criteria are taken as universal givens and therefore beyond need of justification. As a result, anyone unable to experience these qualities fully is being denied basic needs and thus by implication, is less than a person. Following this train of reasoning, it is the White Paper's position that unlike most Canadians, Indians are disadvantaged because they have been denied the proper conditions to nurture the human attributes named (White Paper 1969:3). A proper response in the government's view was provision of remedial measures allowing Indians greater opportunity for fuller participation as individuals in Canada's rich and diverse potentiality.

We might interject at this point to ask whether there are basic needs required by all people beyond the basic ones of food, shelter, and clothing. I would suggest liberalism's supposition that its core values are universally applicable to all races and cultures certainly bears some scrutiny. As we have seen for example, Indians do not view self-fulfillment as a basic human need nor personal distinction as a prerequisite for dignity. Instead, corporate group respect and well defined community roles is closer to Indians' consciousness. It seems then, that liberalism's propensity to insist that its core values hold exclusive legitimacy creates a condition wherein it is largely intolerant of
minority groups which practice life in accordance with norms
generated outside the context of liberalism.

Suspicion of structural differences between citizens
naturally follows from a view which perceives individuals
as essentially the same. Normative arrangements within a
liberal order presuppose a uniform condition of individual
liberty and equality for all. It follows then that
acknowledgement of group distinctiveness by way of special
protection meant to accentuate differences between people
is viewed as illegitimate on the grounds of being discriminatory.
For if people are essentially the same, to create artificial
distinctions between them will invariably lead to a condition
of disadvantage for some. Such is the view of the White
Paper in regards to special legal and administrative status
for Indians.

Under the rubric of special status, Indians are separated
from other Canadians in law, government services, social
contacts, and in terms of where they live (White Paper 1969:
3). Quite apart from what Indians might have thought, the
federal government viewed these measures as discriminatory
(White Paper 1969:5). For believing Canadian citizenry to
be an homogeneous entity, it was the government's opinion
that justice required all be subject to the same conditions
of individual liberty and equality. To separate and
"isolate" Indians through differential treatment then, was
equivalent to denying Indians basic rights enjoyed by all
other Canadians (White Paper 1969:5). Thus, quite apart from any perceived benefits that special status might entail, in the government's view such status was by definition unacceptable for it requires different treatment of like individuals (White Paper 1969:5).

The adverse affects of different treatment were glaringly visible in regards to Canadian Indians the White Paper argues. Paternalistic administration of Indian affairs by government had denied Indians liberty, and distinct legal status had denied them equality (White Paper 1969:5,6). Taken together, both had isolated Indians from Canadian society, caused Indians to be "inward" looking, and thereby had generated among them conditions of abject poverty (White Paper 1969:3,4,5). Full and equal participation by Indians in mainstream Canadian society was viewed by government as the only and obvious alternative. As a first step this required eradication of all special status measures (White Paper 1969:6). Thus, the primary focus of the White Paper was to generate a comprehensive policy mechanism through which special status could be gradually eliminated.

I will not dwell on the details of the policy proposed in the White Paper for they do not add substantially to the argument already made. Suffice it to say that all special Indian status provisions were to be dismantled. This included a repeal of the Indian Act, the dismantling of DIAND within five years accompanied by a transfer of all federal
responsibilities for Indians to the provinces, the ending of treaties, and a dismissal of aboriginal rights claims (White Paper 1969:8-11). Two concessions granted Indians were promises to settle outstanding land claims and to turn over control of Indian lands to Indians themselves (White Paper 1969:11,12). In the government's view, Indian responsibility could not be realistically assumed until Indians controlled all their resources, including land.

In the final analysis, the 1969 White Paper on Indian Policy was as thorough going a product of liberalism as could be produced. Substantive claims for group recognition and rights were not even part of the discussion given liberalism's propensity to ignore the ontological reality of group phenomena. Instead, the entire policy was conceived and developed in individualistic terms; a perception of reality alien to Indians' experience. That the White Paper was excessively narrow in its conception of reality and thus poorly equipped to deal with the pressing needs of Indians in the late 1960s, was nowhere better articulated than in the Citizens Plus document, a subject I will now address.

C) Citizens Plus: The Indian Response

The official Indian response to the White Paper was released in June 1970, one year after the White Paper's introduction. Indian leaders gathered in Ottawa and after some consultation, adopted the Indian chiefs of Alberta's
position paper, *Citizens Plus*, as the national Indian response. Requests by Indian leaders to address full cabinet were granted, thereby providing Indians with a high profile forum in which to present their document. In essence, *Citizens Plus* contained a categorical rejection of the White Paper on the basis that it threatened the cultural survival of Indians as a distinct Canadian community. Discussion of this theme comprises the remainder of this chapter.

The entire *Citizens Plus* document is pervaded by a deep mistrust and suspicion of government motives. Indians had been led to believe at the Indian Act consultation meetings that the importance they placed on their special status would be taken seriously by government. Yet, the White Paper stood as testimony to the fact government had either ignored or dismissed all measures Indians believed pivotal to their meaningful incorporation into the Canadian community (*Citizens Plus* 1970:1). *Citizens Plus* was a final desperate appeal to make Indian views known to government.

Central to the Indian position in *Citizens Plus* is the assumption that "Indianness" cannot be understood as nor reduced to an individual or "private" quality. One does not choose to be an Indian for the sake of one's betterment for example. Rather, "Indianness" is a condition nurtured and able to come to expression only within a communally shared horizon of meaning. Only within the context of a group wherein each interacts with all, does "Indianness" as a
mutual way of speaking, feeling, thinking, believing, and expressing come to life. Thus, maintenance of the minority Indian way of life within Canada is dependent upon Indians being dealt with not as an aggregate of individuals but as a group. Moreover, given the fragility and precariousness of a distinct way of life existing on the periphery of the enormous conglomerate of North American liberalism, Indians believe special status is tantamount to cultural survival (Citizens Plus 1970:5). For Indians, equality need not mean the same conditions for all individuals as liberalism assumes. Instead, equality may also necessitate the recognition of a group as an ontological entity followed by a provision "of different treatment in order to obtain a result which establishes an equilibrium between different situations" (Citizens Plus 1970:5). In Indians' view "to be a useful Canadian we must first be a good, happy and productive Indian" (Citizens Plus 1970:5).

This means that special status provisions are not by definition discriminatory mechanisms leading to Indian isolation and conditions of Indian apathy and poverty (White Paper 1969:3). To view the legal protection of cultural distinctiveness as discriminatory is, in effect, to hold up liberalism as the only acceptable norm for meaningful living. Citizens Plus reveals however, that Indians are not clamouring for entry into mainstream liberal society. Normativity in their view encompasses maintenance
of an Indian way of life. Cultural survival becomes untenable without special protection however, thus explaining Indians passionate appeal in *Citizens Plus* for the retention of their historic rights.

If the "isolating" effects of Indian rights are not responsible for Indian poverty, what is? Multiple factors contribute here but perhaps the most basic is the paternalistic and improper manner in which Indian rights have been historically administered by government. The special status which Indians envisaged would produce healthy, vibrant, distinct Indian communities, under improper management by government produced apathetic, alcohol riddled, destitute communities. For example, on the Indians' interpretation, treaties protect Indian land, Indian hunting, fishing and trapping rights, and make provisions for government assistance toward Indian health care, education and economic development (*Citizens Plus* 1970:8). Conscientious commitment by government to live up to its treaty obligations would have assisted in maintaining healthy, vibrant communities argue Indians. But instead government chose to neglect its promises due to an ahistoric view of treaty obligations. As far as the government was concerned, treaties were not binding for all time. Instead, treaties were agreements created to meet a specific and immediate historical need. Agreements to provisions of medicine chests, machinery and livestock testified to the relativity of the agreements
(Citizens Plus 1970:8). Indians argue on the other hand, that although written in historically relative language, treaty agreements were intended to capture and formalize a binding relationship in perpetuity. If the federal government had assumed this latter perspective, Indian land would have been protected, hunting, fishing and trapping rights maintained, and health care, educational facilities and economic development provided. As it is, the federal government had neglected its duties and so had contributed towards Indian poverty.

An equally graphic example of a special status measure poorly administered by government is the Indian Act. A distinct legal mechanism created to define the relationship between Indians and the rest of Canadian society is, in Indians' minds, a good thing. Such a mechanism creates clear distinctions between who belongs to which groups, thus maintaining the integrity of both (Citizens Plus 1970:12). Where the Act went wrong however, was in the sweeping powers it conferred on the Indian Affairs Branch to regulate Indians' lives. Paternalistic administration frustrated attempts at personal responsibility and tribal self-government so leading to the loss of dignity and generating community apathy (Citizens Plus 1970:13). Again, argue Indians, transformation of the Indian Act as a special status measure, so as to allow Indians greater responsibility to conduct their own affairs, would inevitably lead to

In many respects, Citizens Plus was a call by Indians for government to assume its special status obligations. As far as Indians were concerned, the government was coming at their problems from the wrong angle. Indians charged that governments which blamed the practical problems of Indians on theoretically impure liberal structures were, in essence, attempting to avoid responsibility. For any theory which disallowed government's recognition of Indians as a cultural group possessing ontological status was in fact a government with an excessively narrow view of reality. Until the federal government widened its spectrum as to what it considered "real", the government would be avoiding responsibility for it would not be properly equipped to deal with the needs of citizens flowing out of a group concern.

In the end, Indian rejection of the White Paper proved persistent and effective enough to force its withdrawal. Pierre Trudeau went so far as to say:

...I'm sure we were very naive in some of the statements we made in the paper. We had perhaps the prejudices of small "1" liberals and white men at that who thought that equality meant the same law for everybody, and that's why as a result of this we said, "well let's let Indians dispose of their lands like every other Canadian. And let's make sure that Indians can get their rights, education, health and so on from the governments like every other Canadian". But we have learnt in the process that perhaps we were a bit too theoretical, we were a bit too abstract, we were not ...pragmatic enough or understanding enough... (Weaver 1981:185).
Although not quite an apology, Trudeau did admit that the government had failed in its attempt to address Indian problems. By Trudeau's own admission, preoccupation with theoretically pure liberalism can bring results poorly suited to meet the needs of a practical concern.

In the final analysis then, it seems that when liberalism creates policy based on the primacy of the individual it cannot help but at the same time negate the practical reality of groups and groups' substantive claims for rights. In such instances the reality of groups' existence are pitted against the desire for pure and consistent liberal theory. The 1969 White Paper on Indian Policy stands as only one particularly salient example of the devastating circumstances which can result for groups if liberal theory proves to be the victor.
Endnotes


2 For example, in 1967 a senior Privy Council Office official reported the following:
1) Indians are deplorably poor; on the Prairies the cash income is 350 dollars a head.
2) Indians are deplorably unhealthy; their life expectancy is half the national average.
3) Indians are badly under-educated; their attainment is half the national average.
4) Indian housing is scandalously bad; present government programs will require a generation for correction.
5) While Indians are becoming relatively poorer, the federal bureaucracy and federal expenditures are becoming greater.
6) The percentage of Indians on relief is rising every year; in 1962 it was 32%; in 1965 it was 39%.
7) The government is allocating 16 million to Indian relief and something like 4 million to Indian economic development.

Compare these statements to more recent ones made by Pierre Trudeau in 1984. If anything, it appears as though Indian conditions have grown worse rather than better in recent years.
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--Their (Indians) life expectancy is ten years less than for the population as a whole.
--Violent deaths are three times the national rate.
   Suicides, particularly in the 15-24 age group, are more than six times the national rate.
--Between 50 and 70 per cent receive social assistance.
--One in three families lives in overcrowded conditions.
   Less than 50 per cent of Indian houses are properly serviced, compared to a national level of more than 90 per cent.


3 For an excellent discussion of the various roles played by the key personel who formulated the 1969 Statement on Indian Policy (e.g. Chretien, Minister of Indian Affairs; MacDonald, Deputy Minister; Andras, Minister without Portfolio; Davey, Prime Minister's Office; Rudnicki, Privy Council Office, Social Policy Secretariat), see Sally Weaver, op.cit.

4 The term "white paper" is a generic one referring to a publicly released policy statement designed to encourage public discussion prior to the introduction of formal legislation.

5 Citations from the Government of Canada's Statement on Indian Policy will be referred to as the White Paper in the body of the text.

6 The title Citizens Plus, derives its origin from a government of Canada's survey of Indian conditions conducted in 1966 entitled, A Survey of the Contemporary Indians of Canada (1966-67) (also known as the Hawthorn Report). The immediate appeal of the Report for Indians rested in its thrust on the concept of choice. "Indians should have a greater choice of lifestyle, whether it meant staying in their communities or leaving them". Regardless of what choice was made, "Indians should retain the special priviledges of their status while enjoying full participation as provincial and federal citizens". In this respect Indians were viewed as citizens plus, a concept Indians could endorse. In the Report's view, "questions of assimilation were decisions that neither government nor anyone else could effectively take on behalf of Indians". For a discussion of the Hawthorn Report see Sally Weaver op.cit., pp.20-24.
VI. INDIAN RIGHTS IN THE 1980S

Prime Minister Pierre Trudeau's defense of the 1969 White Paper included the following statement:

It's inconceivable, I think, that in a given society one section of the society have a treaty with the other section of the society. We must all be equal under the laws and we must not sign treaties amongst ourselves... Our answer is no. We can't recognize aboriginal rights because no society can be built on historical "might-have-beens".1

Less than thirteen years later a new constitution for Canada was proclaimed. Among other things, the Constitution Act of 1982 entrenched the Charter of Rights and Freedoms, provided an amending formula for constitutional changes, and granted constitutional recognition to Canada's aboriginal peoples. Contained in section 35, the relevant clause reads as follows:

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

In this act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Metis peoples of Canada.

Moreover, the group claims recognized in Section 35 seem to have gained political substance in the ensuing constitutional discussions (as provided by section 37) held to define the meaning of the rights named. At the 1983 conference for example, Trudeau observed in his opening statements:

Clearly our aboriginal peoples occupied a special place in history. To my way of thinking, this entitles them to special recognition in the Constitution and to their own place in Canadian society, distinct from each other and distinct from other groups.

This position was further substantiated when in his opening remarks to the 1984 constitutional conference Trudeau said:
A hundred and some years have not changed the minds of aboriginal peoples... They have not assimilated... They must be given a chance to run their own affairs and self-governing institutions.²

Given the constraints that liberal individualism traditionally imposes on group claims for rights, what accounts for this apparent governmental change of heart? Could a government dedicated to the vision of the 1969 White Paper change its position so radically by the time of the new constitution's introduction in 1982? Later in this chapter we shall observe that promising government rhetoric is not a substantial realignment from liberal ideology to a position more favourable to group rights. For the moment however, we must consider what forces compelled this dramatic shift in government rhetoric in the first place. Here at least three influences are important.

The first influence was the success of the Indian lobby, which not only forced the withdrawal of the 1969 White Paper, but also in the ensuing policy vacuum took the initiative for developing new policy proposals. Second, was the importance of the 1973 Nishga decision of the Supreme Court of Canada which established for the first time the possibility that some Indians might possess an aboriginal right to title over traditional land. Finally, in the wake of a constitutional provision protecting "aboriginal rights" which in the government's view, lacked clarity of meaning, a special parliamentary committee was struck (the Penner Committee) which after extensive study suggested to government that "aboriginal rights" included an inherent right to self-government. Examination of these three influences is
important for they not only had the cumulative effect of forcing aboriginal property and political rights onto the government's constitutional agenda, but they also form the backdrop against which current discussions for Indian self-government are taking place. In what follows I will discuss each of these influences in turn.

A) **Group Rights, The Indian Initiative**

1) **The Indian Lobby**

In the wake of the "failed" 1969 Indian policy, a new policy was needed. Indians were clearly unwilling to trust new government initiatives, so they began to organize, develop political expertise, and press their own claims. The growth of Indian political organizations can in part be attributed to the cultural threat the White Paper posed to the existence of Indians as distinct peoples. As Sally Weaver notes:

> The fear and insecurity it (the white paper) brought to tribal communities was so great that nativism was the reaction--a process of cultural reaffirmation which often arises when cultural systems are severely threatened. Instead of seeking equality, Indian communities reasserted their cultural uniqueness, emphasizing their social distance from the dominant society (Weaver 1981:6).

Equally important to the rise of Indian political organizations has been the funding provided by the federal government. Initially intended to help Indians participate in the 1969 consultative process, funding has since been maintained to enhance Indians' impact on the political process and to develop Indian leadership. As Boldt and Long note, if Indians had to
rely solely on funding available to them from their respective communities, the major Indian organizations would never have had the resources necessary to develop a full-fledged Indian policy alternative (Boldt and Long 1985:9). Thus, ironically, although Indian mistrust of government motives ran deep, dependence on federal financial resources proved to be the life-blood through which Indians were able to develop Indian policy initiatives to which the government had to respond. Moreover, not only were Indian proposals at variance with those traditionally pursued by the government, but they also very quickly attained a level of sophistication and thereby had the effect of putting the government on the defensive.

It was in the context of the 1970s' Indian policy vacuum that Indian organizations began to develop proposals for self-government. Already in Harold Cardinal's Unjust Society (1969) and in the Citizens Plus document (1970) the notion that Indian communities should have greater freedom to determine their own future was introduced. As the decade unfolded, Indian organizations developed more and more sophisticated arguments in favour of self-government such as the Dene Declaration (1975) which called for political institutions shaped in accordance with Indian values, and the Federation of Saskatchewan Indians' paper, "The First Nations: Indian Government and the Canadian Federation" (1980). By 1981 the Indian term "aboriginal rights", had been expanded from its initial focus on land rights to include a right to self-government as well.

Whether due to increasing Indian pressure for self-government
or because a lack of its own policy alternatives, in the early 1980s the federal government itself began to examine the concept of Indian self-government. During the first few years of the 1980s, the Department of Indian Affairs and Northern Development (DIAND) published a number of discussion papers on the subject of Indian self-government, the most important being "Strengthening Indian Band Governments" (1982). Thus, by the early 1980s Indians had succeeded in making self-government a serious political issue and a possible alternative to existing federal policy.

In October of 1980 the federal government announced its decision to patriate the Constitution unilaterally. While this action was taken quite independently of concerns about federal Indian policy, it would prove to have momentous effects on the future course of that policy. For in an attempt to bolster the political legitimacy of patriating the Constitution without Provincial consent, Trudeau's government turned instead to numerous interest groups with the intent of meeting their concerns with respect to the contents of the constitutional proposal (Schwartz 1986:29).

For their part, Indians realized that the Constitution could provide a means for the protection and articulation of their aboriginal rights. It was their hope that constitutional protection would function as a protective buffer against the kinds of threats represented by the policy orientation of the 1969 White Paper. As a result, Indians and other aboriginal groups mobilized to protect what they considered to be their historic relationship with the British crown and to secure their
rights in the new constitution.

In response to the Indian lobby, the federal government inserted Section 25 into the Charter of Rights. Section 25 states that the Charter must not be construed so as to undercut the rights of aboriginal peoples. Important to note here is that the protection offered by section 25 is rather minimal. All it does is protect aboriginal rights from the Charter. It does not protect aboriginal rights from the interference of governments in general. Unimpressed with the scope of Section 25, aboriginal organizations continued their lobbying effort with the eventual result that Section 35 of the Constitution Act was enacted recognizing and affirming aboriginal and treaty rights.

In April 1981, the Supreme Court of Canada ruled that the federal government was technically within its rights to patriate the Constitution unilaterally, but that it would violate constitutional convention if it did not proceed without substantial provincial support (Schwartz 1986:29). Accordingly, the federal government and Provinces resumed negotiations and eventually agreed upon a modified constitutional package (minus the support of Quebec). In the course of constitutional discussions Section 35 was deleted. Aboriginal organizations responded with a last ditch lobbying effort with the result that Section 35 was re-inserted, although modified by the word "existing" qualifying "aboriginal and treaty rights". In response to aboriginal fears that "existing" might limit the constitutional protection of rights negotiated in the future, Indians were promised a
conference by means of Section 37, wherein aboriginal constitutional matters could be discussed by Indian leaders and first ministers. 4

Intended to define the rights named in Section 35, the one conference was later expanded to four which were held in 1983, 1984, 1985, and 1987. In these conferences aboriginal self-government became the major issue. Aside from the practical concern of how Indian governments might be structured, financed, and linked to federal and provincial governments, considerable time was spent at these conferences discussing whether a right to self-government flowed from the sovereignty of the Indian people or the sovereignty of the state (Weaver 1984:217). I will discuss later what is at stake in the resolution of the self-government debate. The point I wish to stress for now is the considerable accomplishments achieved by the Indian lobby. By taking the initiative for developing Indian policy alternatives in the 1970s, Indians not only gained the attention of government, but also eventually succeeded in securing their aboriginal and treaty rights in the new constitution. Moreover, by construing self-government as an aboriginal right, Indians successfully placed the central component of their policy alternative in the heart of the government's constitutional agenda.

2) The Political Consequences of the Nishga Decision

Parallel to their political lobby throughout the 1970s, Indians also began to press their claims to rights in the courts. Although results have been mixed, the Supreme Court's judgment
in the Nishga case (1973) is noteworthy. The Nishga Indians of British Columbia had sued for a declaration that their Indian title to their traditional land base had not been extinguished. Three of seven Supreme Court judges were willing to grant the declaration. Not only did they recognize Indian title, but they also ruled that the Nishga's title still existed. In their view, Indian title could be extinguished only if done so by legislative action created deliberately for such purposes. Three other judges held that there was such a thing as "aboriginal title", but that in the case of the Nishga it had been extinguished by colonial ordinances and the British Columbia Terms of Union (Schwartz 1986:26). The seventh and deciding judge held on a technicality and so the Nishga lost their case four to three.5 The important point however, is that with respect to at least six judges, the court did not reject out of hand the doctrine of aboriginal title to land.

Since the Nishga decision, judicial opinion continues for the most part to support the proposition of aboriginal title to land. In the case of the Baker Lake Inuit, James Bay Cree, and Musqueam of Vancouver for example, judicial opinion has supported aboriginal title to varying degrees where rights to lands had not been extinguished by specific legislation. With respect to the Musqueam (1985) moreover, the courts not only recognized Indian land rights, but also that the federal government is placed in a position of trust over those rights (Purich 1986:58). In this case the Musqueam band surrendered control of their land to the
federal government so that it could in turn lease the land out to a Vancouver golf course for the band's benefit. The Supreme Court decided the federal government had not honoured its trust duties by ensuring at the outset that the band agreed to the terms of the lease it had negotiated on the band's behalf. Ten million dollars in damages were assessed on the basis that if the band had known of the government's terms, they would never have assented and would have eventually obtained a far better deal on their own (Schwartz 1986:183).

However, as Michael Asch notes, although the courts do recognize an aboriginal right to property, they nevertheless take the position that these rights can be modified or limited by legislation even when no explicit reference is made to aboriginal rights in the body of a law (Asch 1984:52). For example, with respect to the Nishga, although the Supreme Court held that they had the right to hunt and fish on unoccupied land, in 1976 the Court also ruled that Indian fishermen were subject to the same federal regulations as non-Indian fishermen, even if the legislation did not directly speak to this point. In this respect says Asch, although the courts recognize the existence of an aboriginal property right, they are also most willing to restrict this right in certain instances so that in the end it has no greater substance than the rights granted all citizens (Asch 1984: 52).

Moreover, it is important to recognize that although aboriginal title has gained legal support, in no case have political rights relating to self-government been at issue in the courts. It is
Asch's contention that if the courts were asked to review an assertion relating to an unextinguished right to self-government, "it would be highly unlikely that such a proposition would be upheld" (Asch 1984:52). For in his view, although the courts would probably recognize the reality of self-government in "pre-contact" days, and might even acknowledge the continued existence of such institutions into the present, "they would deny that political rights survived legislation that established for example, the parliamentary form of government for all citizens, including aboriginal peoples" (Asch 1984:52). In this respect, the courts constitute at best a risky venture in the establishment of a legal precedent for self-government as an aboriginal right.

Because the courts' interpretation of aboriginal rights is restricted to issues of land rights, I think it is fair to say that the most important ramification of the Supreme Court's decision on Nishga was non-judicial in nature. Influenced by the Nishga decision, Trudeau admitted that "there might be greater legitimacy to Indian claims than he originally thought" (Purich 1986:54). As a result, the federal government began to develop a comprehensive policy of settling Indian land claims. As Boldt and Long note, "Federal officials feared that if, in some future test case, aboriginal title should be affirmed by the judiciary, the claims settlements that might be awarded to aboriginal peoples could exceed the government's capacity to pay" (Boldt and Long 1985:10).
In 1974 the federal government announced a policy which would recognize and settle Indian claims in non-treaty areas. Claims recognized were to be of two sorts; comprehensive claims based on aboriginal title over extensive areas, and specific claims meant to redress lawful obligations of government never fulfilled. In addition, the federal government began to provide funding for the research of Indian claims and established an Office of Native Claims to evaluate the proposals brought forward (Purich 1986:55). For government, political negotiations were preferable to determining claims by means of litigation. Government argued that by pursuing the former strategy, more flexible arrangements could be made in which Indians would have more opportunity to participate (Schwartz 1986:28).

To date, these land claims negotiations have produced substantial gains for Indians. Two of the most important comprehensive claims settlements to be secured are the James Bay and Northern Quebec Agreements (1978) and the Western Arctic Claim by the Inuvialuit of the Mackenzie Delta and western Beaufort Sea (1984). Moreover, agreements in principle were reached in 1988 with the Dene/Métis of the Mackenzie Valley in the Northwest Territories and with the Council of Yukon Indians, with the intention that continued negotiations would lead to the ratification of the agreements within two years. In each case provisions for cash grants of millions of dollars have been secured, the allocation of lands for Indian and Inuit use was attained, hunting and trapping rights have been protected,
increased authority for band governments procured, and management rights in land and other resources assured (Boldt and Long 1985:12).

Having gained political credibility for their arguments to aboriginal title, Indians have of late directed their attention to issues of more focussed political concern. They have attempted to redefine aboriginal rights so as to incorporate a right to self-government based on the original sovereignty of Indian people. By basing their arguments for self-government on original authority as opposed to authority derived from Parliament or the British crown, Indians believed a credible case could be made for freeing Indian governments from the "foreign" liberal presuppositions which shape the British Parliamentary tradition. And as Paul Tennant argues, "The intensity of Indian feeling and sentiment on this point was not and is not sufficiently appreciated in the dominant society" (Tennant 1985:327). At the same time however, given that this "dominant society" largely sets the Canadian political agenda, it is within its ranks that the aboriginal source for self-government must be acknowledged if Indians are to gain political powers consistent with their position. In this respect, it is interesting to note that it was within Parliament's own Penner Report that the Indian group claim to self-government received not only full support, but also concrete suggestions for full-scale implementation.

3) **The Penner Report**

By the late 1970s a right to self-government had received
increasing prominence in the comprehensive claims process. Moreover, it was also clear that the issue of self-government would constitute a sizable agenda item for aboriginal leaders in the Section 37 "aboriginal rights" constitutional discussions. In response to these factors Parliament established a Special Committee on Indian Self-Government in December, 1982 to examine "Canada’s total financial and other relationships" including a right to self-government with Canada’s Indians. The Penner Report as it is popularly known, was issued in December, 1983. The effect of the Report was dramatic for although Indians had been looking to self-government as the means by which their rights could be protected and exercised, the Report succeeded in consolidating what had till then been a fairly diverse Indian position into an overall integrated policy scheme. As a result, the Penner Report was able to bring Indian self-government to the forefront of the constitutional talks.

Mention needs to be made of the committee’s composition. The Indian right to vote (established in 1960) had by the mid 1970s produced a number of MPs from constituencies with sizable numbers of Indian voters (Tennant 1985:328). Given the composition of their constituencies, these members were fairly knowledgeable about Indian issues and were keenly interested in Indian affairs. The committee was drawn from this group which had representatives in all three parties. Paul Tennant notes that if the committee had not been drawn from this group its procedure and policy proposals would likely have been very different (Tennant 1985:
In this respect, the policy proposals are probably more representative of the committee members' ideals than they are of official government policy.

The approach adopted by the Penner committee was to attempt to define and develop Indian self-government proposals from within the political and cultural perspective of rights held by Indians. To this end, the committee appointed representatives from the major Indian organizations to full, non-voting membership in its body. In addition, the committee conducted hundreds of interviews, received numerous submissions and presentations, and held several hearings with individual Indians, band governments, and Indian organizations all across Canada. With the Indian point of view thus heard and subsequently incorporated into the policy proposals, a policy alliance between committee members and Indian interests was consolidated. As Sally Weaver describes it, "...by combining the essential elements and logic of Indian political ideology with its own judgements on how these could be integrated into a total scheme, the committee became a vehicle to secure Indian co-operation and organize and articulate Indian demands" (Weaver 1984:217).

For the most part, the Penner Report develops policy proposals for Indians residing in the provinces. In the Report's view, the situation with respect to the Inuit, Metis, and Indians north of 60° is sufficiently unique to warrant separate treatment. Moreover, unlike their southern counterparts, aboriginal peoples in the north currently have options for political reform through
constitutional change to the territories through comprehensive claims negotiations (Penner Report 1983:63). Nevertheless, with respect to broad statements of principle and the Report's general orientation towards implementation of a group rights model, the Report offers important recommendations to both northern and southern aboriginal communities.

In all, the Report makes fifty-eight recommendations, most consistent with the Indian positions made known at the committee's cross-Canada hearings (Tennant 1985:328). The cornerstone recommendation is that Indian government should be recognized and exist at the level of "Indian First Nations" (Penner Report 1983:41). Noteworthy here is that the Report incorporates the kind of language Indians use to refer to themselves. Indians are not identified by their band affiliation for example. Rather, the Report refers to Indian communities as First Nations.

Realizing full well however, that the term "nation" carries with it separatist connotations, the Report uses the term in its British historic usage as in the Royal Proclamation of 1763 which recognized Indians as cultural-political nations. Often referred to by Indians as the Indian Charter of Rights, the Royal Proclamation set the terms by which treaties would be negotiated between Indians and the British crown in the nineteenth century. Intended as much to protect Indians from the unscrupulous land dealings of opportunistic colonialists, the Proclamation also contained an implicit recognition that in negotiating treaties the Crown was dealing with distinct political entities. In this sense, the Penner Report ties its usage of "nation" to
an historical-legal precedent established within the British
tradition.

Against this background then, it is the Penner Report's
intent to signal that Indians are not nations in the sense that
complete political separation from the rest of Canada is their
ultimate policy goal. Rather, "nationhood" is used to designate
the reality that Indians are politically and culturally distinct
enough from the remainder of Canada to warrant legitimate use
of that title.\textsuperscript{12}

The Penner Report's central thrust is to argue that a new
relationship between Indians and the federal government must
be built on the foundation of Indian self-government (Penner
Report 1983:41). Moreover, the Report states that the integrity
of Indian distinctiveness should be safeguarded through the
recognition of Indian self-government as an aboriginal right.
The Report further states that this right be "explicitly stated
and entrenched in the Constitution of Canada" (Penner Report
1983:44). The implications of this position are enormous.
For as Tennant argues, adoption of this position would constitute
an affirmation that Indian first nations "derive their legitimacy
not from Parliament and not even from the constitution itself,
for the constitution would simply acknowledge or 'recognize'
the pre-existing right of aboriginal peoples to self-government"
(Tennant 1985:328). In other words, recognition of Indian
political autonomy on the basis of original sovereignty would
place Indians in a legitimate position to assert independence
from the liberal constraints which shape the British parliamentary
system. In effect, Indian first nations would "form a distinct order of government in Canada" (Penner Report 1983:43).

Consistent with distinct governmental status is the need for Indians to exercise a full spectrum of political powers. The Indians the committee spoke to were unanimous in their opinion that if a distinct Indian way of life was to be maintained, their communities must be granted the right to exercise traditional powers. One said:

Traditionally, as aboriginal peoples we had uncontested, supreme and absolute power over our territories, our resources and our lives. We had the right to govern, to make and enforce laws, to decide citizenship, to wage war or make peace, to manage our lands, resources and institutions. We had our own political, legal, social and economic systems... (Penner Report 1983:63).

Chief David Ahenakew formulated this general sentiment into a political demand orientated toward the future by saying:

We expect that First Nations will retain and exercise most rights and jurisdictions which provinces now have within Canada, and some others which are the special rights of First Nations. First Nation governments will have to develop judicial systems that will establish laws, institutions and procedure according to the needs and customs of each First Nation (Penner Report 1983:63).

The Penner Report endorsed this Indian position stating that if First Nations are to be effective, they must have access to clearly defined and extensive powers. Accordingly, self-government should mean, "virtually the entire range of law-making, policy, program delivery, law enforcement and adjudication powers would be available to an Indian First Nation government within its territory (Penner Report 1983:63). Legislative powers that the Report notes as particularly important in this regard include those relating to social and cultural development, including
education, health and welfare, land and resource use, revenue raising, economic and commercial development, justice, citizenship and governmental structure (Penner Report 1983:64,55,57).

Furthermore, given viable self-government is dependent upon economic self-sufficiency, the Report urges Indian nations be given full control over their territory and resources and that the federal government seek a speedy resolution to outstanding land claims and offer Indians unconditional grants for economic development (Penner Report 1983:108,109,115,97).

Access to such wide-ranging powers does raise the question of whether the Penner Report envisages any limits on powers Indians may exercise. Does the federal government retain the prerogative to shape the lives of its Indian citizens in their capacity as "Canadians" for example? Moreover, given Indian governments are to exist within a state where power is currently concentrated within federal and provincial jurisdictions, how is Indian power to be aligned and harmonized with the power exercised by these other two levels? The Penner Report does not deal substantively with such questions, although it does not ignore them entirely either. Offering itself only as a broad blueprint for reform, the Report pushes off detailed jurisdictional questions into the future. In its view, resolution of such issues constitute the next phase in Indian policy development once reform leading to self-government is actually in place. The Report does state however, that all areas of jurisdiction to be controlled by Indian governments must be worked out through agreements with the other levels of government. Moreover, with
respect to some jurisdictions such as resource management and taxation, the Report points to some overlap and so encourages the development of agreements leading to joint governmental control (Penner Report 1983:64,65).

As to implementation of the Report, the committee recommended that immediate measures be taken to develop legislation which would; 1) require the federal government to recognize Indian governments accountable to their citizens; 2) enable the federal government to negotiate jurisdictions with new Indian governments; and 3) under the authority of Section 91(24) of the Constitution Act, 1867... allow the federal government to occupy all areas of competence necessary to permit Indian governments to govern themselves effectively and to ensure that provincial laws would not apply on Indian lands except with Indian consent (Penner Report 1983:142).14 The final and ultimate step the Penner Report recommends is that the government entrench the Indian right of self-government in the Constitution (Penner Report 1983:57).

Substantively then, the major contribution of the Penner Report is that its endorsement of Indian self-government marks the first time a Parliamentary committee has recognized a substantive aboriginal claim to a political right. This in itself is a significant advancement beyond previous government positions which were willing to recognize no more than the Indian right to title over land. What makes the Penner Committee's recommendations so remarkable however, is that their support of
the Indian position on self-government is in every respect unqualified. As such, the Penner Report represents an important coming together of Indian and Parliamentary views within the parameters of a group rights orientation.

On the surface at least, the government's response to the Penner Report appeared positive. Under House of Commons rules a Parliamentary Committee may require the government to respond to its report within a prescribed time, and the Penner Committee invoked this rule. Accordingly, on March 5, 1984 the then Liberal government made public its response to Penner which included the following statements:

The Special Committee recommended that the Government make an immediate commitment to constitutional entrenchment of Indian First Nation Government. At this time, the Government is seeking further clarification of the possible form and implications of entrenchment, particularly through discussions with representatives of Indian First Nations and in the ongoing multilateral constitutional process.

In the immediate future, the Government is prepared to proceed with the primary thrust of the Special Committee's, that the Government in concert with Indian First Nations, and in consultation with Provincial Governments, develop legislation to provide for the recognition of the status and power of Indian First Nation Governments (Government Response 1984:2).

With this the Liberal government had committed itself to the implementation of Indian self-government, at least through legislation, and possibly through the Constitution. In this sense, the Penner Committee functioned as the final catalyst which elicited a forthright commitment from government that Indian self-government would form the heart of the aboriginal rights constitutional talks and the core of legislation leading
to a new Indian policy. Yet, as we shall see in the next section, although the government has adopted the language of the general policy thrust of Penner, its continued commitment to liberalism effectively undercuts much of the Report's promise.

Nevertheless, in sum it can be said that the cumulative effect of the Indian lobby, the Nishga decision, and the Penner Report upon government has been considerable. From an Indian policy tradition shaped by individualist assumptions these three developments have succeeded in forcing the government to consider a policy option more compatible to a group rights orientation. Evidence for this shift is apparent in the undertaking of land claims negotiations and the government's general willingness to consider self-government as an aboriginal right in Canada's constitution. It is precisely to events such as these that Ponting points when he says that what has been set in motion is "a series of changes that have acquired a momentum--a sense of what has been called 'cumulative directionality'--that, sociologically and politically, is probably irreversible" (J.Rick Ponting 1986:401).

B) Indian Rights and Canadian Statecraft, 1982 and Beyond

It is on the basis of the developments we have discussed that Michael Asch notes that aboriginal peoples are closer than they have ever been to having their land and political claims explicitly recognized by the Canadian government (Asch 1984:10). Yet, despite the symbolic significance of the aboriginal rights constitutional provisions and the considerable promise contained
in the Penner Report's recommendations, many issues most important to Indians with respect to their rights remain unresolved. Questions relating to the authoritative source and jurisdictional scope of Indian governments as well as to the definition of the aboriginal rights in the Constitution are far from decided for example. There are numerous reasons for lack of resolution with respect to these issues. Many of these include practical concerns such as the increasing costs required to ensure the viability of Indian governments; lack of resolution with respect to the application of provincial and federal laws on Indian land; and the reluctance of particularly the provinces to have their authority diminished through jurisdictional realignments.\textsuperscript{15}

But perhaps the most basic obstacle to the resolution of Indian claims remains the overriding influence of liberalism. The government remains committed to a Canadian vision and strategy of statecraft shaped by the basic presuppositions of liberalism. This means in turn, that the government continues to place low priority on Indian "groupist" agendas. Still, given the need for a new Indian policy and the general distrust with which Indians regard federal proposals, the government is prepared to listen to Indian alternatives. In the end however, the best Indians are able to gain are reluctantly granted "concessions"; concessions moreover, regularly circumscribed by and subject to liberal conventions. Federal recognition of Indian claims then, often stands more as a pragmatic concession to groups sufficiently powerful to disrupt the political system than it
does to an "ideological" change of heart on the part of government.  

In what follows I will seek to highlight the "concessionary" character of Indian group rights by exploring the implicit liberal impulses which continue to shape governments' interaction with Indians and their claims. Because no document similar to the 1969 White Paper exists however, we will have to rely on the Section 37 aboriginal constitutional talks to provide us with clues sufficient to construct a case of the governments' current position. It is to these talks and the resulting proposals for constitutional amendment that I now turn.

1) Liberalism and the Section 37 Process

Although the Indian group claim for self-government constituted an important agenda item from the outset, it became the center of attention in the first ministers' conferences of 1984, 1985, and 1987. Douglas Sanders notes that Trudeau was a reluctant convert to the concept, willing to support self-government only because all other policy approaches with respect to aboriginal peoples had failed (Sanders 1986:71). Brian Mulroney on the other hand, leader of the Progressive Conservative party which formed the government in the fall of 1984, gained power in the period immediately following the Penner Report's strong legitimizing of the concept, and so his support was more forthright. Mulroney's view was that self-government would give "dignity" to aboriginal peoples (Sanders 1986:71).
Moreover, even though the federal government took the governmental initiative for placing self-government on the constitutional table, opposition from the provinces was never direct. All provinces supported self-government in one form or another. Even the "hard-line" provinces of Alberta and British Columbia were not opposed to self-government as such, but only to the form of "third-order" government which Indians were advocating. Thus, on the surface at least, the aboriginal constitutional conferences presented themselves to Indians as an important opportunity to win a significant concession from governments with respect to their core political claim.

Despite supportive rhetoric, both Trudeau's and Mulroney's opening statements to the conferences reveal that an unmistakeable liberal bias continues to slant the federal government's interpretation of Indians' political claims. A noticeable shift from the former government position of the 1969 White Paper is evident however. Neither use overtly liberal language to describe government intentions for example, but rely on mildly "groupist" formulations whenever possible. Moreover, open hostility to special status measures as discriminatory is absent, replaced by a position seemingly more amenable to Indians' ethnically exclusive agendas. Still, in several important areas liberal themes consistent with that of the 1969 White Paper persist. The influence of these themes in turn, are in large part responsible for shaping a governmental vision of Indian self-government considerably different from the Indian vision. The end result was that resolution on Indian self-government
claims could not be reached. The key theme here is the continuing ideological tension between the government's and Indians' understanding of the role and place of culture. Basic incompatibility at this level ensured that divergent positions would be developed by either side with respect to the desired economic and political place of Indians within Canada. In what follows I will examine the substance of these important areas of divergence and their implications for Indian self-government beginning with the theme of culture.

i) Views of Culture

A pervasive sentiment in the 1969 White Paper was that Indians' preoccupation with their own culture was more the result of a negative response to societal exclusion and less the result of Indian devotion to their own culture. From the statements of Trudeau and Mulroney it is clear that by the mid 1980s government opinion on this position had changed considerably. Both spoke respectfully of Indians' ability to maintain their cultures in the face of near overwhelming odds directed against them by a hostile environment. Moreover, both joined with Indians by stating that Indian culture was not only valuable, but ought to be enhanced and protected into the future. Said Trudeau:

If our aboriginal peoples are to preserve their heritage and keep their identity in our society, their cultures and languages must be preserved and enhanced (Trudeau 1984:151).

A year later Mulroney reinforced this position when he said:
In Canada we assume that our cultural and linguistic backgrounds and traditions will be respected, even cherished and enhanced. But Indian, Inuit, and Metis peoples do not have this assurance (Mulroney 1985:161). Mulroney's implication was that such assurance should be provided. The position of both then, was that far from being a negative factor, Indian culture contributed a unique dimension to what they take to be the configuration of the Canadian "mosaic" (Mulroney 1985:163).

While both were in support of enhancing Indian culture, there is also sufficient evidence in the comments of Trudeau and Mulroney to indicate that the government continues to view culture differently from Indians. As we have seen, Indians view their culture in inherently groupist terms. That is, the experience of being "Indian" is total and all-encompassing in which every dimension of life is woven into one dynamic whole. "Individuality" in turn, flows out of the experience of one's place within this cultural whole. So being "Indian" is not solely about one's use of language, or practice of religion or custom for example. Rather, "Indianness" is about a total experience of a distinct way of life which integrates languages, economies, social and political organizations, customs, and values into a total culture. It is this "total cultural experience" that Indians wish to retain and enhance into their future.

Government on the other hand, persists in viewing culture in largely liberal terms. This continued dominance of liberalism can in part be related to the government's understanding that
Indian culture forms an integral part of the Canadian mosaic. As a societal ideal, the cultural mosaic is influenced by at least two interrelated liberal assumptions. The first is the assumption that cultural diversity comes to expression only within the "private" domains of discrete communities. "Public" life conversely, is free of "cultural" influences, serving instead as a supposedly neutral framework for the democratic regulation of societal life. Applied to Indians, this means that government views "Indianness" as a largely "personal" affair with minimal formative power for the shaping of distinct public expressions of life.

Culture relativized to a function of privacy is further combined with the second liberal assumption; the sanctity of individual freedom. Central here is the idea that while communal, culture exists primarily for the achievement of meaning by free individuals. Individuals must be free to choose those cultural expressions, whether language, religion, or form of education, which they believe will best assist in the attainment of their self-fulfillment strategy. With self-fulfillment through freedom of choice thereby attained, the natural and desired corollary is the achievement of communal and individual self-worth. For it is on the foundation of self-worth attained in private life that individuals are able to confidently engage with others in the public arena. The mosaic ideal then, represents the communal results of the assortment of individual cultural choices that each Canadian citizen has the right to make in freedom.

It is against this background that Trudeau and Mulroney's
comments on Indian culture gain their meaning. Both define culture rather narrowly for example, excluding public institutions such as government, businesses, and social organizations from their lists. Instead, the important cultural expressions named are those which are typically "ethnic" including, languages, arts, custom, and (a possible exception) education (Trudeau 1984: 154). The underlying assumption is that specifically Indian qualities are nurtured and come to expression only within these less public (i.e. private) forums. In addition, each ethnic experience warrants protection because, in Trudeau's words, they can restore to aboriginal peoples, "the pride of race and sense of self-worth that is theirs by right" (Trudeau 1984:155). Or as Mulroney puts it, cultural identity protected on "...the Indian reserve, the Metis settlement, and the Inuit community must remain places of retreat and spiritual renewal" so that "a renewed sense of self-assurance and self-worth...will enable Indians, Inuit, and Metis to play...a unique and special place in the national mosaic" (Mulroney 1985:163). The orientation of these comments indicate that for Trudeau and Mulroney, cultural traits function foremost as achievements by which "self-worth" is procured. Neither recognize that for Indians, it is their distinctive culture which acts first of all to instantiate their way of life as worthwhile.

Culture relativized to an instrumental function of self-worth was highlighted in at least two notable instances in the constitutional conferences of 1983 and 1984. A major premise of the government's position appeared to be that if Indians believed
self-fulfillment was best attained through the development of their cultural heritage, Indians must be given the freedom to develop these cultural traits. The stress here however, was on Indians' freedom to act as they desired and not on the importance of Indian cultural heritage as such. For example, in the 1983 conference an Indian chief suggested that Indians ought to possess a "group right" to a communal citizenship definition process. Trudeau responded by saying, "we are all citizens of Canada" and "whether within this country we can form into groups or tribes or clans or extended families...is guaranteed by the constitution, the right of association..." (Schwartz 1986:30). The implication here is that in Trudeau's view, the individual right to freedom of association was sufficient to procure the development of vibrant Indian cultures. What his position failed to take into account was the possibility that the survival of Indian culture might depend upon a group right to exclude those who assume they can freely associate (as in the case of a non-Indian attempting to gain entry into an Indian community).

The emphasis on freedom as central to cultural activity emerged in the 1984 constitutional conference as well. In the preamble to a proposed political accord, the federal government insisted that among other things, in addition to educating their children in an aboriginal language, aboriginal schools must educate in English or French so that the children "may be equipped to live in the cultural milieu of their choice" (Schwartz 1986:98). The implication in this case was that an Indian group right to retain cultural distinctiveness must be limited by the
right of an Indian child to exercise choice in whether to live in "mainstream" society or the community of her birth. Behind this lies the liberal ideal that each person must be properly educated so as to have at her disposal a wide cultural spectrum from which to make choices in relation to the procurement of her self-fulfillment strategy.

What these examples point to is the ongoing tendency within government to view the experience of being Indian as a largely personal affair. Indian qualities are personal attributes freely chosen against a backdrop of diverse cultural wealth, for the sake of individual betterment. To protect and nurture Indian cultural qualities is important then, for it is through them that Indians attain the necessary self-worth to move with confidence in broader Canadian public life. Thus, Indian control over their own languages and education is a perfectly acceptable strategy according to government. For nurturing Indian qualities within these forums only adds a worthy contribution to the configuration of the Canadian cultural mosaic.

ii) Economic and Social Welfare

The differences between the government and Indians' interpretation of culture lead to important discrepancies between their respective understandings of the core "problems" and potential solutions embodied within Indian claims. Indians identify the "problem" as the survival of their distinct way of life. Accordingly, Indians pose their claims as an interlocking
cultural composite of group demands including not only ethnic, but political and economic functions as well.

Government on the other hand, fails to draw this close affinity between Indian culture and Indians' political and economic demands. For having relegated Indian culture to a function of "privacy", it is as though government believes the "Indian" content of Indian claims can be adequately dealt with in the specifically "ethnic" dimensions of Indian rights. The result is that the distinctive cultural content which forms the substance of Indians' "public" claims is lost, and so government tends to interpret the economic and political problems of Indians not in groupist but in liberal terms. In the government's view then, the "problem" is not foremost about the loss of distinct Indian economic and political expressions, but about the lack of economic and political equality Indians enjoy relative to that enjoyed by other Canadians. With the problem thus defined, a thorough going liberal solution also presents itself; create economic and political measures which will empower Indians in similar ways and to equal levels of all other citizens. In what follows I will examine the key dimensions of the government's proposed solutions beginning with that of economics.

In its analysis of Indian claims, government emphasizes the central importance of addressing Indians' severely disadvantaged economic and social position as a first concern. Both Trudeau and Mulroney's comments begin for example, with a litany of social indicators which testify to the severity of the Indian situation. With economic and social disadvantage thereby
highlighted, the immediate responsibility of government is to eradicate the disparities which exist between Indians and other Canadians. Says Trudeau:

As a small but significant segment of our population they (aboriginal peoples) have suffered and for the most part continue to suffer acutely from economic disadvantage, social degradation, and political obscurity. But perhaps the greatest injustice is the hard fact that their condition has been almost totally ignored by the mainstream society, including its governments (Trudeau 1984:148).

Behind Trudeau's statement rests the liberal ideal that all citizens are entitled to a fair share of a society's resources. Persons can hardly pursue their chosen ends in life without adequate provision of material resources to make this pursuit possible. Thus, Trudeau's point is that justice requires Indians be supplied with basic needs such as housing, schools, social services, and so on, to a level equal to that enjoyed by other Canadians. Moreover, in Trudeau's view, it is a basic responsibility of governments to "help those who need help the most". So "...federal and provincial governments, in close contact with the aboriginal peoples, must work together to put in place the socio-economic infrastructures that will enable them to fulfil their reasonable expectations as citizens of Canada" (Trudeau 1984:154).

The immediate consequence of focussing on Indians' disadvantaged state as an area of central concern is that government tended to relativize and down-play the central importance Indians placed on their political claims. Indeed, government perceived the political claims and economic and social needs of Indians to be separate issues. In its view,
economic and social parity must be gained alongside the occurrence of discussions intended to define the scope and nature of Indian rights. In Mulroney's words:

In seeking constitutional change, I recognize that this alone cannot resolve social and economic problems. Constitutional change is not enough to reduce disparities and correct injustices. Rather, improvements to the economic and social circumstances of aboriginal peoples must be pursued at the same time as changes to our constitution are sought to define the rights of aboriginal peoples (Mulroney 1985:161).24

Mulroney is right of course, in stating that revisions to constitutional documents do not in themselves procure economic and social change. Nevertheless, his propensity to view Indian disadvantage as a comparative issue seems to preclude the possibility that Indians' economic and social problems may be inextricably intertwined with the issue of their constitutional rights.

In response to government, Indians would not deny that as a group they suffer economic and social disadvantages. Moreover, they would be in full agreement with government that all forces which inhibit a full and meaningful economic and social existence for Indians must be eradicated. Indians and government differ however, with respect to emphasis. Whereas government emphasizes "parity" as a first solution, Indians emphasize that solutions must be developed as integral components of their communal identity. In this sense, adequate economic and social provisions form a crucial dimension of Indians larger political claims to group rights. It is not sufficient for example, for Indians to have access to schools, social services,
and the judicial system to a level equal of that enjoyed by all other Canadians. Rather, Indians emphasize that their communal identity is dependent upon the creation of an adequate spectrum of economic, social, and other institutional possibilities tailor made to further their distinct identity. In their view then, the tendency of government to isolate economic and social questions from Indians more broadly conceived concerns for group rights, creates the illusion that these are issues which can be treated in distinction from one another.

iii) Political Empowerment

Culture relegated to an activity of free individuals, coupled with economic and social parity determined as the most pressing Indian issue, contribute significantly to a governmental reinterpretation of the Indian political claim. Moreover, it is largely due to the influence of this reinterpretation that both Trudeau and Mulroney were able to offer unequivocal support for Indian claims to self-government. Lack of ambiguity in the support of both is evident from the following statements for example:

The government of Canada remains committed to the establishment of aboriginal self-government, and it is my impression that the provinces are of the same mind. We are not here to consider whether there should be institutions of self-government, but how these institutions should be brought into being (emphasis mine) (Trudeau 1984: 152).

Really, colleagues what we will be discussing over the next two days is greater autonomy for the aboriginal peoples of Canada. All would agree, I think, that self-government is a worthy objective...What we are really
seeking to do is make self-government a practical reality for Canada's aboriginal peoples (Mulroney 1987:250). It is with respect to the question of how and by what criteria institutions of self-government for Indians gain justification however, that discrepancies between the Indian and government positions emerge.

Government justifies Indian self-government from within liberal democratic assumptions. Because the most pressing current issue facing Indians is the fact that they are disadvantaged, strategies must be developed to ensure that they gain economic, social, and political equality with other citizens. What better way than if Indians take this responsibility upon themselves, particularly given that governmental initiatives to rectify these disparities have failed in the past. Political empowerment of individual Indians and their communities as a strategy for securing equality is not only consistent with liberal principles, but may also be precisely what is required to turn the desperate conditions of Indians around. In the rhetoric of government then, self-government for Indians stands most fundamentally as a democratic right. Successful negotiations should ensure Indians full and equal status in the Canadian state with the concurrent individual sense of pride and self-worth accruing from that status which all other Canadian citizens enjoy as a matter of right. Trudeau and Mulroney state this as follows:

Aboriginal communities have rightful aspirations to have more say in the management of their affairs and to exercise more responsibility for decisions affecting them. These
functions are normal and essential to the sense of self-worth that distinguishes individuals in a free society (Trudeau 1984:152).

You know, colleagues, there is nothing novel or startling at all or unique in self-government. It is simply one expression of Canada's democratic tradition. In their quest for self-government then, the aboriginal peoples ask only to be treated as Canadians. Canada's Indian, Inuit, and Metis want to enjoy a full role in Canadian society, one based on equality and mutual respect (Mulroney 1987:252).

Justifying Indian self-government from liberal values however, has implications for the government's vision of what general form Indian governing institutions should assume. For emphasizing political equality comparatively understood, at the expense of "Indianness" as a broadly integrative cultural concern, means government fails to appreciate the urgency Indians attach to political pluralism as a requirement for the protection of their distinct way of life. Instead, government emphasizes models which will fit into the current democratic federal system. In its view, restoration of communal and individual Indian initiative depends upon a meaningful integration of Indian communities into the liberal democratic order. By politically integrating Indian communities into full though separate democratic partnership in the political process, it is the government's view that the Indian capacity to achieve equality on other fronts will be greatly enhanced. Indeed, Mulroney makes this point so emphatically that by implication it seems he holds Indians lack of integration as an important contributing factor to their generally disadvantaged state. He says:

The Government of Canada rejects any notion that aboriginal governments will stand separate and will stand apart.
Canada's aboriginal peoples must be allowed to enjoy all the rights and benefits derived from being Canadians. The Government of Canada will support any proposal that respects these concerns. We want to ensure that Canada's Indian, Inuit, and Metis are given the means of establishing their rightful place within Canadian society. In short, we welcome self-government for we feel it mirrors the democratic principles which have helped shape Canada (emphasis mine) (Mulroney 1987:254).

This emphatic denial of all solutions which entertain notions of Indian separateness appear to effectively deny any "groupist" solutions Indians have proposed to rectify their disadvantaged state. Indeed, it is the overwhelming sentiment of government that Indians form an aggregate of similarly disadvantaged citizens whose political obscurity can be eradicated through the granting of democratic measures previously denied. Moreover, having thus raised Indians to a position of political self-reliance, it is government's belief that the proper forum for the communal retention and development of Indian language and culture will also be secured. For pride and self-worth generated by an equitable position within the democratic alignment of Canadian institutions can in turn produce a level of communal self-confidence with respect to the expression of specifically "ethnic" functions as well. It is self-assurance of this sort that Mulroney points to when he says "...it will enable Indians, Inuit, and Metis to play their full roles as active and important contributors to the national economy and as holders of a unique and special place in the national mosaic" (Mulroney 1985:163).

By supplying a political right for the exercise of certain
democratic powers by a visible minority, a form of distinct self-government is no doubt created. This is a far cry however, from the group rights position for which Indians are advocating. Exploring some of the political consequences of these seemingly incommensurate ideological orientations is a task I turn to next.

2) Section 37; Implications for Indian Self-Government

i) The Constitutional Debate

The Section 37 talks on aboriginal constitutional matters were preoccupied with one concern; the interpretation of the "existing aboriginal rights" named in Section 35(1). Because governments and Indians brought vastly different interpretive criteria to this process however, definition proved elusive and the debate for a constitutional amendment was polarized from the outset. This polarization can in part be attributed to the influence of ideological factors. As Ponting notes, the cultural incongruity between the negotiators from the two sides was such that they regularly spoke "past" each other at the constitutional table (Ponting 1985:3). That is, models of self-government espoused by the Indian leaders and government officials were so firmly grounded in their respective ideological orientations, that accommodation to one or the other view proved exceedingly difficult.

Yet interestingly, in actual debate and proposed constitutional amendments, justification of positions through reference to
ideology was muted. Instead, ideology played the more circumscribed and largely hidden role of shaping basic preconceptions. Actual debate was cast in the more political language of whether and how Indian self-governing institutions should be accommodated within the current Canadian political power arrangements. In my judgement however, this emphasis on power does not detract from the importance of ideological differences in shaping the debate. It simply means that with respect to complex issues such as Indian self-government, discussion regularly occurs at different levels. This lack of resolution on ideological and political questions was symbolized by the political controversy over whether "existing rights" included an "inherent" or "contingent" right to Indian self-government.

On the one end of the constitutional scale, Indian leaders defended "existing rights" as an all-encompassing set or "full box" of rights. These existing rights are inherent they say, because they were never surrendered or given up by their predecessors (AFN 1987:3). Indians maintain that self-government is one such right never surrendered. Because the source of their rights lies not in British or Canadian law but in the simple reality of their own indigenous nationhoods, Indians argue it is not within the legitimate authority of Canadian governments to "grant" Indians a right to self-government. The right is free standing and so what is sought is a binding recognition by governments of this inherent Indian
right to be self-governing. Once recognition was explicit, specific powers and financial arrangements could be discussed through a process of negotiation (Sanders 1986:68). It is this position that Indian leaders held to emphatically throughout the constitutional conferences of 1984, 1985, and 1987.27

On the other end of the constitutional scale were the provincial and federal representatives who had been treating Section 35 as without content. In their view, parliamentary supremacy was not affected by Section 35 nor by any other "free standing" right Indians might name (Sanders 1986:68). Instead, "existing rights" were those rights which governments offered to recognize and which were contingent or subject to federal and provincial ratification. In this respect, any right to self-government would be procured as a delegated power from the higher authority of the federal and provincial legislatures. As such, self-government for Indians would be a matter of governmental policy in which rights are created and not recognized. Implicit here was a clear rejection by governments of a free standing Indian right to a "third order" of government within Canada.

Governments were unwilling to recognize a free standing Indian right to self-government for at least two reasons. The first, related to ideology, was the governments' inability to comprehend how constitutional status would rectify what government viewed as Indians' most pressing problem; their disadvantaged economic, social, and political state (Calder 1988:
The second reason is related to power. Constitutional recognition of Indian governments as a distinct order would place these governments beyond the control of the other two orders (federal and provincial) except by means of constitutional amendment (Sanders 1986:73). As William Calder, a Saskatchewan delegate to the conferences of 1985 and 1987 argues:

Governments appear to hold the present division of section 91 and section 92 powers to be an essential part of the Canadian political fabric. By implication, departing from this critical "context of Confederation" by establishing separate powers for aboriginal governments might threaten the integrity of the nation itself. Reinforcing this view, governments insisted throughout the talks that proposals would be considered only within "the context of Confederation", an apparent code term for existing distribution of powers (Calder 1988:77).

The core impetus behind this constitutional "conservatism" is the provincial expectation that any powers gained by Indian governments will generally be at their expense (Ponting 1985: 77). Questions relating to financial costs and provincial loss of land (and subsequent revenue) for example, weigh heavily in the provincial determination to exercise extreme constitutional caution. For this reason Sanders notes "the provinces could be expected to oppose any constitutional amendment which will take power from them" (Sanders 1986:75). If compelled however, provinces wish to relinquish power under terms and conditions as favourable as possible to their own position. Maintaining the upper hand in the negotiation process then, precludes the attainment by Indian governments of constitutional parity with the provinces.

The cautionary orientation of governments is fully reflected
in the federal government's proposed constitutional amendments of 1984, 1985, and 1987. The 1984 proposal on Indian self-government for example, reads as follows:

35.2 Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority...

(b) the aboriginal peoples of Canada have the right to self-governing institutions that will meet the needs of their communities, subject to the nature, jurisdictions and powers of those institutions, and to the financing arrangements relating thereto, being identified and defined through negotiation with the government of Canada and the provincial governments; and
(c) the government of Canada and the provincial governments are committed to participating in the negotiations referred to in paragraph (b) and to presenting to Parliament and the provincial legislatures legislation to give effect to the agreements resulting from the negotiations.28

Rhetorically at least, this proposal attempted to bring together the rights advocated by Indians with those proposed by the provincial and federal governments. Substantively however, not much of a right is recognized at all for its content remains contingent on the negotiated and legislated agreements procured with the two levels of governments whose authority at the same time is not to be lessened. Moreover, governments are not bound to agree to anything but must only participate in negotiations. If by chance an agreement is attained however, ratification is to occur through legislation (which is subject to legislative appeal). In other words, negotiated agreements do not receive any form of constitutional protection whatsoever. Clearly, this proposal was vastly removed from the aboriginal position and so was subject to their forthright and vehement rejection.29
The federal constitutional proposals of 1985 and 1987 leaned more favourably towards the aboriginal position but essentially remained variants of the 1984 federal draft. In both cases the principle of an aboriginal right to self-government would have been entrenched, contingent on negotiations with federal and provincial governments to determine appropriate jurisdictional arrangements and the specific content of the right. As with 1984 also, the drafts of 1985 and 1987 constitutionally committed governments to no more than a process of negotiation with Indians, with no guarantee that tangible benefits would result. Unlike 1984 however, the drafts of 1985 and 1987 did stipulate that any self-government negotiations resulting in agreement and approval from the provincial and federal governments would receive constitutional protection. An added stipulation of the 1987 draft was that, where appropriate, the Canadian Charter of Rights and Freedoms would apply to all governing bodies of Indian first nations.30

Differences between the federal government and Indian positions received rather limited attention in the conferences of 1985 and 1987. Rather, because a constitutional amendment requires the consent of at least seven provinces comprising fifty per cent of the national population, the federal government was preoccupied with gaining approval for its proposal from provincial representatives first. Yet here too agreement proved unattainable. In 1985 for example, the provinces of British Columbia, Alberta, Saskatchewan and Nova Scotia expressed concern that the federal
proposal offered too much. Moreover, Saskatchewan refused to support a proposal which involved some judicial enforceability (Sanders 1986:70). In response, the federal government modified its proposal by removing from the amendment the commitment to negotiate and placed this in a political accord instead. Despite adjustments however, British Columbia and Alberta continued to withhold support on the grounds that the federal proposal still held the appearance of offering Indians a third order of government.

In the end however, Boldt and Long note that although the differences between provincial and federal leaders appear considerable, they are in fact superficial when viewed against the fundamental disagreements which continue to divide aboriginal peoples and the Canadian governments (Boldt and Long 1988:17). For even those governmental leaders who are willing to support an aboriginal right to self-government, do so on the basis that this be an increased delegated form operating within the current provincial-municipal alignment, and not the "inherent nation-like" status for which Indians had been advocating. Viewed against these differences, Boldt and Long can only conclude that for Indians at least, "the constitutional process under Section 37 has ended in frustration and failure" (Boldt and Long 1988:51). Admittedly, the conferences did provide an extremely high profile political arena for the exchange of views between aboriginal and governmental leaders thereby providing a political legitimacy to Indian issues never enjoyed before. Nevertheless, the exchange did not produce any significant change. As Gibbons notes they "may have done
more to clarify points of disagreement than to contribute to any sense of convergence or consensus" (Gibbons 1986:313).

ii) The Legislative Alternative

With the imminent failure of the constitutional conferences emerging as a distinct possibility after 1985, the federal government initiated a parallel "legislative" route for individual Indian bands to secure self-governing powers by means of what it called "community-level negotiations". In the federal government's view, if concrete self-government agreements could be secured, a concept currently perceived as vague and ill-defined would receive tangible content and thus perhaps alleviate the fears of provincial governments (Sanders 1988:168). Consequently, the federal government has developed guidelines for self-government negotiations which offer a range of powers potentially transferable to Indian communities from federal departments under mutually satisfying conditions. Issues the federal government indicates a willingness to discuss include, the legal status of Indian communities, the potential structure and procedure of Indian governments, questions relating to membership and management of lands and resources, gaining clarity on possible financial arrangements, determining the application of the Indian Act, and outlining additional powers Indian communities might exercise. Thus potentially at least, it would appear that negotiation holds the promise of securing greater on-reserve authority and a degree of local institutional
pluralism for Indians (Boldt and Long 1988:50).

Yet, Indians remain wary of community level negotiations for the following reason. The basic model of Indian government which the federal and provincial levels are willing to recognize is that of a municipality, co-existing as a junior partner in the current federal-provincial liberal democratic order. Moreover, the federal government has made it clear that the development of Indian governments will occur under its close supervision, subject to its criteria and the approval of cabinet. Included here are stipulations that Indian governments must not disrupt the current division of powers between the federal and provincial governments; that federal and provincial laws of general application will continue to apply unless otherwise stated; and that self-government must be compatible with the established principles, jurisdictions, and institutions in Canada (including conformity with the Charter and recognition of redress rights for citizens) (INAC 1988:1).

Under these conditions Indians find it difficult to believe that they would have access to sufficient power necessary to maintain and develop their distinctive communal expression of life. For as municipalities, Indian governments would be bound to federal rules, a condition Indians fear would offer them little political security. It is conceivable for example, that under these arrangements the federal government could revoke the Indian right to self-government in the future (Purich 1988:216). Moreover, if federal rules include adherence to democratic
principles as the above conditions hint they might (i.e. Charter application), it is not clear that Indians would be at liberty to develop their communities in ways consistent with their group orientated world view. In community situations where group rights conflict with those of individuals for example, the federal government may insist that individual rights take priority.

Added to this, it is in the nature of a municipality to be principally concerned with the non-legislative task of community and social service delivery (Sanders 1988:153). By implication then, if Indians assume a municipal self-governing model this raises serious questions about how extensive Indian powers will be. Will Indians have full control over their own education, justice procedures, economic and industrial policies for example, or will they merely act as the administrative arm of the federal government? In addition, if Indian governments were to function in a primarily administrative capacity, it is certainly questionable whether Indians would possess the authority to re-align their delivery of services in ways more harmonious to their traditions. In certain instances for example, the federal government might insist that if Indians are to deliver services they can do so provided they adhere to specific democratic principles (e.g. delivery of legal services contingent on the right of redress for individual citizens).

At this juncture however, it is virtually impossible to determine what the final outcome of Indian self-government negotiations will be. To date, only one agreement leading to
legislation has been ratified (with the Seschelt band in British Columbia in 1987), but as Sanders notes the goals of this band were fairly specific (related primarily to additional management powers over its land so as to get on with economic development) that it cannot be taken as a useful test case. Thus the question remains: could municipal style governments provide Indians with sufficient political latitude to maintain their distinctive way of life?

Although we can only speculate at this point, Menno Boldt and J. Anthony Long signal the following danger. They say it is not sufficient that Indians merely gain increased control over existing governmental structures. For increased control without a fundamental and systematic reorientation, means Indians will be operating structures largely alien to their own culture. In their view, "the challenge of the future is to transform existing institutions from Euro-Canadian models to models compatible with Indian cultural values" (Boldt and Long 1988:54). To do anything less is to run the serious risk of being "institutionally assimilated". By this they mean that insofar as Indians pursue municipal self-government models no more distinctive than those currently operating in Canada, they will quickly become junior members in the federal-provincial power alignment and thereby also remain subject to the major liberal-democratic conventions. Indeed, it is their view that institutional assimilation is not merely the potential outcome of a choice Indians must undertake, but is also the deliberate policy alternative of the current federal government. This
would not be entirely surprising given our own examination has indicated that the ideological presuppositions governments have brought to bear on their political dialogue with Indians results in a governmental willingness to increase Indian power but not in a form which would encourage Indians to "stand apart". That Indian structures ought to be distinct from those of mainstream society however, is an important and undisputed fact according to Indians. Let me indicate this by means of a few brief examples.

As we have seen, Indians are suspicious of municipal style governments because they exist at the prerogative of superior governments and exercise authority which is both limited and delegated. What is less well highlighted however, is that the above constraints are in turn compounded by the fact that the structural principles by which municipalities exist are at variance with the political traditions of Indians. Municipalities for example, elect mayors and aldermen and do so by means of adult suffrage. Moreover, each adult possesses the right to seek elective office (Tennant 1985:325). At the heart of municipal structures then, stand the individualistic premises of elections, political equality, and access to public office. Paul Tennant notes that when applied to aboriginal communities, these premises tend to weaken the traditional emphasis on communal obligation and accountability. Also, they undercut the Indian notion that political power should be exercised by elders possessing exceptional experience and wisdom (Tennant 1985:325). As a result of these and other factors then, Boldt
and Long urge Indian leaders not to consider municipal governments as a prototype, but to develop alternate models more integral to their traditional experience instead (Boldt and Long 1988:53).

Justice is another area in which Indian leaders have highlighted significant incongruities between Canadian law and Indian tradition. Important disparities noted include differing strategies relating to dispute resolution, wrongs committed against community, and resolution of family matters, particularly where children are involved (Purich 1986:218). Here the essential difference emphasized is that the Canadian legal tradition operates out of highly individualistic assumptions, while the Indian tradition employs a more directly community based strategy. With respect to dispute resolution for example, the favoured Indian strategy has been to avoid punishment of the individual guilty parties and employ instead a process of mediation in which interested community members take active part for the intended aim of restoring community harmony (Purich 1986:218). Where mediation fails thereby raising the necessity of punishment, a favoured Indian practice has been that of community banishment. The emphasis here then, is not on loss of individual freedom so central to the punishment strategies of the Canadian legal tradition. Rather, Indians practice exclusion because denying a person community membership is the ultimate form of punishment given that in the Indian tradition community constitutes the source from which individual identity and well-being is defined and sustained. If Indians
remain municipalities under the federal government's supervision, Indians suspect they will remain largely subject to Canadian legal conventions because they will lack the power and legal standing to develop alternate judicial practices. For this reason Indians speak of their need for relatively independently exercised self-government powers.

Indians have also expressed a great deal of concern over the potential impact of the Charter of (largely individual) Rights and Freedoms on their traditional "groupist" way of life. We have seen that Section 25 of the Charter provides courts with the instruction that they must construe the Charter with sensitivity to the distinct legal and cultural position of Indians within Canada. Yet as Schwartz says, this does not exempt Indians from the Charter's application. All Section 25 does is instruct the courts that the Charter must be applied sensitively. In Schwartz's words; "The courts may still find that a particular right of an aboriginal group is inconsistent with the Charter, and thus invalid, where it would betray the letter and spirit of the Charter to do otherwise" (Schwartz 1986: 393). Indeed, we have already observed the government's insistence that if Indians are to gain institutions of self-government, they must function in accordance with the Charter's stipulations (Constitutional proposal of 1987 and INAC Parameters for Self-Government Negotiations, 1988).

The federal government's indication that the Charter will apply in some form to aboriginal governments is, in part, based upon its general commitment to the liberal democratic
ideology. Some would argue for example, that even if self-governing, Indians will remain Canadian citizens and because the Charter has become the document which defines Canadian citizenship, to limit its applicability on Indians would be equivalent to diminishing or excluding them from their rightful position as citizens (Ponting 1985:5). In this way, individual Indians' right to membership in both aboriginal and "mainstream white" society will be protected and enhanced. Others, fearing the potential vulnerability of individuals in a "groupist" environment, insist that the Charter apply so as to protect individuals against likely abuses suffered at the hands of the group. Here specific situations named are the position of "outsiders" or visitors who, because they are not members of the community, will lack the political voice or influence to protect themselves from unwarranted discrimination or mistreatment (Schwartz 1986:394). In addition, because many Indian communities are small, some fear political authority will be highly concentrated in the hands of one or more factions which in turn will dominate the rest. Moreover, because many will have a personal relationship of friendship, kinship or enmity with those in the controlling faction, the distribution of government benefits may occur most unequally (Schwartz 1986:395). The overall contention then, is that certain features of Indian governments provide the likelihood that some individuals may be treated unfairly and so the Charter should be imposed in order to limit some of these risks.

Indians on the other hand, highlight the potentially
detrimental ramifications of the Charter's application to their
governments. One fear that Boldt and Long name is the possibility
that disgruntled members of aboriginal communities may "exploit
the Charter's provisions to their individual advantage, thereby
undermining existing group norms" (Boldt and Long 1985:171).
More serious yet however, is the Indian fear that the Charter
may undermine any meaningful expression of specifically group
based Indian government structure. For the Charter requires
that all Canadian governments be based on the democratic principles
of individualism. If such principles are applied to Indian
governments, it will be exceedingly difficult to develop social
structures based on traditional Indian values. The Charter's
prohibition against racial discrimination could also prove to
be a difficulty for Indian governments. If the courts ruled
out Indian ancestry as a prerequisite for community leadership
on the basis that this was discriminatory for example, Indian
control of their own institutions could be jeopardized (Boldt
and Long 1985:172). The point is for Indians then, that although
they want constitutional protection, they believe this is best
attained if their group and not individual rights are emphasized.
In the final analysis argue Boldt and Long, Indians "assert
that the doctrine of individualism and inherent inalienable
rights, on which the Charter rests, is not part of their cultural
heritage, serves no positive purpose for them, and threatens their
integrity and survival as a unique people"(Boldt and Long 1985:173).
The implication of the Indian position then, is that
because the Charter is biased in favour of individualism, it
does not contain the overarching regulatory principles by which
diverse political realities within Canada can be assured of
accommodation and adequate protection. Indeed, it is the Indians'
view that in its current configuration, the Charter cannot help
but abrogate and destroy important group dimensions of Canadian
life. But this raises the important question of what alternative
is available if the Charter is ill equipped to define Canadian
citizenship? Can a society in which fundamentally divergent
ways of life co-exist, construct an overarching framework to
which all forms can appeal and expect mutually satisfying results?
This is a difficult question for which there is no easy answer.
Perhaps the best that can be hoped for in the Canadian situation
is a revised Charter, less liberal in orientation, which gives
more explicit recognition to the rightful claims of groups.

The above examples, though few, do indicate that in the
exercise of defining and developing content for Indian self-
government, Indians and governments bring vastly different
assumptions to bear on the process. Consequently, little by
way of developing a clear conception of what form Indian
governments are to take has thus far been accomplished. What
has been established however, are the political parameters
within which the discussion is to take place. In response to
Indian claims for self-government, governments have indicated
a willingness to offer no more than a limited form of cultural
pluralism combined with "administrative participation in a
rather narrow range of jurisdictional spheres". The result Ponting notes, "is that having elevated their constituents' expectations to symbolically far loftier heights, aboriginal political leaders find little political mileage and even less autonomy and security in such mundane proposals..." (Ponting 1985:7). For the moment then, each side is unwilling to accommodate any further to the philosophical and related political orientations of the other. The consequence is a virtual stalemate.
Endnotes

1 As quoted in J. Rick Ponting (ed.), Arduous Journey: Canadian Indians and Decolonization, Toronto, McClelland and Stewart, 1985, p. 400.


3 Dependence on the federal government was not without its problems however. Besides being subject to the dictates of conditional grants, Indian organizations also became increasingly bureaucratized and in so doing took on the characteristics of typically "white" political structures. The result was a credibility problem with their own constituency who became suspicious that their organizations were more closely allied with government priorities than with those of the grass-roots members. See J. Rick Ponting, op. cit., 1985, p. 39.


5 The various players and positions contributing to the 1973 Nishga decision are explicated in Michael Asch's Home and Native Land, op. cit., pp. 46-53.

6 A detailed analysis of the Musqueam decision can be found in the following two unpublished papers; Alan Pratt, "The Musqueam Case and Some of its Implications", November 1984, and Douglas Sanders, "The Musqueam Decision: A Confirmation of Indian Rights", November 1984.

7 For a useful history of comprehensive claims negotiations to 1984 see Michael Asch, op. cit., pp. 64-72.

8 The Council of Yukon Indians and Dene/ Metis both signed agreements in principle in the fall of 1988. Negotiations within the agreements will continue with the intention that if negotiations are completed to the satisfaction of all parties involved, ratification will occur in the next two years. Four other comprehensive claims are currently under negotiation including those brought forward by the Nishga (B.C.), the Tungavik Federation of Nunavut (N.W.T.), the Labrador Inuit Association, the Counsell Atikamek-Montagnais (Quebec). Waiting in the wings are 15 other land claims.
Ottawa has accepted for negotiation, many of which are from B.C.

The seven committee members, all from rural ridings, were as follows: Keith Penner, Liberal, Cochrane-Superior (Ont.), Stan Schellenberger, P.C., Wetaskiwin (Ab.), Warren Allmand, Liberal, Notre-Dame-de-Grace-Lachine East (Que.), Jim Manly, N.D.P., Cowichan-Malahat-The Islands (B.C.), Frank Oberle, P.C., Prince George-Peace River (B.C.), Raymond Chenier, Liberal, Timmins-Chapleau (Ont.), Henri Tousignant, Liberal, Temiscamingue (Que.).

Representing Indian organizations were Roberta Jamieson, Assembly of First Nations, Ex officio member, Sandra Isaac, Native Women's Association, Liaison member, and Bill Wilson, Native Council of Canada, Liaison member.

For example, the Royal Proclamation made clear that; 1) no-one except a representative of the sovereign was authorized to purchase Indian lands; 2) the formalization of the transfer must be made by an authorized representative of the Indian group; 3) the transfer must take place at a public meeting attended by the other members of the Indian group; and 4) that the several nations or tribes with whom the Crown was connected must not be molested on lands set aside for them as their hunting ground. See Michael Asch, op.cit., pp.57-58.

In this respect, Indians' understanding of themselves as "nations" has close parallels to the self-understanding of Quebec. For a comparison of the two and a discussion of the current political measures Quebec enjoys in order to protect its distinctive character, see Michael Asch, op.cit., pp.74-88.

If primary allegiance of Indians is to be vested in their respective Indian governments as these wide ranging powers indicate it would be, the question is raised of what precisely the status of Indians' allegiance to Canada and their Canadian citizenship will be. Why remain part of the Canadian state if loyalty to it is minimal and at best secondary? Here we do well to remember that if not primary, Indian loyalty to the federal level of power does remain considerable, if for practical reasons alone. For it is incumbent upon the federal government to protect and uphold Indian treaties, to negotiate land claims, and transfer substantial sums of money for development of infrastructure on Indian lands, to name a few examples. If separate states however, federal responsibility for the livelihood of Indian nations would likely be minimal. Nevertheless, this issue of allegiance is not peculiar to Indians themselves but is part of an ongoing Canadian debate. Power between the federal and provincial
governments has never been fixed but is subject to ongoing adjustments often because of this very issue. Various positions taken on the Meech Lake Constitutional Accord stand as a testament to the current round on this very question.

14 The Penner Report argues that the federal government should occupy all areas of competence under section 91(24) in order to deflect possible conflict from the provinces onto the federal government instead of Indian governments as power is transferred from one jurisdiction to another. For some powers Indians wish to exercise are currently held by the provinces (e.g. those reserved by section 92 to the provinces which in the absence of federal legislation also apply to Indians). In the likelihood that the provinces relinquish their powers to Indian governments unwillingly, the federal government is to take responsibility for facilitating a smooth transition of authority. The point of such legislation would be to protect the smaller, politically more vulnerable Indian governments from the provincial governments which operate from a far superior position of strength.


16 Bryan Schwartz, a Manitoba delegate to the aboriginal constitutional conferences of 1983, 1984, and 1985, says that in the preparatory meetings leading to the 1983 conference, the attitude of provincial and federal governments with respect to the section 37 process was as follows:

- the constitutional status quo is presumptively acceptable to governments; aboriginal organizations have the burden of explaining and justifying changes to it;
- governments pass judgement on whether an aboriginal proposal is acceptable; acceptance of a proposal is a concession to aboriginal peoples at the expense of society generally.


17 Although not directly concerned with self-government, the 1983 conference was the only one able to procure a series of constitutional amendments. Amendments included the inclusion of a sexual equality clause (section 35(4)), 
a provision that land claims agreements be accorded constitutional protection equal to that of treaties (section 35(3)), that governments be required to hold an aboriginal first ministers' conference prior to amending any Constitutional provisions which refer specifically to aboriginal peoples (35.1 (a)), and that the conference of 1983 be expanded to two more constitutional conferences to be held within three to five years (the conference of 1984 was procured by means of a political accord).

18 Pierre Trudeau presided over the conferences of 1983 and 1984 while Brian Mulroney presided over those of 1985 and 1987.

19 Schwartz notes with respect to Mulroney, that in most important respects, he holds to the same political philosophy as Trudeau. An essential difference between the two however, is a pragmatic one. Equipped by personality and training as a labour lawyer, Mulroney is better skilled at finding a common ground where interests conflict. See Bryan Schwartz, First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft, op.cit., p.295.

20 Trudeau's comments were as follows:

Yet in spite of...acknowledged adversities the aboriginal peoples have managed to survive as identifiable groups in our population. Will-power, patience, and determination to sustain themselves in a hostile social environment have enabled the aboriginal groups to persevere in their quest for the justice, respect, and consideration they have been denied since the dawn of our Canadian history...

These comments were echoed by Mulroney in 1985 when he said:

They (aboriginal peoples) have persevered and maintained their cultural identity through many years of adversity. This is part of our national heritage, part of how we define ourselves as a society, something to be celebrated, not ignored.


21 At Indians' insistence, this clause was eventually dropped.

22 See Chapter V, endnote 2 for Trudeau's list. Mulroney acknowledged this situation similarly when in 1985 he said:
In describing the current situation I could read to you the litany of social indicators on the disparities suffered by aboriginal peoples in unemployment, in lives of despair ending in alcoholism or suicide, the waste in human potential caused by inadequate educational facilities and substandard housing. But I do not want to trade in sorrow. We are familiar enough with the statistics and I know some of you live with them on a day-to-day basis and see them reflected in the eyes of your children.

See Brian Mulroney, "Notes for an Opening Statement to the Conference of First Ministers on the Rights of Aboriginal Peoples", in Boldt and Long (eds.), The Quest For Justice, op.cit., p.160.

Regional and other forms of disparities indicate that many Canadians in addition to Indians do not enjoy similar standards of livings to those who, because of geography, opportunity, or social position, are better off. Equality of opportunity then, functions more as a political ideal than an actual reality although governmental initiatives such as equalization payments between provinces, social welfare programs, and work incentive and training programs are intended to bring such a reality about.

Mulroney's position is entirely consistent with that of Trudeau's who in the 1984 aboriginal constitutional conference said:

In the field of rights the major preoccupation of the aboriginal peoples is with self-government... But inclusion in the constitution of rights to self-government cannot alone meet the real day-to-day needs of Indians, Inuit, and Metis living in their own communities. Another item on our agenda should be the need to build the socio-economic infrastructure the aboriginal peoples need if they are to fulfil their reasonable expectations both as Canadians and as persons of aboriginal ancestry.


For an interesting articulation of some of the practical measures the government considers crucial to the successful
implementation of Indian self-government, see Bruce Rawson (deputy minister of the Department of Indian Affairs), "Federal Perspectives on Indian-Provincial Relations", in Long and Boldt (eds.), Governments in Conflict?, op.cit. pp.23-37.


29 For a detailed explication of the various positions taken by the key players at the 1984 aboriginal constitutional talks, see Bryan Schwartz, op.cit. pp.249-268.


31 It should be added that a constitutional forum is not always the best arena in which to resolve political issues. Achieving amendments with respect to an issue as difficult and complex as Indian self-government over four consecutive two day periods for example, even under conditions of mutual trust and goodwill, would not be easy to attain. Moreover, as Gibbons notes, "the First Ministers' Conference is a clumsy mechanism in itself and becomes even more so when aboriginal representatives are grafted onto the process. There are simply too many participants, playing to too many audiences in the glow of too much media coverage, to accomplish much in the way of substantive bargaining", Roger Gibbons, "Canadian Indians and the Canadian Constitution: A Difficult Passage Toward an Uncertain Destination", in J. Rick Ponting (ed.), Arduous Journey: Canadian Indians and Decolonization, Toronto, McClelland and Stewart, p.313.

32 The predecessor to the community-level negotiation approach was Bill C-52, An Act Relating to Self-Government for Indian Nations, which died on the order paper with the demise of the Liberal government in 1984. Developed as general framework
legislation in response to the Penner Report, the Bill was subject to Indian rejection for being too limited and insufficiently flexible to meet the varying needs of diverse Indian communities. Consequently, with the election of the Progressive Conservative government in 1984, the Bill has never resurfaced. Instead, in an attempt to remain more flexible, the new government abandoned the general framework approach for one in which the particular needs of each community could be discussed through a process of community level negotiations. For a general critique of Bill C-52 see the following sources: Bryan Schwartz, First Principles, Second Thoughts, op.cit. pp.197-208,291-295; The Indian Association of Alberta, Bill C-52: A Critique, Edmonton, IAA, 1984; Paul Tennant, "Aboriginal Rights and the Penner Report on Indian self-Government", in Boldt and Long (eds.) The Quest for Justice, op.cit. p.331; Menno Boldt and J. Anthony Long, "Native Indian Self-Government: Instrument of Autonomy or Assimilation?", in Boldt and Long (eds.), Governments in Conflict? op.cit. p.48.

33 Additional powers the "guidelines" indicate the federal government is willing to discuss include those relating to community infrastructure, education, social and welfare services, justice, health, environment and wildlife management, culture, traffic and transportation. See "Guidelines for Self-Government Negotiations", Indian and Northern Affairs Canada, mimeo, 1988.

34 Most municipalities do exercise legislative authority over land and motor vehicle use however.

VII. CONCLUSION

In conclusion, I would like to draw together the specific political problems raised in Chapters V and VI in the form of a general summary. My point will be that our analysis of Canadian Indian policy effectively illustrates the identity of liberalism as a political ideology.

In this thesis we have summarized the important stages of Canadian Indian policy development from 1969 to 1988. Judging from this summary, one clear conclusion has emerged. Liberalism and its assumptions were a major cause for disagreement between Indians and federal policy makers over the direction of Indian policy development. Different liberal themes have been highlighted during the various stages of the policy's development. Yet the general effect has been the same; Indian claims for group rights have been habitually frustrated in one form or another by the rules of liberalism. In this thesis we have examined two particularly important instances of this.

Beginning from the liberal assumption that individual equality requires similar treatment be extended to all, in 1969 the government proposed to eliminate all legal provisions protecting Indian special status. These measures were justified on the grounds that special status unjustly separated Indians from other Canadians and was thus by definition discriminatory. In the government's view, similar treatment meant Indians should be liberated from their parochial rights.
This would ensure Indians equal access to full democratic rights and thus equal standing with other Canadians from which to maximize opportunities for individual self-fulfillment.

The assimilationist strategy of 1969 gave way to a governmental position more accommodative towards Indian group claims in post 1982 policy discussions. Yet even here we have observed that important liberal assumptions continue to pervade the process. Governmental willingness to entertain an aboriginal right to self-government for example, receives primary justification from the liberal assumption that individuals must enjoy political parity if they are going to acquire a sense of self-worth. Self-government then, is a democratic right granted in response to an aggregate individual demand for an equal opportunity to participate politically.

What the above examples have shown us is that on a fundamental level, Indians and governmental officials have tended to talk past each other. Both groups have developed different priorities shaped by the basic assumptions of their respective world views. Indians speak from their experience that groups form a basic and irreducible component of human life. Consequently, Indians' rights claims flow from the priority Indians place on preserving and enhancing the distinctive forms of their communal experience. Government on the other hand, places absolute priority upon the individual. This means government views groups foremost in their instrumental capacity, as mechanisms for the achievement of meaning by free
individuals. Between these two positions there appears to be little ground for convergence for at the core of each is a fundamentally different vision for life. As a result, both sides talk past each other for any attempt to bring the two positions together, requires a compromise of what is essential to the positions of both.

Our examination of these fundamental points of divergence has also shown us that liberalism is ideological in the sense that it is not neutral in the way it claims. Liberalism does not function as a non-partial framework able to accommodate diverse expressions of life because it excludes all expressions which do not place first priority upon the individual. Moreover, because liberalism's exponents are convinced of liberalism's neutrality, they are not aware that their individualistic starting point is biased. Consequently, when confronted with the legitimate claims of groups a form of oppression ensues, for in the name of non-partiality liberals constrain groups for fear they would deny the free activity of individuals. It seems then that for as long as liberalism remains the dominant Canadian ideology the best groups can hope to attain is a situation similar to that procured by Canadian Indians; an uneasy accommodation circumscribed by fairly rigid individualist constraints. If groups are to attain their rightful protected place within society, it appears a fundamental shift away from liberal ideology as it currently shapes Canadian political practice is required.
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