

**GOVERNMENT TERMINATION POLICY AND CANADIAN INDIANS:
A FOURTH POLICY REALITY**

by

Joan M. Alison DuBois

A thesis

submitted to the Faculty of Graduate Studies

in partial fulfillment of the requirements for the Degree of

Master of Arts

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Abstract

During the past thirty years Canadian 'Indian' policy has undergone significant changes. There is consensus amongst First Nations people that the *1969 White Paper*, although formally retracted by the federal government in the early 1970s, has provided the framework for subsequent Canadian 'Indian' policy.

In this thesis a distinction is made between 'Indian' and 'Aboriginal' policy whereby 'Indian' policy refers to those groups of people legally defined as Indian according to the *Indian Act*. The policy distinction is needed because it is these indigenous peoples that were the focus of the *Statement of the Government on Indian Policy* (commonly known as the 1969 White Paper). While the literature shows that Indian policy was formulated according to three policy goals (civilization, protection, and assimilation), this study will investigate the extent to which termination and genocide was a fourth, and continued, federal Indian policy objective. Indian termination policy has usually been discussed in reference to the American Indian experience. Although termination and genocide are rarely allowed to enter into First Nations and indigenous 'Indian' discourse in Canada, First Nations and non-First Nations writers state that genocide has and continues to be the indigenous experience in Canada.

As a fourth policy reality in Canada and part of the socio-political ideology of the indigenous 'Indian' or First Nations in Canada, termination can be termed as the process and procedure in Indian policy while genocide is the ideological frame of reference. In order to assess to what extent the 1969 White Paper has influenced 'Indian' policy during the last ten years in Canada, a comparative analysis between the 1969 White Paper and the 1994 Manitoba Framework Agreement, First Nations Governance 2001, and the First Nations Land Management Act will be included.

Early in the literature search, attention was paid to reviewing Indian policy documents and written materials. Sally Weaver's 1981 work on Canadian Indian policy-making and the 1969 White Paper served as starting points. I determined that 1982 would be the 'cut-off' year whereby Indian policy sources written before 1982 would be included. This cut-off date took into consideration the 1982 patriation of the Constitution as I assumed that the new constitution would have ramifications for Indian policy. Post-

1982 policy literature was also reviewed and a further distinction was made resulting in the placement of Indian policy as part of overall Aboriginal policy. First Nations policy becomes increasingly part of the discourse as a component of Aboriginal policy or Indian policy and the Royal Commission on Aboriginal Peoples is included as a definitive example of Aboriginal policy.

A select grouping of policy documents pertaining to Indians, as defined by the Indian Act, are part of a comparative analysis that also takes into account Canadian public policy-making in general. It is in this section of the thesis that Indian termination policy is revealed as one of the three historic policy objectives of the federal government. 'Generic' policy terms and analyses are applied to Indian policy and this discussion forms much of the thesis chapters. By bringing public policy-making into the analysis of Indian policy, any similarities across documents become apparent. The comparative analysis method was necessary in order to determine the extent that the 1969 White Paper has been incorporated into subsequent Indian policy.

My research shows that, although formally and publicly retracted by the federal government, the 1969 White Paper policies were incorporated into future Indian policy initiatives. The important point is that the White Paper policy proposals would not necessarily find their way into the most recognizable form of Indian policy, the *Indian Act*, but would be manifest in related legislation pertaining to Indians and Indian lands. The study concludes by showing that termination, and ultimately genocide will be a realized policy objective by termination of 'Indian' ties to Reserve land.

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Chapter One: Introduction: Government Termination Policy and Canadian Indians: A Fourth Policy Reality

1.1 Opening Remarks.

My decision to study termination and the applicability of the concept to the Canadian Indian experience was shaped in part by my personal journey to healing, life experiences as an Indian and interactions within the Indian (or First Nations) community. In particular, my attendance at a 1999 conference on Canadian Indian Termination, hosted by a northern Cree Nation, revealed to me the importance of academically acknowledging an issue that was deemed to be important to Indians in this country.

If one refers to newspapers from the 1960s on through today it becomes apparent that termination policy has and continues to be part of the Canadian Indian discourse. Academically, Canadian Indian termination policy has received little acknowledgement and readers are directed to chapter three for a review of scholars who have addressed termination policy as part of the Canadian Indian experience.

During my initial research it was necessary to distinguish between Canadian and American Indian 'termination policy' because termination policy has and continues to be equated solely with the American Indian experience during the 1950s and 60s, whereby the federal-Indian relationship would cease to exist. Chapter four provides a definition of termination as well as further discussion explaining how termination is manifest in Canadian Indian policy.

In order to research the possibility that termination was and continues to be a component of Canadian Indian policy and in order to fulfill the original research requirement, five Indian policy documents were reviewed and analyzed. These include the Indian Advancement Act 1884, 1969 White Paper (formally known as, A Statement of the Government on Indian Policy, 1969), Manitoba Framework Agreement 1994, First Nations Governance Act 2002 and the First Nations Land Management Act 1996. Secondary sources of Indian policy were reviewed and analyzed, including the First Nations Community Consultation Discussion Package, First Nations Governance website, and documents obtained from conferences. Especially helpful in establishing a

frame of reference for analyzing both government and Indian contributions to the examination of the 1969 White Paper process were the files from the Canadian Association in Support of Native Peoples collection, circa 1968-1970.

Discussion of all documents and related sources comprise most of the chapters and tables are provided to facilitate a comparison of policy objectives. The relevance of the research topic and methods used will be the focus of this chapter as part of a research synopsis.

1.2 Thesis Statement:

During the past several years, an increasing number of Canadian Indians have stated that the 1969 White Paper has re-surfaced. This belief intensified during and leading up to the First Nations Governance (FNG) consultation process during the latter half of 2002. Although the FNG process would culminate in changes to the Indian Act, the changes were not greeted favourably by all Indians (or, First Nations) and there was increasing resistance to proposed Indian Act changes. Some First Nations believed that the FNG process was similar to the 1969 White Paper in that Indian status, lands and treaty rights would be terminated. This researcher was guided by one question: what is meant by termination? During this study, a concerted effort is made to determine if termination is part of contemporary Indian policy discourse in Canada. In order to accomplish this and to present a reasonable argument, several pieces of Indian policy were analyzed.

1.3 Thesis Objectives:

In order to determine if the 1969 White Paper components were part of contemporary Indian policy in Canada, the following objectives were seen as critical in this analysis.

1. To differentiate between 'Indian' and 'Aboriginal' policy;

The need to differentiate between the two terms became apparent early in the research and was one of the guiding principles used in the literature review. The volume of Indian and Aboriginal policy literature was a deciding factor but equally important was the need to focus specifically on Indian policy and literature that referred to Indians. A starting point for the research was to clearly determine that Indian policy specifically referred to those groups of people

defined as Indians by the federal Indian Act. The Royal Commission on Aboriginal People (RCAP) and the 1982 Constitution Act served as examples of Aboriginal policy. My research focussed on literature and policy that impacted upon Indians in Canada in order to determine the extent that the policy objectives proposed in 1969 had found their way in current Indian policy.

2. To compare the 1969 White Paper and contemporary Indian policy;
After a review of the White Paper and current proposed policy changes, tables were constructed. Each proposed White Paper policy change was charted and current Indian legislation was compared. Themes or policy areas became apparent, such as land, government, economic development and legislative changes that were defined by this researcher as termination.
3. To find out why termination and genocide is part of the Canadian Indian socio-political discourse;
An early review of literature showed that Indians in the late sixties on through to the nineties framed changes to Indian legislation as either termination or genocide. In order to find out why both terms were used, current legislation as reviewed and compared with the 1960 White Paper proposals.
4. To determine why resistance continues to be a part of contemporary Canadian Indian responses to proposed policy changes;
In order to find out why resistance continues to play a role in proposed policy changes, I needed to determine what it is that Indians are resisting. A careful examination of the proposed legislation was undertaken showed changes several key areas including land and status.

Chapter Two: Indigenous Epistemology and Methods.

This chapter discusses the research methods used in this study. Six critical methods were used in this study; 1) resistance, 2) 'policy filtering', 3) networking (4) reframing, 5) life experience and 6) review of original materials. The last two are in language that is more in keeping with conventional academic methods. Each method contributed to an epistemology, or, methodology, which recognizes and retains Indigenous cultural and spiritual ties to the land. Indigenous epistemology will be discussed first, followed by a review of the methods used.

2.1 Indigenous Epistemology.

During our first year as Native Studies graduate students we are required to participate in a course that provides opportunities to explore and ultimately choose a research methodology that is best suited to our research. One possible result is that Native Studies graduate research becomes defined by the methodological interpretations of other disciplines such as anthropology, history and sociology. Subsequently, there does not appear to be a development of the proper ethical perspective that can be regarded as being uniquely 'grounded' in Native Studies. My experience focussed on finding a 'scientific' way, as required by university standards, to frame my understanding of what was important to me and to my indigenous community.

My perspective as an indigenous person not only determined what I would research but how I would proceed, or, in other words 'who I am' determined my approach to the requisite methods and methodology. In my quest as an academic to locate a framework (methodology) that would support my research, I needed to look no further than myself. As an indigenous researcher it was difficult for me to try to separate 'me' from my research. Any attempts to become objective by employing an arms-length approach was not easy and did not feel right. I was studying a topic directly related to my status as a Treaty 4 Indian. As part of an overarching Indigenous epistemology, Indigenous identity derives its own frame of reference by maintaining traditional ties to the land that recognizes and resists state coercion to alter these ties.

The foundation for the study incorporates an alternative methodological approach. Indigenous epistemology is employed with its frame of reference derived from identifying as an Indigenous person. The argument may be one of semantics but it seemed appropriate to speak of 'epistemology' rather than 'methodology'. As I thought about the two words, I soon realized that 'epistemology' referred to a way of thinking that one could use during a lifetime while 'methodology' would last as long as the research did; at some point in time, the methodology could be forgotten and neatly put away on a dusty bookshelf.

An Indigenous method of inquiry, or of acquiring new knowledge, is built upon an Indigenous paradigm, firmly rooted in 'being here first', of being embraced within one's community (Kuokkanen 2000). An Indigenous paradigm therefore, is built upon the fact that we are 'grounded' in the knowledge that 'we were always here' and by virtue of this fact, we are indigenous.

Rigney (1999:116-117) contends that three interrelated principles, resistance, political and social linkages to community and 'giving voice to Indigenous peoples' guide indigenist research. His assertion is based on the fact that he self-identifies as an Indigenous Australian. Rather than his identity being a hindrance to research, he successfully argues that maintaining Indigenous identity in the research process is required, and forms a necessary part of methods and methodology.

For Alfred (1999), peace, power and righteousness are the requisite elements of an Indigenous manifesto, a state of existence that has as its foundation, traditional culture and knowledge. If the individual is able to look beyond the book's bindings, page numbers and written text, one becomes much more than a passive reader and is instead an active listener. One needs only to open the first few pages of Alfred's book and discover that there are no references to page numbers or chapters, instead the listener passes through stages.

Smith (1999:14) says that "indigenous pedagogies" embody, "the stories, values, practices and ways of knowing" and that, "in international meetings and networks of indigenous peoples, oracy, debate, formal speech making, structured silences and other conventions which shape oral traditions remain a most important way of developing trust, sharing information, strategies, advice, contacts and ideas."

One of the responsibilities we have as indigenous researchers is to undertake activities that are relevant not only to ourselves, to our goals in life but also relevant to our people. Deloria (1998) firmly believes that Indigenous scholars must not resort to fence-sitting and must become involved in community realities and academic responsibilities while firmly ensconced in Indigenous worldviews. But how is this accomplished in an academic setting? In an environment whereby seemingly intangible elements are not part of the 'scientific' discourse of scholarship, the unseen forces guiding First Nations in everyday life become unimportant or interpreted as imaginary and therefore unsound to mainstream academic institutions. Wheeler (2001:100) understands this concern

One of the decolonising tasks in Indian Studies is to find ways to approach, understand, and present significant issues within indigenous conceptual modes, without comprising our traditional or scholarly integrity.

Regardless from which discipline Native Studies scholars might borrow methods and methodologies, Native Studies as a discipline, according to Cook-Lynn, "differentiates itself from conventional academic disciplines in two important ways: it emerges from within Indigenous communities, geographies, languages and experience, and it rejects conventional academic treatments" (Wheeler 2001:99).

Cook-Lynn's quote best exemplifies an overall approach to my research since the source is both Indian and indigenous person situated within Native Studies as a discipline. My graduate studies are an extension of undergraduate work that culminated in a degree in Indian Studies. I share the preceding information because I believe it is important to point out that my previous scholarly work was shaped by both my personal identity as an Indian as well as a politicization of this identity as part of an academic institution. The ramifications for my current study is such that 'conventional academic treatments', methods and methodology have not shaped my research to a significant degree. Instead, an alternative approach has resulted in emphasizing both the importance of identity and resistance while respectfully situating academic responsibilities within an indigenous frame of reference or epistemology. The next part of this chapter turns to a discussion of the methods used during the research.

2.2 Networking.

Networking opportunities occurred during several forums; graduate student teaching through the Native Studies Department, participation in a Native Studies lecture series and attendance at conferences. Each opportunity was viewed as being related to the research process, although I did not categorize either forum as 'networking'. Smith (1999:156) states that the benefits of networking are far-reaching in that it is, "an efficient medium for stimulating information flows, educating people quickly about issues and creating extensive international talking circles". The following three examples of networking used in this study show how indigenous methods are universal.

Graduate Student Teaching.

There are few departments at the University that provide teaching opportunities for graduate students and during my graduate studies, I took advantage of this opportunity. The course content usually has as its basis the graduate student's research to date and from there, a framework is established. The immediate benefits for students and graduate instructor are reciprocal; students gain information regarding the most recent developments in the field of Native Studies and the graduate student instructor is able to fine-tune his/her research when drafting the course syllabus. As well, the oral tradition is enhanced and emphasized by verbally sharing 'what one knows'.

Conferences.

My research was shaped by different geographical locations of other indigenous peoples. Canadian Indian policy spans federal jurisdiction before it reaches regional or provincial interests, I included not only my own perspectives regarding Indian policy, but also the views of 'other Indians' in other parts of this country. Similarities in experiences shared by First Nations exist when viewed from a public policy perspective, differences based on geographical location speaks to the heterogeneity of Indigenous worldviews. I was reminded of this fact during my visit with an indigenous professor from New Zealand. We sat and talked for many hours, at first amazed that an indigenous person from Canada and New Zealand had so much in common, despite the geographical distances that separated our lands. Certainly our visit was a way of exchanging similar experiences and views on colonialism, racism and understanding what it means to self-identify as an indigenous person. My attendance at a conference hosted by a northern

Manitoba Cree nation also provided extensive networking opportunities to listen to the words of community people.

Native Studies lecture series.

There are many, often unspoken and unwritten, courtesies amongst Indigenous peoples that are unknown to the 'outside' researcher, or, are misunderstood. One such common courtesy is to greet others with a hand-shake and an introduction that not only lets people know who you are and where you come from, but also enables people to see what motives or pre-conceptions you may bring. Smith (1999:157) sees Indigenous protocol as being an intrinsic part of Indigenous methodology. Rather than view each other as strangers or the 'Other', inquiries are made until a common thread can establish a relationship based on family, community or friends;

The face to face encounter is about checking out an individual's credentials, not just their political credentials but their personalities and spirit. Networking by indigenous people is a form of resistance. People are expected to position themselves clearly and state their purposes.

At my first colloquium presentation in Native Studies, I began by circulating a few photographs. The photographs contained images of my family and lent a brief glimpse of the physical environment I had grown up in. By visually sharing with the audience a bit of my personal history, I had hoped to show *why* my research topic was important, not only to me, but to the community at large. I also wanted to impart to my audience that my research topic was not an abstract concept that impacted on nameless, faceless entities but in fact, directly affected real people in real situations. In essence, I was not the tourist who was showing pictures of my holidays, nor was I the outsider, showing the insiders what the inside *really* ought to look like, rather, I was the researched, sharing my experiences. This is what happens when the 'native' is 'put' into the research picture. Quite simply, there is an immediate requirement to re-define *research* so that it is first of all, a *re-searching* of previously ingrained ways of seeing and perceiving, a method that *must* begin with the researcher.

2.3 Life Experience.

Clandinin and Connelly (1994:414) ascertain that social science research is first and foremost "the study of experience". Furthermore, for them, there are personal

experience methods that take into account the “four directions” inherent in experience; inward, outward, forward and backward, and as such is “holistic”. While quite literal in their interpretation of ‘four directions’, one must give credit to Clandinin and Connelly’s non-Indigenous methods. A correlation can be found in Indigenous knowledge whereby Indigenous knowledge is holistic and the four directions are of a moral, figurative and multi-disciplinary nature and as such, “associated with the long-term occupancy of a certain place” (Sefa, G.J., et al 2000:4). Furthermore, “indigenous knowledges speak to questions about location, politics, identity, and culture, and about the history of peoples and their lands” (Sefa, G.J., et al 2000:4). With respect to this study, I have been cognizant of the past, present or reality, and future as well as the reflective nature of Indian policy. Clandinin and Connelly are referenced because their definition of social science research is a fair comparison to this researcher’s definition of ‘methodology’ and ‘methods’.

Rigney (1999:116) sees the inclusion of lived experiences as a powerful tool in the deconstruction of foreign knowledge systems that have oppressed the intellect of Indigenous peoples

such lived experiences of Indigenous Peoples enable Indigenous researchers to speak on the basis of these experiences and are powerful instruments by which to measure the equality and social justice of society. It is these experiences that enable Indigenous Peoples to question the moral as well as the educational foundations of society.

For example, the majority of university students are unaware of the university policies that determine the responsibilities of both instructors and students. Many students are unaware that the course syllabus is a contract and must be distributed to them during the first week of classes. Most instructors will only refer students to the appropriate policy sections in the university calendar. But are the students well-informed? Do they receive all of the information that is relevant to them? How responsible is the instructor to ensure that the students are well-informed? These questions can easily be applied to Indians and Indian policy in Canada. I use teaching and the course syllabus as an example because I am able to bring in my own experiences as a student and instructor. By doing this I am able to parallel this within a researcher/researched paradigm. The

student/instructor experience can be correlated to the research on Indian policy and the indigenous researcher.

2.4 Reframing.

According to Smith (1999:153), “reframing is about taking much greater control over the ways in which indigenous issues and social problems are discussed and handled”. Reframing is another way of re-defining problems but who’s doing the defining is as important as the definition. As Smith (1999:153) says, “the framing of an issue is about making decisions about its parameters, about what is in the foreground, what is in the background, and what shadings or complexities exist within the frame”. In this sense then, the literature review is an example of how reframing was used as a method in this study. Literature regarding the 1969 White Paper and Indian policy in general was reviewed. The method employed throughout the literature review required a re-framing and re-interpretation of existing literature on Indian policy. The juxtaposition of an Indian interpretation of Indian policy with that of well-known scholarly interpretations of Indian policy assists in re-defining Indian policies so that a new category of Indian policy objectives can be discovered and added to those already part of Indian policy discourse.

Smith (1999:153) notes that critical issues that impact upon indigenous people have received little or no attention because of government’s failure, “to see many indigenous social problems as being related to any sort of history. They have framed indigenous issues in ‘the indigenous problem’ basket, to be handled in the usual cynical and paternalistic manner”. This is partly due to the whole colonialism paradigm, whereby any attempts of the colonized to wrest control back from the colonizer is met with colonizer and neo-colonizer resistance because that paradigm threatens the status quo as they know it (Armitage 1999). The status quo is maintained because they believe the same thing: that Canadian Indians/indigenous peoples were not exterminated, terminated, nor were they victims of genocide. The status quo therefore, becomes threatened ‘from the outside’ when the victim’s experiences and memories of the same crimes in Canada are voiced. This is in direct opposition to the utopian hegemony prophetized by those in power (Alfred 1999).

2.5 Resistance, Totalization Theory and Indian Policy.

I am critical of a set of beliefs that are central to Canadian Indian policy. The central idea holds that the Indigenous peoples of this land must become self-sufficient. This 'self-sufficiency' is defined not according to our traditional philosophies of wealth and value but is instead based on the totalizing effects of capitalism, imperialism and colonization. In its simplest terms, totalization places a monetary value on people, place and time, through the accumulation of capital and ownership of private property. Kulchyski (1994:1) defines totalization as;

The process by which objects, people, spaces, times, ways of thinking, and ways of seeing are ordered in accordance with a set of principles conducive to the accumulation of capital and the logic of the commodity form. Wealth piles up; every social product including people is made to be bought and sold, to have an exchange value and a use value; these principles spread as the dominant way of being in the world today: totalization. The order, the underlying rule, of these principles is the order of quantity, of homogeneity, of seriality.

In the past ten years these values held by the dominant society have increasingly been imposed upon Canadian Indians through various legislation.

As Kulchyski (1994:13) states,

there are two realities in the country we know as Canada... this reality, or multiplicity of realities, could be called the dominant society. The dominant society is itself dominated by the values and traditions of a particular sector within it; those values can be characterized as western or European. The logic of those values is based on an instrumental rationality. The values and traditions, most especially the material preconditions, of the dominant society are totalizing... everything, every thought, every human relation is still in the contested process of being reshaped into a modality that suits the commodity form. As long as the material preconditions remain, as long as the necessity for expansion of the commodity form and the accumulation of capital continue as fundamental social forces, the project of totalization will continue without rest.

In my opinion, what is cause for further alarm is the increasing support Aboriginal people, particularly Indians, are giving to long-standing policy objectives of the federal government. In order to become self-sufficient Indian people must become landowners of reserve land. We can keep our sense of identity, an identity that is sanctioned by not only

the various levels of government, but also by mainstream society, hence the universal embracement of the term “Aboriginal”.

Kulchyski (1992:177-178) contends that Indigenous peoples have always resisted the totalizing efforts of the capitalist state. In his 1992 article titled, “Primitive Subversions”, Kulchyski uses several examples to explain Indigenous resistance that is based on subversion. Subversive resistance is the proactive Indigenous response to the state’s attempts to integrate, assimilate or civilize Indigenous people;

resistance involves constructing enclaves of culture within the established order, of finding space in the interstices of power, of controlling the pace and nature of links with the dominant social organization and culture, of adapting Western technology to precapitalist social relations, of taking the tools offered by the State and capital and using them to strengthen rather than destroy primitive culture. These strategies... involve working within totalizing structures and inverting the strategies employed by hegemonic power.

One example that Kulchyski (1992:190) discusses is the adoption of the term “Indian” by Canadian Indian peoples as a form of subversive resistance;

subversion is most frequently a matter of micropolitics, a politics of everyday experience, of speech and gesture, a politics that leaves few traces, but may be passed on from generation to generation through stories or values and may also disappear into a backwater eddy of history, not even serving to inspire those who bear its spirit of constructive refusal

Viewed by the state as an identifying concept that placed Indigenous peoples into categories that would sever traditional socio-economic and political ties, the term “Indian” would enable the government to realize the Crown’s obligations while at the same time would facilitate the absorption of a group of peoples whose mode of existence was incongruent with capitalism. Subversion occurred when Indians embraced the term “Indian” as both a source of pride and nationhood;

native people effectively subverted a piece of legislation whose explicit intention was totalizing. In order to totalize, the State was forced to define and marginalize. The sign of difference, the legal demarcation of Indian status, was reinvested by Native people as having a positive value. Marginality became in part a

position from which aboriginal culture could resist totalizing power (Kulchyski 1992:180).

For Kulchyski, Aboriginal peoples have resisted the State's attempts to assimilate and absorb Aboriginal peoples into the capitalist system. By implicitly resisting or by subverting various State policies, Aboriginal peoples have managed to maintain a sense of identity that is based on ties to the land. In my opinion, as part of identity and resistance, there is a second more critical aspect to being an *Indian Act* Indian that is relevant to this study; claiming Indigenous identity means that one is rejecting previous labels that were based on the state's definition of identity. For the purposes of my research I have adopted the *Indian Act* definition of 'Indian' because of continuing threats to the legal definition of 'Indian'. As part of resistance to totalization, An Indigenous researcher is grounded in the knowledge that his or her ancestors 'were always here'. Indigenous ties to the land go far beyond mainstream concepts of land ownership and a legacy that is and was the driving force behind past emigration and immigration doctrine of this country. Indigeness is more than a state of mind; it is a state of being, of thinking and of existing.

Chapter Three: Review of the Literature

The objectives of the researcher introduction in the previous chapter served several purposes; the researcher was clearly situated as part of, or within, the overall research framework and it was respectfully acknowledged that it is not necessary to separate 'who I am' from 'what I know' or 'what I want to know'. It is this situating of researcher within research that in turn determined what literature would be reviewed.

In this chapter, literature specific to Canadian Indian policy is discussed. It was determined by the researcher that the 1969 White Paper was the definitive example of 'Indian' policy. This is because the 1969 White Paper specifically made recommended policy changes that would impact upon Indians, Indian lands and Indian status. Literature pertaining to the 1969 White Paper was reviewed, including the White Paper document. A discussion of the White Paper follows in the next chapter.

After careful review of the literature four dynamics or themes in Indian policy were identified that have not been addressed by previous researchers; a) a differentiation between 'Indian' and 'Aboriginal' policy; b) the location of both policy groups immediately prior to and after the 1982 patriation of the Canadian Constitution and; c) the situating of recognized experts within their respective research about Indian or Aboriginal policy. Building on three heretofore-reified Indian policy objectives recognized by previous scholars, the literature review highlights the concept of Indian termination. Termination as a fourth Indian policy reality in Canada has received little attention and as such, will be discussed and expanded upon in the study. These policies are examined within a framework of 'policy filters', which are described in the next section.

3.1: Filtering 'Indian' and 'Aboriginal' Policy in Canada.

During the past thirty years there has been extensive literature on Indian and Aboriginal policy in Canada. The critical task undertaken as part of the literature review was two-fold; the first task was to differentiate between Indian and Aboriginal policy and to then distinguish between Indian and Aboriginal policy literature. It became apparent that Indian and Aboriginal people are regarded as separate within the vast policy field. This separation of both groups is due to differences legislated by the federal government

policy-making process. As a result, I am focusing on a specific category of Canadian policy that deals with those groups of people defined by the *Indian Act* as 'Indians'. The separation of both groups of people occupies several niches and results in an analysis that separates 'Indian' and 'Aboriginal' policy according to a process that this researcher has termed 'policy filtering'.

The following discussion on 'policy filtering' and 'policy filters' is, at this point in time, not found in policy related literature. This researcher coins the term because 'policy filter' best explains the process that was identified in this study. It is shared with the best intentions.

The use of 'policy filters' has assisted in the selection of relevant literature as the framework for the study. For the purposes of the study, 'policy filters' are those tools used by indigenous peoples to determine the degree of coercion contained within government policy changes. 'Policy filters' assist in determining a correlating level of resistance. It is this researcher's experience that 'policy filters' take many forms and is built upon a perceptual framework of Indigenous spiritual and cultural ties to the land. Consequently, a perceptual framework that serves as the Indigenous paradigm is witnessed.

The first policy filter is informed by identity. As discussed earlier in this study, identity is an intrinsic component of Indigenous epistemology. The epistemology is built upon the inherent knowledge that my ancestors and I have always been on the land that is now known as Canada. The Indigenous identity/epistemology relationship is interconnected and in my opinion, the relationship is based on recognizing and maintaining spiritual and cultural ties to the land. Despite state applications of identification, such as 'Indian' and 'Aboriginal', the adherence to the Indigenous paradigm influences identity, which in turn serves the second policy filter, resistance. For example, state-sanctioned identity labels are incorporated into an inherent Indigenous identity as a counter-measure to identifying as only 'Indian' or 'Aboriginal'. Resistance was a significant factor during the literature review. Rather than accept that Indian policy could be defined according to an orthodoxy that was determined by non-Indigenous academics, this researcher was in a position to 'see' other possible Indian policy categories. Identity and resistance helped

shape the literature review and as a result, a new way of interpreting Indian policy emerged.

The third filter recognizes and resists the termination of Indigenous ties to the land and as part of this resistance, various policy documents have been interpreted differently than proposed by the policy 'orthodoxy'. For those who identify as Indigenous, the term 'Indian' is embraced as part of a resistance to totalization, and is a critical component of subversive resistance to state attempts to terminate traditional connections to the land, whether termination is achieved through legislation or literature.

Defining 'Indian' and 'Aboriginal' Policy.

As part of the distinction between the two policy groups, 'Indian' and 'Aboriginal', it is important to provide examples of each policy type. It is important to distinguish between "Indian policy" and "Aboriginal policy" for two reasons. Firstly, both categories refer to two different legally and constitutionally defined groups of people (Canada *Indian Act, Constitution Act*), and secondly, both categories refer to different periods of policy history. Subsequently, different policy periods have in turn contributed to differences in Indian policy discourse.

There are two significant pieces of legislation that clearly distinguish between Indian and Aboriginal peoples in Canada; the *Indian Act, 1876* and the 1982 Canadian *Constitution Act*. The *Indian Act* defines 'Indian' as someone who, "pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian" (Canada, *The Indian Act*). The 1982 *Constitution* includes Indians as part of an Aboriginal group of persons that also includes the Metis and Inuit (Canada, *The Constitution Acts*).

"Indian policy" not only includes *Indian Act* Indians but also refers to Indian policies prior to the patriation of the Canadian Constitution in 1982. As such, there is a multitude of literature that specifically addresses Indian policy in Canada (Canada 1982; Weaver 1981, 1978; Marule 1978; Tobias 1976; Doerr 1972). Conversely, between 1969 up to and including 1982 there was no specific 'new' Canadian legislation and subsequent policy action designed to encompass Indian, Inuit and Metis peoples. After patriation of the Constitution in 1982 there is a change in government policy whereby policies are designed to manage not only Indian affairs but also increasingly Inuit and

Metis concerns under the designation, “Aboriginal”, as defined by the newly minted Canadian Constitution. After 1982 therefore, there is considerable emphasis on ‘Aboriginal’ policy and First Nations (Armitage 1999; Doerr 1997); and little, if any, reference to ‘Indian’ policy both in government and academic discourse with a few exceptions (Mawhiney 1994; Buckley 1992; Barron 1984; Rudnicki 1987; Weaver 1990, 1986, 1981).

Boldt (1993) counters that Indian policy cannot be called ‘Indian policy’ because those policies do not benefit Indians the same way that Canadian policy benefits Canadians. As such, ‘Indian policy’ is a misnomer. For Boldt (1993:77) part of the problem is due to the ‘national interest’ policy paradigm that will always relegate Indian concerns to residual or ‘sidestream’ planning. In other words, policies that affect Indians are a result of Canadian policies that first and foremost, are mandated to serve the national interest. Nevertheless, Boldt (1993; 2000) makes references to Indian policy because he recognizes that ‘Indians’ are a legal and cultural group of peoples within Canada. Boldt’s (1993) ideas regarding the national interest as policy paradigm over and above Indian policy merit attention and can be linked to totalization theory in that the ‘national interest’ comprises what Weaver (1981:168) acknowledges as part of a “liberal ideology” that encompasses, “equality, individual choice and responsibility, and freedom.”

Differences in Indian Policy Discourse.

When reviewing the literature it is important to also employ a comparison between different periods or decades. For example, it became apparent that the tone and interpretation of the same pieces of information will be influenced by the socio-economic conditions of that particular writer’s time. So, for academics studying Indian policy immediately *after* the release of the *1969 White Paper* there is a more liberal interpretation of what the *White Paper* was proposing. Subsequently, in the 1970s terms like ‘termination’, and ‘extinction’ were used by Indian as well as non-Indian scholars (Burke 1976; Marule 1978). There was a willingness to analyze the White Paper components from a multi-dimensional perspective, regardless of how that interpretation might be construed. Although Burke (1976) presents an unflattering portrait of an early

Manitoba Indian organization, some of Burke's arguments have been taken into consideration by this researcher for two reasons; the 1969 White Paper debate was only seven years from the time of his writing on the subject and he reported potential links between newly developing Indian organizations and the 1969 *White Paper*. It is these links to current policy initiatives, in particular, the 1994 Manitoba Framework Agreement Initiative that will be the focus of later chapters in this study. For the purposes of the present discussion, Burke (1976:22) believed that the *White Paper* was not retracted and that the government continued their "process of covert implementation" of the 1969 Indian policy proposals.

In contrast since the 1980s, interpretations of Indian policy were rampant with the type of language that any motivational speaker would envy. Terms such as 'empowering', 'self-determination' and 'self-government' are increasingly used in the literature, perhaps buoyed by the extravagant free-spending eighties. Hall (1986:78) sums it up best when he states, "'self-government has clearly emerged as the dominant buzz phrase". Still, the feel-good rhetoric of most academics is tempered by a few voices of those who have participated in federal Indian policy-making and interpret Canadian Indian policy in the liberal tones evident in the seventies (Rudnicki 1987; Weaver 1981).

Rudnicki was one of the few scholars to apply the concept 'termination' to an interpretation of Canadian Indian policy. He saw self-government as legislated termination policy through a surrender of "lands and identity". Termination of Indians would result in "the end to the existence of most First Nations within a generation (Rudnicki 1987:289) and Rudnicki cautioned, "for Indian Nations today, therefore the salient and most important issue is survival" (Rudnicki 1987:289). In particular for Rudnicki,

It is significant that during most exchanges between federal officials and Indian spokespersons, one rarely hears even a passing reference to termination. As a subject for debate, the concept received its last major attention following the announcement of the federal governments' "White Paper" proposal in 1969. The apparent disappearance of "termination" from the vocabulary of First Nations reflects perhaps the lengths to which federal authorities have gone to hide the true intent of their policies and actions.

Rudnicki (1987:290) further points out that Canadian Indian termination policy mirrors the United States Indian termination initiatives in one respect; both countries sought to reduce financial and legal obligations to Indians by introducing changes through various government policies.

During the mid eighties and early nineties the federal *Indian Act* is vilified as a major hindrance to Indian self-sufficiency and the literature on Indian policy reflects these views. For example, there is a tendency for scholars to infer that the *Indian Act* does more harm than good (Ponting 1997). More times than not, there are references to the *Indian Act* as being a piece of legislation that gave rise to, and continues to perpetuate the parent-child relationship between Indian nations and the federal government in pre- and post Confederation Canada. Removal of the *Indian Act* and the subsequent reserves that the *Indian Act* supposedly creates is seen as a viable solution and this assumption permeates the views of some scholars (Barron 1984; Buckley 1992).

There are a number of misconceptions regarding Indian 'special' status and reserve land throughout most of the literature. For example, Barron (1984:29) states that reserves were set up by virtue of the *Indian Act*; "it was generally conceded that the most appropriate setting for the tutelage of the Indian was a reserve, a tract of land set apart from white society". Although Barron (1984:28) acknowledges that the "Plains Indian Nations . . . had very definite land rights, sanctified by British policy and precedent" by virtue of the 1763 Royal Proclamation, he is unable to fully develop his statement. In fact, the reserve system, or, the setting aside of "lands reserved for Indians" was due to the provisions in the *British North America Act, 1867* and the numbered treaties. If Barron's assertion were true there would be no need for Canada to fulfill outstanding treaty land entitlements to this day. A further danger with Barron's assertion is that by stating reserves were created by a piece of legislation then reserve land can be eradicated by legislation. It is this self-fulfilling government prophecy that continues to influence current Indian policy to this day and the remainder of this thesis will show the extent of these influences.

Buckley's research focuses on Canadian Indian policy as it affected Indians in Alberta, Saskatchewan and Manitoba. According to Buckley, forty percent of Canadian

Indians reside in these three provinces (1992:6). In my opinion, it is implicit in her tone that she considers assimilation and integration (“bringing them in”) of Indians into Canadian society to be a favourable government objective. It failed because, “retaining their culture has made adjustment more difficult, but it has also served as armour against a hostile world, just as the reserves have served as a refuge” (Buckley 1992:12).

Buckley is subtly advocating the demise of Indian reserve land because, according to her, reserves are one of the main reasons for Indian poverty. In particular, for Buckley, Indians in Manitoba and Saskatchewan have no traditional ties to the land because their reserve land that was allocated was not part of their traditional territory and should therefore be dismantled (1992:18,22). Mawhiney (1994:38) is also of the same mind when she states, “reserves were artificially constructed territories that functioned as panopticons that drew a visible barrier between Euro-Canadians and Indian peoples, and maintained Indian peoples as distinct from Euro-Canadians.” As well, Buckley fails to recognize that, contrary to the “policy vacuum” prior to the 1969 White Paper, in the early 1960s two federal initiatives were implemented or were about to be implemented that would have profound impacts on Indians; the federal franchise granted to all Indians in Canada and funding to national Indian organizations.

This view is unlike the definition of status that Mawhiney (1994:4) discusses, whereby the status of Indians can be attributed to the *Indian Act*. Jamieson (1986:112) echoes the views of Mawhiney by stating that, “the membership sections define who is and who is not entitled to be registered as an Indian by the government of Canada, and thus who is entitled to whatever special rights accompany that status”. Gibbins and Ponting differentiate between status and non-status Indians by the legal entitlement to status Indians to be registered as such in both Band and Department of Indian Affairs and Northern Development (DIAND) registers. Both groups of people are Indians as defined by the *Indian Act* but status Indians owe their status to the *Indian Act*. Equally true for Gibbins and Ponting is the distinction they make between treaty status Indians and non-treaty Indians whereby approximately half of the status Indian population are included in the Treaty areas in Canada (1986:18-19).

By the 1990s in an effort to facilitate the changes necessary to decrease government spending and to address increasing 'civil disobedience' such as was witnessed by the 'Oka crisis', the focus shifts to the operational aspects of good governance and the building of constructive dialogue with Aboriginal people. Brock (1997) discusses the importance of engaging Aboriginal people in a dialogue in a proactive response to mitigate 'civil disobedience'. For Brock (1997:192),

If such confrontations are to be avoided, a dialogue must be constructed which creates a basis of mutual trust and redefines the relationship of First Nations to the Canadian state in a manner which accommodates the growing forces of local nationalism.

Part of the emphasis on good governance is the need to decrease spending in all areas while at the same time assisting First Nations in attaining self-sufficiency. Angus (1991:24) is direct in stating the reasons for economic restraint and the implications for Indians in Canada;

There are at least three specific reasons why Native people will be among the victims of any government attempts to control or reduce social expenditures. First, monies spent on Native people come from what was once called the "social envelope"; as social spending in general comes under attack, Native people will also be vulnerable. A second factor lies with demographics: the Native population is rising at a rate far higher than the rest of the Canadian population. This means that even a continuation of existing programs would lead to increasing costs. Any government wanting to control its social spending will have to find ways of reducing its existing commitments to Native people. Finally, there is racism. Native people live in the midst of a white society which, when forced to choose, will look after its own first. As a last resort, white Canadians can always call upon their government to defend their interests; Native people lack a similar option.

Increasing media reports of mismanagement and lack of accountability to taxpayers and band members strengthens the argument that reforms need to be undertaken with respect to the management of Indian affairs. Brock (2002:2) notes that;

media reports questioning the accountability of First Nations governments and leadership have provided an important context and impetus to the reforms. Since the early 1990s, media reports on abuses of power and financial mismanagement within First Nations communities have led to calls for reforms.

Further public opinion-milking by nationally recognized writers such as Flanagan (2000) add to an increased call for federal government intervention into the affairs of Indians and Indian lands. It is with great reluctance on the part of this researcher that the views of Flanagan (2000) were taken into consideration as part of an academic review of policy literature. However, in order to present counter-arguments to strengthen this study, an attempt has been made to articulate, as befitting scholarly literature, some of Flanagan's opinions particularly with respect to the 'costs' associated with Aboriginal policy.

One of Flanagan's interesting opinions revolves around his notion of an 'aboriginal orthodoxy', which, according to Flanagan is;

An emergent consensus on fundamental issues. It is widely shared among aboriginal leaders, government officials, and academic experts. It weaves together threads from historical revisionism, critical legal studies, and the aboriginal political activism of the last thirty years. Although its ideas are expressed in many books, it has no Marx and Engels, that is, no canonical writers to authoritatively define the ideology (Flanagan 2000:4).

Flanagan urges tax-paying Canadians to engage in the debate against the 'aboriginal orthodoxy' and he focuses on the *Royal Commission on Aboriginal Peoples* (RCAP) as the definitive policy example of the 'new orthodoxy'. Flanagan's message is simple; if tax-payers do not rally against the 'aboriginal orthodoxy' then all does not bode well for Canadians;

Canada will be redefined as a multinational state embracing an archipelago of aboriginal nations that own a third of Canada's land mass, are immune from federal and provincial taxation, are supported by transfer payments from citizens who do pay taxes, are able to opt out of federal and provincial legislation, and engage in "nation to nation" diplomacy with whatever is left of Canada. That is certainly not the vision of Canada I had when I immigrated in 1968 and decided to become a Canadian citizen in 1973; I doubt it's what most Canadians want for themselves and their children. But it's what we may get if we don't open the debate on the aboriginal orthodoxy. (Flanagan 2000: 4).

If one is compelled as part of a scholarly literature review to look beyond Flanagan's fear-mongering then it is possible to add to and raise Flanagan's opinions to new heights more conducive to academic literature. For the purposes of this study the notion of 'aboriginal orthodoxy' can be graciously linked to the differing theories of what constitutes Indian or Aboriginal policy. In other words, it is this researcher's conclusion that Indian and Aboriginal policy is an 'orthodoxy' in and of itself that is defined and shaped by experts in Indian and Aboriginal policy analysis.

The next section of the chapter will group Indian policy literature according to this researcher's interpretation of 'orthodoxy' and as part of this definition, the works of Sally Weaver (Indian Policy), Audrey Doerr (Indian Policy/Aboriginal Policy in the context of Canadian public policy and administration), and Kathy Brock (Aboriginal Policy/First Nations) will be discussed. The works of others are incorporated into the discussion, in particular, Janice Switlo (Indigenous Resistance/Totalization) who has contributed much to the current Indian legislation debate. The contributions to Aboriginal policy discourse by Alan Cairns will close the chapter.

3.2 Indian and Aboriginal Policy 'Orthodoxy'

Sally Weaver (Indian Policy)

Literature on Canadian Indian policy is dominated by a handful of academics of which Doerr and Weaver wrote prolifically in the late 1970s through to the 1990s. Sally Weaver's extensive research (1993; 1990; 1986; 1981) on Indian policymaking provides the most in depth examination of the 1969 White Paper to date and Indian policy in general.

A first time reading of Weaver's *Making Canadian Indian Policy: The Hidden Agenda* (1981) can be a confusing experience unless the reader is familiar with many of the technical terms regarding public policy making in Canada. The value of her research for this study lies in the fact that she included the knowledge of those who were involved in the drafting and subsequent implementation of the White Paper. She also includes in-depth analysis of the White Paper including: the definition and process used during the

drafting of the White Paper. Weaver's 1981 treatment of the White Paper process has proven to be the definitive research on Indian policy in Canada.

For the purposes of this study, one area in Weaver's analysis was identified as significant; 'consultative democracy' and the lack of Indian consultation in the White Paper process. Weaver is careful to not explicitly state what constitutes 'the hidden agenda' or whose agenda it might be. It is this researcher's conclusion that the main component of 'the hidden agenda' was and continues to be termination. Other related components Weaver focuses on are the 're-naming' or re-defining of legislation and other government procedures in order to realize policy objectives, the partnership potential of federally funded Indian organizations in realizing termination objectives and the short and long term time frames that will facilitate an 'open-ended' and 'flexible' termination policy. The preceding components are all mentioned in Weaver's 1981 examination of the Indian policy-making process leading up to the 1969 White Paper but for the most part, are not explored in depth by Weaver. Each component of 'the hidden agenda' will be addressed in chapter five as part of the discussion on the 1969 White Paper.

After 1981 Weaver refers to two policy paradigms (1986) or paradigm shifts (1990) that characterize Indian policy. In her article titled, "A New Paradigm in Canadian Indian Policy for the 1990s" (1990), Weaver suggests that the increasingly active participation of Indians in politics has created a shift in Indian policy, thereby resulting in policies that address long-term responsibility and ethical consideration of Indian involvement in the policy process. She states that the 1969 White Paper "acted as a catalyst in promoting Indian participation in the policy-making process of the federal Government" (1972:25). Her argument is based on 'participative' democracy which is based on the premise that policy-making encourages the participation of those that policies will affect. Weaver (1986b:17) defines a policy paradigm as "a system of values and premises that shape the individual's perception of the policy paradigm and channel the marshalling of arguments and evidence in search for solutions". It is this paradigm shift in Indian policy i.e. the intermingling of new and old ideas and solutions regarding the 'Indian problem' that created problems in the Indian policy field in the 1980s.

I argue that it is not the incorporation of new and old policy ideas (paradigm shift) that caused problems as Weaver states. Rather the paradigm shift occurred when the

federal government slowly began to implement the policies proposed in the *1969 White Paper*. Since Weaver defines paradigm as a process that both defines and seeks and implements a solution to that problem, the *White Paper* as policy solution becomes the problem. According to Doern & Phidd (1992:41), a policy paradigm centers on a given policy issue. As such, “ a well developed paradigm provides a series of principles or assumptions that guide action and suggest solutions... paradigms can become entrenched and thus change very slowly because they become tied to the education and socialization of professionals or experts and perhaps of the larger public as well”. In the 1990s we see the implementation of *White Paper* policy proposals as a solution or as part of an overriding paradigm shift.

The new Indian policy paradigm that Weaver speaks of is comprised of nine components including a permanent organic relationship, sanctioned rights, dynamic Indian culture, a political ethic that guides government relations with Indians, jointly formulated policies by both federal government and Indians, empowerment for Indians, joint management systems to realize empowerment goals, the increasing importance of aboriginal knowledge and a development-oriented administrative role (Weaver 1990:11-15). These components find their way into Indian policy in the form of ‘sanctioned rights’. Sanctioned rights are a result of the shift from old paradigm ‘needs’ to new paradigm ‘rights’. Under mutual agreement, ‘sanctioned rights’ are those rights that both Indians and the federal government agree on. This mutual agreement is necessary because there are ‘parallel political forces’ in play and the new paradigm does not recognize an eradication of the Indian-federal government relationship (Weaver 1990:11).

The policy paradigm is further influenced by the personal political ideology of ministers and deputy ministers which further add to the seemingly erratic policy environment surrounding Indian policy (Weaver 1986b:18). Weaver calls this type of official influence as “foundation policies,” those policies that a government really wants to implement but is limited or restricted in application. Because “foundation policies are informed by the unmasked values and attitudes of ministers and their advisors...foundation policies are seen as “the real agenda” because they symbolize “the

real” values of the policy makers that are likely to shape future policies, or impede those seen to be incompatible” (Weaver 1986b:29).

Given that increasing participation of Indians in politics provides the framework for a new policy paradigm whereby a problem is defined and solutions put forth on a collaborative basis, one could conclude that a paradigm shift in Indian policy did occur. Mawhiney (1994) does not believe that such a shift occurred and she contends that Indian definitions of Indian philosophy and reality represent a change in hegemony that the dominant society would not support. For example, she states that “self-government” is merely another way to express the increasing “participation” of Indians in Indian policy-making. For her, a true paradigm shift will have occurred when the government accepts and implements an Indian definition of self-government.

Audrey Doerr (Indian/Aboriginal Policy/Canadian Public Policy and Administration)

Audrey Doerr (1974) was one of the first academics to research the development and impact of the 1969 White Paper on Indian policy. Both Weaver (1981) and Doerr (1974) approached their investigation from similar stances; the use of confidential ‘behind-the-scenes’ informants and both analyzed the 1969 White Paper as a separate stand-alone policy. Whereas Doerr does not provide the in-depth analysis Weaver does, Doerr nevertheless examines the 1969 White Paper within the context of public administration and a ‘generic’ public policy-making process. For this reason, Doerr (1974; 1972; 1971) was included in the literature review to highlight the importance of placing the 1969 White Paper within its proper context as one of many policy instruments used by a government to realize its policy objectives. It is this researcher’s conclusion that, although Weaver (1981) refers her readers to Doerr’s interpretation of the overall white paper process, the result is Weaver’s failure to situate the 1969 White Paper as part of the overall ‘the hidden agenda’. Doerr (1974; 1972; 1971) provides the requisite context that Weaver (1981) was unable to provide.

According to Doerr (1974:39) the 1969 White Paper was, “intended to act as a catalyst in provoking Indian reaction to the issues which the Department felt were of major concern. It was also hoped that it would serve as a useful means of generating support for the Department’s position”. The use of white papers as a means of gauging

public and political support was not new to the government circa 1969. White papers had been used within Parliament since the 1930s and by the late 1960s, had evolved to become a critical component of policy-making. Doerr (1971:180) explains that;

The initial role of the white paper was to serve as a strictly informational supplement to existing government policies. Gradually, the papers were used as policy instruments... the object of presenting these papers was to give Parliament the information needed to provide a basis for judgment on matters of policy. Such presentation also offered the government an opportunity to test the opinion of the members of the House and the public before introducing legislation in its final form.

As a policy instrument or tool, a white paper is one mechanism by which a government can 'test' both the public and target group reaction. Hence, as Doerr (1971:179) states, the role of a 'generic' white paper is one of public relations;

The making of public policy involves a continuing dialogue between diverse sectors, groups and organizations in society. this dialogue has become an immensely difficult exercise in communications as the number of participants in the system being governed and the number in the policy-making process have increased. Problems also rise from the increasing complexity of the situation, the increasing speed and unpredictability of social and technological changes, and the increasing "lead time" needed to make any effective response. In an attempt to cope with these problems, governments are confronted with the necessity of improving established procedures and employing new techniques to facilitate the process.

The use of the term 'generic' by this researcher is meant only to differentiate between Canadian public policy and Indian policy. For the purposes of this study, the application of the term 'generic' to public policy-making is a perceived contextual difference that distinguishes between Canadian policy issues and an 'identified' target group or issue, such as the 1969 White Paper on Indian Policy. Although Doerr's references to white papers are in relation to her examination of the 1969 White Paper on Tax Reform, her analysis of that process is included to show how a 'generic' white paper facilitates the finding of solutions in policy-making, regardless of target group or issue. For Doerr (1971:199) one of the benefits of white papers in the policy-making process was to highlight anticipated "social problems and search for solutions before the

problems arise". As part of a communication tool, the use of white papers also served to enhance the degree of citizen participation in policy-making.

As part of 'participative democracy', Doerr's (1971) analysis of white papers, including the 1969 White Paper on Indian Policy (1974), is different from Weaver's (1981) interpretation. For Doerr (1974:38), the 1969 White Paper was an exercise in ensuring the "participation of Indians as full citizens in a "Just Society". There were previous attempts to consult with Indians but it was not until the release of the 1969 White Paper that consultative participation was successful;

The White Paper on Indian Policy acted as a catalyst in promoting Indian participation in the policy-making process of the federal Government (Doerr 1972:25).

Weaver (1981) on the other hand identifies consultation as a specific component of participation and she interprets the White Paper on Indian Policy as an exercise in 'consultative democracy'. Both Doerr (1971) and Weaver (1981) conclude that there was no Indian participation or consultation in the 1969 White Paper process. In particular Weaver (1981:10).states;

The theme of participation wove its way through many aspects of Indian policy, including the decision to release the policy as a White Paper rather than draft legislation for parliamentary debate. The policy-making process ostensibly began with consultation meetings with Indians... participation was said to have taken place, but in fact, it did not occur; Indians were not party to the deliberations that produced the White Paper.

It can be reasonably concluded that there were two sets of principles guiding the 1969 White Paper on Indian Policy process. The first principle was based on participation as a form of 'participative' democracy whereby all citizens, including Indians, would have the opportunity to have a voice in those policies that would affect them (Doerr 1974; 1972; 1971). The second principle was based on the need to ensure that those affected by policies would participate as a form of 'consultative' democracy (Weaver 1981). It is the second principle of consultation as a form of participation within the policy-making process that will be the focus of chapter discussion on the 1969 White Paper and the First Nations Governance process. The contributions of Doerr (1974; 1972) and Weaver (1981) are introduced in this section to show how consultation and

participation were a significant component of the 1969 White Paper on Indian Policy process as befits a 'generic' white paper. The next section of the chapter will focus on Aboriginal, specifically First Nations, policy in Manitoba.

Kathy Brock (Aboriginal/First Nations Policy in Manitoba)

Of those scholars deemed by this researcher to constitute part of the Indian and Aboriginal policy 'orthodoxy', Kathy Brock (1995a; 1995b; 1997; 2002) contributes significantly to the discussion on the current *Indian Act* changes as well as initiatives undertaken by Manitoba First Nations to acquire self-government. Brock (1995a; 1997) focuses her attention on an initiative begun in 1994 under a partnership agreement by a Manitoba First Nations organization and the federal government. Brock is included in the literature review because of her focus on the 1994 Manitoba Framework Agreement Initiative. In this section of the chapter a brief overview is presented. An extensive examination of Brock's analysis of the Manitoba initiative is included in chapter six.

Perhaps without realizing it, Brock (1997:208) links current changes to Indian policy with the present-day Liberal government and its Liberal roots in the Indian Policy proposals of 1969. The result of Brock's unwitting comparison is that these initiatives appear to be the same in the late 1990s as they were in 1969, particularly with respect to consultation;

The Liberal government... has entered an elaborate process of consultation and policy development with the Aboriginal communities. The objective is to obtain policies which reflect Aboriginal concerns and needs, and better serve those communities. This represents the first step in dialogic democracy. The next step is to begin to redefine the Canadian community to allow the differences of First Nations to be accepted and respected. But if this process is to be effective, then tangible results must be realized within the communities themselves in the short term... for First Nations in Canada, the alternative to productive policy is Oka, Ipperwash, and Gustafsen Lake.

For Brock (1997; 1995a; 1995b) the Manitoba Framework Agreement Initiative embodies the government's commitments to ensuring that First Nations are consulted as direct participants in realizing self-government. In her analyses Brock (1995a) focuses on two goals of the Manitoba initiative, dismantling the Department of Indian Affairs and

Northern Development (DIAND) and establishing the recognition of Manitoba First Nations governments. The impetus for changing the federal government-First Nations relationship occurred in 1993 with the release of the 'Red Book'. Formally titled, 'Creating Opportunity: The Liberal Plan for Canada', the new policy was deemed a significant departure from earlier initiatives in several key areas; previous policies had failed to meet the needs and concerns of First Nations, the 'inherent right' of self-government had been acknowledged and would provide the needed approach to meet First Nations previously unmet needs and concerns and the Department of Indian Affairs would be dismantled in order to fulfill 'inherent' self-government objectives (Brock 1995:149).

Brock (1995a:150) explains why the dismantling of the DIAND was started in Manitoba and not the other provinces. First, as part of an "overarching political structure" the Manitoba First Nation Chiefs were quick to respond with a proposed plan outlining the transfer of DIAND programs and services to the First Nations in Manitoba. As well, First Nations in Manitoba were not newcomers to the political arena;

Manitoba First Nations have a long history of mobilization and highly developed political organizations. Under the leadership of David Courchene in the 1960s, the organization and mobilization of the Manitoba First Nations was especially evident (Brock 1995:167).

An equally important factor was that, with the exception of the Dakota Sioux tribes, all of the First Nations in Manitoba were covered by the historical numbered treaties;

Thus, the Manitoba First Nations population was a sufficiently large and cohesive component of the provincial population to allow the province to serve as a working model for the rest of the nation. (Brock 1995:151).

Lastly, the ability of the "two key political players" in the Manitoba-Federal government initiative to ensure that dialogue and negotiations between all stakeholders was maintained should not be overlooked. As Brock (1995a:151) states;

The right chemistry existed between... the Minister of Indian Affairs and the Grand Chief of the Assembly of Manitoba Chiefs. Ron Irwin and Phil Fontaine both possessed the degree of

commitment and established the mutual trust that were necessary to initiate the discussions and sustain them through strained and difficult periods. When negotiations between representatives of the AMC and Indian Affairs at the bureaucratic level reached an impasse, a phone call or discussion between the two politicians would usually be sufficient to rectify any problems and cause discussions to resume.

Brock (1995b) distinguishes herself from her policy colleagues by including First Nations perspectives in her research. With respect to her examination of the dismantling of the Manitoba regional DIAND office, it bears mentioning that the dismantling initiative was one component of the 1969 White Paper. Brock (1995b) does not mention the connection to previous federal Indian policy and one would be remiss if this connection were not investigated. Brock (1995b) focuses on the concept of self-government in Manitoba and offers recommendations to that process. While the premise of this study is not self-government per se, Brock's 1995 contribution to the Royal Commission on Aboriginal Peoples will be referenced in the discussion on the Manitoba Framework Agreement. Finally, her insights into the current First Nations Governance initiative will be reviewed in that chapter.

Brock raises valid points and it is relatively easy to discern that, regardless of the inability of the 1969 White Paper process to consult with Indians on a national level, on a regional level there appeared to be significant consultation and participation, in 1969 and during the mid 1990s. If the preceding statement were true, it would stand to reason that despite formal retraction, the 1969 White Paper proposals were implemented, although the extent has yet to be determined. It is the objective of this study to attempt to clarify the extent that the policies proposed in the White Paper have been implemented. In order to help ascertain the level of implementation, the remaining chapters will focus on analysis of specific pieces of legislation. Analyses of the legislation will be complemented with relevant policy related literature.

Alan Cairns (2000) provides the last contribution to Indian and Aboriginal policy 'orthodoxy' that is included in the literature review.

Alan Cairns (Aboriginal Policy)

The discussion on the contributions of Alan Cairns (2000) is included in the literature review for several reasons. First, Cairns (2000) theorizes that assimilation as a federal Indian policy objective has been realized in Canada. In order to support his conclusion he provides evidence that proves that identity has given way to a need to re-conceptualize the new 'modern aboriginal'. Cairn's views on assimilation policy will serve as an introduction to two other policies that have been acknowledged in most literature as the archetypical Indian policy objectives; *protection* and *civilization*. All three widely acknowledged Indian policy objectives are addressed in the next chapter. With respect to assimilation, Cairns (2000:105) states that;

most overt changes of behaviour and of norms can be brought under either the label of assimilation or of an adaptable Aboriginality... formerly, assimilation/acculturation was seen as a progressive erosion of Aboriginal values and behaviour, which were displaced by majority values and behaviour.

Secondly, Cairns' views on identity need to be addressed and the foundation of Indigenous epistemology, chapter two of this study, provides a sound critique to Cairn's conviction that the assimilation of the Indian has occurred by virtue of identity loss. Cairns (2000:105) advocates the relinquishment of identity in favour of 'modernizing aboriginality' because he perceives that any sense of identity has weakened or is lost due to intercultural contact between the two groups;

Indianness and Aboriginality are now capacious concepts no longer confined to historical ways of life. Aboriginality now incorporates non-traditional beliefs, practices, and values from outside without ceasing to be Aboriginality.

Cairns (2000:6) distinguishes between previous assimilation policy and the newly emerging "parallelism", defined by Cairns as, "Aboriginal and non-Aboriginal communities travelling side by side, coexisting but not getting in each other's way", and concludes that neither paradigm succeeds in addressing the inter-relatedness of Aboriginal and non-Aboriginal people. Hence, he concludes that a new paradigm is needed that recognizes and acknowledges inter-cultural contact;

It is misleading when the massive effects of long and intensive cultural contacts are silently ignored in language that magnifies

“otherness” in the service of separate treatment. In sum, to exaggerate our solitudes at the expense of a recognition of our moral and factual interdependence is a recipe for poor policy in the short run and profound regrets in the long run. The cultural differences of the past have diminished saliency. Intermarriage, urban living, the educational explosion among Aboriginal Canadians, and pervasive globalization pressures produce overlapping commonalities of belief and behaviour. Simultaneously, of course, the past policies that separated us from each other survive in memory and are reinforced by politics and policies that both feed on and provide sustenance to difference.

Cairns re-conceptualizes ‘citizen’s plus’ that that was first introduced over forty years ago prior to the release of the 1969 White Paper. According to Cairns (2000:9-10) ‘citizen’s plus’ originally referred to status Indians and was;

an earlier attempt to accommodate the apartness of Aboriginal peoples from, and their togetherness with the non-Aboriginal majority. The “plus” dimension spoke to Aboriginality; the “citizens” addressed togetherness in a way intended to underline our moral obligations to each other.

His modernized version of ‘citizens plus’ is still based on recognizing differences but goes further by re-considering how differences between Aboriginal and non-Aboriginal communities can be accommodated *within* the Canadian state. Essentially Cairns is saying that identity can be retained only if there is an acknowledgement of shared experiences and values between the Aboriginal and non-Aboriginal people.

It is this researcher’s belief that one of the ‘shared experiences and values’ that Cairns refers to can be attributed to the totalization theory that is mentioned in chapter two of this study. Cairns recognized that assimilation policy did not facilitate federal policy objectives to terminate Indian status and ultimately, federal responsibility. Cairns attributes the failure of assimilation policy to be partly due to the amount of coercion that fuelled assimilation measures. As Cairns states, “assimilation policy, especially when implemented as an aggressive assault on Indian culture, only served to reinforce a stubborn sense of Indianness” (Cairns 2000:66). In my opinion, it is this ‘stubborn sense of Indianness’ that is the cornerstone of Indian/Indigenous identity, an identity that is built upon an epistemology that does not enable an individual to embrace worldviews or value systems that might result in lessening traditional connections to the land. It is

resistance to alterations of that worldview. Any opposing worldviews are in turn passed through various 'policy filters' that help to determine applicable levels of response. An example of a policy filter is provided by the way that this researcher presented the literature review. As was mentioned earlier, Aboriginal and Indian policy literature is extensive. This researcher's identity facilitated the grouping of various scholars as being part of an Aboriginal/Indian policy 'orthodoxy'.

The next chapter discusses Indian policy 'orthodoxy' that suggests Indian policy objectives to be comprised of three objectives; protection, assimilation and civilization. Termination and genocide as a fourth policy reality is introduced and discussed.

Chapter Four: Assimilation, Termination, and Genocide: Reframing Canadian Indian policy

As a continuation of the review of Indian/Aboriginal policy ‘orthodoxy’ undertaken in the previous chapter, the first part of this chapter will briefly review the widely recognized Indian policy objectives of *protection, civilization and assimilation*. The work of Tobias (1976) is referenced to provide an overview to the three aforementioned policy goals. Next, Volume One of the *Royal Commission on Aboriginal People* (RCAP) will be assessed, in particular, those sections that address the history of Indian assimilation policy. The third section will establish formative links between protection, civilization and assimilation policy and termination as a fourth Indian policy reality as an antecedent to the remainder of the study. Next, a discussion of genocide will include situating various concepts of genocide within their respective paradigms as pertains to this study. The chapter will conclude with a critical analysis of the RCAP, situating the RCAP within its role as a policy instrument, as well as its role as overall policy. The discussion on the *Royal Commission on Aboriginal People* serves as an introduction to the next chapter on the 1969 White Paper.

I have drawn on the strength of others, including the efforts of such writers as Robinson & Quinney-Bird (1985), Churchill (1998), Davis & Zannis (1973) and in particular, those of the Pimicikimak Cree Nation, who shared their wisdom during their 1999 conference on contemporary Indian termination policy.

4.1 *Protection, Civilization, and Assimilation: Indian Policy ‘Orthodoxy’*

The majority of the literature acknowledges three main federal policy objectives with respect to Indians; *protection, civilization, and assimilation* (Tobias 1976; Gibbins & Ponting 1986). Tobias (1976:13) states that the three policy objectives have for the most part been the foundation of government policy for several reasons. First, protection of Indians and Indian lands from exploitation was needed during the early period of settlement and expansion in Canada. Tobias (1976:13) argues that protection was for the benefit of Indians and in order to ensure continued protection;

The Indian was to have a special status in the political and social structure of Canada... this distinction was made part of the constitutional structure of Canada through

Section 91, Subsection 24 of the British North America Act of 1867, which gave the government exclusive jurisdiction over "Indians and Indian land".

Tobias (1976) fails to recognize that there is a possibility that the 'protection' measures were in the government's self-interest and, that as part of government self-interest, legislative and constitutional protection could be rescinded. Despite his failure to make the connection as a specific policy objective, Tobias (1976:13) recognizes that termination is possible, despite legislative and constitutional protection;

The legislation by which the Governments of Canada sought to fulfill their responsibility always had as its ultimate purpose the elimination of Indian's special status.

Simply put, if legislation was created to protect Indians and Indian lands, then legislation could also terminate that protection.

Tobias equates the reserve system as a natural extension from early 'civilization' policy objectives. 'Civilization' policy had been part of the government's mandate and in that sense was not new but was an objective for quite a number of years among various religious orders. It was not until the early 1800s that attention was concentrated on the management of Indians and Indian lands. The reason, according to Tobias (1976) was that Indians were no longer needed as military allies. As part of a formal 'civilization' policy, reserves were established in order to realize civilization and assimilation goals (Tobias 1976:14-16);

The principles of Canada's Indian policy were thus all established by the time of Confederation. What changed after Confederation was the emphasis placed on these principles. Until Confederation protection of the Indian and his land was the paramount goal. Civilization of the Indian was gaining in importance but was regarded as a gradual and long term process. Assimilation was the long range goal.

The views of Gibbons and Ponting (1986) on the three historical Indian policies differ substantially from Tobias (1976). According to Gibbons and Ponting (1986:25) protection of Indians was part of a quest to fulfill "humanitarian goals" that sought to shield Indians from non-Indian society. Gibbons and Ponting (1986:25) interpret early Indian policy with a decidedly Eurocentric bias and little analytical insight;

If there has been a central pillar to Canadian Indian policy, it has been the goal of assimilation. While the terminology has varied among “assimilation”, “integration”, “civilization”, and “moving into the mainstream”, the policy has remained virtually unaltered; Indians were to be prepared for absorption into the broader Canadian society.

The shortcomings inherent in the interpretation of Indian policy by Gibbons and Ponting (1986) are revealed when compared to Tobias’s analyses. While Gibbons and Ponting (1986:26) are hesitant to discuss genocide unless that concept is attached by a disclaimer, rendering ‘genocide’ to its lesser, but by no means less damaging, form of ‘cultural genocide’, Tobias (1976:18), upon examining early legislation, is frank in his assessment of the effects that early Indian policy had on Indians and Indian lands;

What becomes even clearer is the Government’s determination to make the Indians into imitation Europeans and to eradicate the old Indian values through education, religion, new economic and political systems, and a new concept of property. Not only was the Indian as a distinct cultural group to disappear, but the laboratory where these changes were brought about would also disappear, for as the Indian enfranchised, that is, became assimilated, he would take with him his share of the reserve. therefore, when all Indians were enfranchised, there would no longer be any Indian reserves.

Tobias (1976) makes several key observations that are relevant to the premise of this study. Concurrently, Tobias provides reasons as to why early Indian policy objectives were part of the government’s initiatives in forging a ‘new’ country. Although he does not clearly define why early Indian policy objectives focused on protection, civilization and assimilation, it is apparent in this researcher’s opinion that Tobias was referring to a process that Kulchyski (1992) has termed, ‘totalization’. ‘Totalization’ describes the process whereby the state attempts to convert Indigenous peoples into adopting the values and beliefs associated with capitalism. One of the key values associated with capitalism is the ability to own private property and from Tobias’s assessment of early Indian policy initiatives, it is apparent that the policy goal was to coerce Indians into adopting a capitalist belief system.

When comparing assessments of Tobias (1976) and Gibbons and Ponting (1986) into early federal initiatives, it is obvious that both interpret the ‘protection’ provisions of

early Indian policy differently. Gibbons and Ponting (1986) associate ‘protection’ of Indians as part of an overarching ‘paternalistic’ society that was merely fulfilling its philanthropic duties. Tobias (1976) equates ‘protection’ with the need for colonial early government’s to protect Indian interests as required by legislation by virtue of the *Royal Proclamation of 1763*. It is important to analyze the *Royal Proclamation* in order to determine how ‘protection’ may have been framed with respect to not only Indians and lands but also the extent that ‘protection’ was or was not solely within government self-interest.

Upon review of the *Royal Proclamation of 1763*, it is this researcher’s conclusion that the *Proclamation* was issued solely for economic reasons. In order to secure trade within designated boundaries of the ‘new’ colonial government, peaceful relations between the Indian nations and the colonial representatives was needed. A royal proclamation would suffice to secure connections to ‘new’ lands and the securement of Indian nations as military allies would ensure that the burgeoning economic interests of the Mother Country in the ‘new’ lands were peacefully accessed, established and maintained. As an early policy instrument itself, the *Royal Proclamation of 1763* was in essence a declaration or agreement that outlined terms of reference for an amicable pursuit of “commerce, manufactures, and navigation”;

Whereas We have taken into Our Royal Consideration the extensive and valuable acquisitions in America; secured to our Crown by the late Definitive Treaty of Peace, concluded at Paris, the 10th Day of February last; and being desirous that all Our loving Subjects, as well as of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation (Imai 1998:253).

What most scholars frequently ignore is that, historically, protection was for the benefit of the federal government or the federal government acting on behalf of the Crown. The main federal objective of most Indian legislation was to protect the Crown’s interest in the land, whether this interest was in settlement or economic development. As the RCAP (1996) states,

The clear and underlying goal of Crown/Indian relations was to secure and maintain the commercial and military

alliances with tribal nations upon which the welfare of British North America still depended.

The aforementioned analyses, combined with Tobias's interpretation of early Indian policy, points to a counter-argument to the conventional analyses of *protection, civilization and assimilation*. The analysis also incorporates totalization theory as a critique of Indian policy 'orthodoxy' that has framed each policy objective within a paradigm that is indicative of the dominant society. Fudge (1983:138) states that Indian policy has been developed, implemented and assessed by perspectives that are comfortably ensconced within;

The small "L" liberal assumption that Indians are a part of Canadian society and, like other minorities, must be helped, but never pushed, toward some sort of economic and political equality... however well-meaning it may be, the liberal assumption fails to recognize any views other than those taking as inevitable the Indians' eventual assimilation into the dominant society. Unfortunately for the liberal assumption, it is rejected by virtually every Indian leader and spokesman.

Prior to a review of the resistance that Fudge (1983) and Tobias (1976) make note of in their assessments, the discussion focuses on the RCAP's contributions to the discussion on early Indian policy. As part of that discussion, Indian resistance to coercive totalization will be introduced and will be clearly identified as resistance to termination policy. The next section will assess the RCAP contribution as policy literature.

4.2 Overview of Assimilation Policy: The Royal Commission on Aboriginal Peoples

The preceding discussion centred the *Royal Proclamation, 1763* within its appropriate location as a policy instrument designed to protect colonial economic interests during early capitalist expansion.

The RCAP assessment of early Indian policy objectives mirrors that of Tobias (1976). Although the RCAP was reiterating much of previously published research and literature, the RCAP contribution to the discussion on 'protection', 'civilization' and 'assimilation' policy is included because the RCAP does attempt to situate its

interpretation within an Aboriginal perspective. As Castellano (1999:92) says of the RCAP;

Its presentation of history challenges prevailing assumptions and argues for a different understanding of the origins and the constituent elements of Canadian society.

The result is a slight loosening of the restrictive Indian/Aboriginal policy 'orthodoxy' for the 1990s and beyond. According to the RCAP, 'protection', 'civilization' and 'assimilation' policy were not separate and occurred in successive stages with a degree of overlap. Despite the mechanisms employed throughout each stage, the end result would be the same;

Regardless of the approach to colonialism practiced, however, the impact on indigenous populations was profound. Perhaps the most appropriate term to describe that impact is 'displacement'. Aboriginal people were displaced physically—they were denied access to their traditional territories and in many cases actually forced to move to new locations selected for them by colonial authorities. They were also displaced socially and culturally, subject to intensive missionary activity and the establishment of schools—which undermined their ability to pass on traditional values to their children, imposed male-oriented Victorian values, and attacked traditional activities such as significant dances and other ceremonies. In North America they were also displaced politically, forced by colonial laws to abandon or at least disguise traditional governing structures and processes in favour of colonial-style municipal institutions (RCAP 1996).

Volume One of the RCAP provides valuable counter-arguments to conventional interpretations of early Indian policy, perhaps, as Cairns (2000) states, a result that is due to the Aboriginal presence of its research directors and commissioners. Regardless, the RCAP appears to be guided by voices that are frank as evidenced in the final RCAP reports. As Cairns (2000:117) states;

The simple fact of the Commission's existence and its legacy will transform the political and intellectual context of future discussions on Aboriginal/non-Aboriginal relations in Canada.

Part of this researcher's objective when reviewing Volume One was to determine if the RCAP would make reference to 'termination' as being part of a fourth policy reality for Indians specifically, or, Aboriginal people collectively. For the purposes of this

study, the RCAP states that the American Indian termination policy was similar to the early land allotment system that was an important component of Canada's *Gradual Enfranchisement Act*;

The intention was to establish a bond between Indians and their individual allotments of property in order to break down communal property systems and to inculcate attitudes similar to those prevailing in mainstream Canadian society. This policy may have been inspired by similar efforts in the United States, where individual allotments had always been used as a method of terminating tribal existence... (RCAP, CD-ROM, Volume 1).

The preceding comment provided by the RCAP serves as a brief introduction to the next section of the chapter that investigates the possibility termination policy was also a federal objective. Cairns (2000:117) makes reference to the RCAP as being a quasi-truth commission in that;

In an indirect way, the Commission is a Canadian version of a truth commission; confronting the majority of society with the unhappy past of its treatment of Aboriginal peoples, with particular attention paid to residential schools, the relocation of Aboriginal communities, the unequitable treatment of Aboriginal veterans of both world wars, and the cultural aggression of the Indian Act.

Cairns (2000:117) sees the above as "the consequences of irresponsible paternalism" but his earlier reference to the role of the RCAP as a truth commission warrants further investigation. Of particular interest was the need to ascertain the reasons that Cairns compared truth commissions to the RCAP. A definition of truth commission's and its uses is included.

Truth Commissions

The United States Institute of Peace defines truth commissions as; bodies established to research and report on human rights abuses over a certain period of time in a particular country or in relation to a particular conflict. Truth commissions allow victims, their relatives and perpetrators to give evidence of human rights abuses, providing an official forum for their accounts. In most instances, truth commissions are also required by their mandate to provide recommendations on steps to prevent

a recurrence of such abuses... ultimately, the goals of such commissions are to contribute to end and account for past abuses of authority, to promote national reconciliation and/or bolster a new political order or legitimize new policies.

Literature on the RCAP was reviewed to determine the extent that the RCAP might parallel truth commissions, as Cairns (2000) stated. Castellano (1999:92-93) states that the RCAP was appointed by the Prime Minister in 1991;

In the aftermath of armed confrontations between Aboriginal people and the Canadian army at Oka... the commission held hearings across the country, heard testimony from over two thousand people and organizations, commissioned hundreds of research reports, and spent \$58 million over the course of five years.

Castellano's assessments of the RCAP contributions are critical at this point because, as one of the co-directors of research, she was able to participate in the drafting of the RCAP text. One of the key objectives of the RCAP was to identify common ground or experiences that could be built upon as a step to reconciling past injustices that tarnished the Aboriginal/non-Aboriginal relationship. Castellano (1999) concludes that,

The Report of the Royal Commission on Aboriginal Peoples unmask the false assumptions that have informed policy decisions in the past, calls for reconciliation in the present, and clearly articulates the principles and conditions that will facilitate partnership in the future.

Castellano (1999:97) mentions the long-term benefits of the RCAP by pointing out that there were a number of "strongly related concepts" guiding the commission;

(1) a *renewed relationship* between Aboriginal and non-Aboriginal peoples in Canada, (2) *self-determination* expressed in new structures of self-government, (3) *self-reliance* through restoration of a land base and economic development, and (4) *healing* to achieve vibrant communities and healthy individuals to fulfill the responsibilities of citizenship.

The next section turns to a discussion an underlying policy paradigm that is referred to by the previously mentioned scholars.

4.3 Termination Policies and Genocide: A Fourth Indian Policy Reality.

Where scholars deny genocide, in the face of decisive evidence that it has occurred, they contribute to a false consciousness that can have the most dire reverberations. Their message in effect is: [genocide] requires no confrontation, no reflection, but should be ignored, glossed over. In this way scholars lend their considerable authority to the acceptance of this ultimate human crime. More than that, they encourage—indeed invite—a repetition of that crime from virtually any source in the immediate or distant future. By closing their minds to the truth, that is, scholars contribute to the deadly psychohistorical dynamic in which unopposed genocide begets new genocides (Churchill 1998:19).

There are few academics writing today who perceive a link between genocide and Indian policy in Canada. In my opinion, this is an obvious gap in Canadian history is one that few individuals are willing to discuss or recognize, let alone treat as part of an academic study. As Davis & Zannis (1973:10) note, “the subject is such that people either want to forget it, or they treat it casually.” Part of the answer is simply that those who control the social, political, educational and economic institutions have control over how and what is included in the telling of history (Armitage 1999). For those Canadian academics that do write about genocide and Indians, a disclaimer is attached, thereby rendering ineffective the application of the term genocide to Indian policy. For example, Gibbins sheds a bit of light but nevertheless fails to develop the issue further. As a result, Gibbins (1997:26) attributes assimilation to cultural genocide, although he does say that use of the term “must be used with caution”.

If caution must be used when applying the terms linked to genocide and the Indian experience in Canada, then why use the term at all? For those who doubt that the possibility that genocide was part of Canadian history the following excerpt from a regional newspaper glaringly brings the past into the present;

Cancel Scalp Bounty: The Nova Scotia government is trying to decide whether it or the British have to cancel a bounty on Mi'kmaq scalps issued more than 200 years ago (January 5, 2000, Winnipeg Free Press).

Termination perceptions of Indians extend beyond international and tribal borders, including psychological perceptions that reach into the realm of genocide.

During a 1999 conference on government termination policies, a northern Chief stated that, “the government of Canada since signing treaties has been planning to extinguish us from society” (Beardy, S. 1999). During a 1961 national American Indian conference on federal U.S. termination policies renowned scholar D’Arcy McNickle commented on the perceptions of U.S. Indians;

Participants “had a common sense of being under attack.”
The sense of crisis that American Indians experienced in 1961 stemmed from the crushing poverty that plagued them and from federal policies that threatened the very existence of their communities.

During the American Indian termination initiatives, federal officials were cognizant of Indian termination perceptions. As a result of this awareness, a “shift” in termination objectives was implemented. Clarkin (2001:30) states;

Thus allowing Native Americans to perceive termination as the hidden intent of all federal programs, including those emphasizing resource development. Although (Secretary Stewart) Udall and his advisors recognized the psychological impact and effects of termination, they did not calm Indian fears on this issue. This ensured that administration policies would be met with suspicion and anxiety, thereby undermining the goal of gaining Indian collaboration and cooperation in the policy process.

Alternative explanations of how Indigenous peoples perceive various policy initiatives are critical to a holistic sense of well-being. As Clarkin (2000:xiii) states;

It is essential that policy studies abandon older forms of interpretation that relegated Indians to the status of victims reacting to the directives of Euroamericans in positions of power. Instead, policy studies must articulate the perceptions of Native Americans as they responded to federal policies and programs, as they struggled to resist the implementation of policies inimical to their interests, and, increasingly in the twentieth century, as they worked to influence the formulation of policy and to assert the right to determine the future of their communities.

Most scholars have defined ‘termination policy’ as the termination of ‘special status’ of Indians with ‘assimilation’ the tool of the federal government’s termination policy (Marule, 1977; Weaver, 1981). Other scholars (Mawhiney, 1994) do not refer to

termination of status but instead have adopted such terms as “segregation” to explain the current socio-political reality of Indian life in Canada. Fleras and Elliott (1999:187) present “stages” and “milestones” in “Aboriginal Policy.” The ‘stages’ represent the time period in which such policies as “accommodation”, “assimilation”, “integration” and “devolution” have occurred. The authors start their time scale with the signing of the Royal Proclamation (1876). It should be pointed out that with such a linear and convenient time line, one could conclude that prior to 1876, there were no Indians in existence. A more reasonable explanation, in my opinion, is that early colonial Indian policies were largely unwritten but nevertheless practiced.

Indian policy has also been referred to as “policy of attenuation”, meaning that Indian status will be weakened to the point that there will be no status Indians at all According to Boldt & Long (1988:42);

The federal government’s reasons for adopting a policy of attenuation of Indian special status are well known...for the federal government, Indian special status constitutes a political, economic, social, legal, and administrative liability of growing proportions and complexity—a liability it wants to be rid of.

The Canadian Indian termination experience has been compared to that of the American Indian in the 1950s and 1960s, whereby the federal-Indian relationship is legislatively terminated. Clarkin (2001:5) summarizes the U. S. Indian termination policy as follows;

The goal of termination policy was to end all federal obligations to Indians and their communities. Tribal governments would lose any sovereign rights they possessed, Indian lands would be removed from trust status, treaty rights would be extinguished, and federal assistance to Indians as such would cease. Tribes would continue to exist as private cultural, social or business entities, but without federal recognition as communities with specific rights distinct from those of non-Indians in the United States. Thus, termination constituted yet another federal effort to assimilate American Indians into the dominant society, efforts that to date had met with abysmal failure.

Marule Smallface (1978) and Rudnicki (1987) differ in their explanation of how termination will be executed. For example, Rudnicki believes that termination of Canadian Indians will be realized through self-government initiatives. As he states, “in

almost every case, termination objectives were realized in the United States by misrepresenting them as “forest management schemes”, “economic development plans”, “self-determination.” (Rudnicki 1987:83). Marie Smallface Marule wrote about Canadian Indian termination policy from 1969 to the mid-70s. Marule (1978:110) contends that assimilation has always been the long-term objective of Indian policy as evidenced by various forms of government initiatives;

The local government guidelines, the Indian Economic Development Fund, and the Central Mortgage and Housing Corporation Indian housing programme, are deliberate vehicles for implementation of the 1969 White Paper...the programmes and guidelines force band councils to establish Euro-Canadian institutions through which adoption of municipal government status and provincial jurisdiction is introduced on a piecemeal basis. In turn, this results in the termination of Indian rights and status by gradually undermining federal jurisdiction. This approach to termination of Indian status is essentially the same as the termination policy of the government of the United States...it only differs in application: whereas the United States policy was applied comprehensively, the Canadian approach is piecemeal. Though the rate of implementation may differ, the results will undoubtedly be the same—the loss of Indian reserve lands and the erosion of special treaty rights.

If the termination of Indians is just a notion or idea, there is a degree of certainty in notions or ideas. Weaver (1990:9-10) discusses how policy in general is influenced by ideas supplied by many sources both in the policy making field and without,

in the past decade much policy advice had flowed to the federal government from a variety of sources including First Nations groups, various government bodies, government-appointed advisory groups, the media and academics.

Weaver (1990:9-10) notes, if that policy advice has been ignored, it has not been forgotten and continues to exercise considerable influence;

when the government ignores such advice, the ideas do not necessarily disappear. Some “hover” over the policy field, thereby continuing to provide alternatives to the conventional policy approach used within government. The persistence of certain ideas can be seen when they reappear in different policies within the same policy field, e.g. Indian Affairs.

If the preceding discussion on assimilation and termination policy has shown anything, it has been that there are differing views on what constitutes assimilation or termination policy. The divergent views on assimilation and termination policy parallels the debate associated with 'genocide'. Upon reviewing the literature on genocide it became apparent that there are different interpretations and definitions of genocide. The Indian policy field in Canada has not escaped the debate and as will be shown, various forms of genocide have been linked to federal Indian policy in Canada.

The next section of the chapter situates genocide within termination policy because both are part of Indian policy reality. As an Indigenous person it is difficult to not think of genocide when discussing termination policy. As Legters (1988:773) states;

The policy of termination, by which the government arbitrarily denied to a number of tribal groups those benefits that the Indians would not have needed but for the subjugation to which they had been subjected, exhibits a subtly genocidal inclination that is preserved today in the movement to abrogate the treaties altogether.

After differentiating between the various definitions and interpretations of genocide, the rest of the chapter brings back into the discussion the severing of Indigenous ties to the land as a form of modern-day genocide. The remainder of the study will then examine various pieces of legislation that serve to support the totalizing efforts of the federal government.

The first part of the discussion highlights the views of three academics that have built on the works of Raphael Lemkin, the leading theorist of 'genocide', in order to support their theories of modern-day genocide. Davis and Zannis (1973) and Churchill (1998) are included in the study because each has made, and continues to make in Churchill's case, significant academic contributions to genocide and indigenous peoples on this continent. Their scholarly treatment is introduced in the discussion first in order to lend support to the voices of 'First Nations', 'Indian' and indigenous peoples in Canada, and elsewhere, who have linked genocide to the past and current socio-economic conditions faced by the original inhabitants.

Although they were writing during different time periods, Davis and Zannis (1973) and Churchill (1998) agree that Raphael Lemkin was one of the first academics to

define genocide. Davis and Zannis (1973) advocate Lemkin's definition as being restrictive because Lemkin was referring to genocide during times of war. Although Davis and Zannis recognize Lemkin's contribution of bringing to light the importance of the topic, both authors contend that Lemkin's application of the term genocide to crimes committed during war was limiting. Davis and Zannis (1973:9) argue that "the destruction of groups continues" and genocide must be considered as occurring not only in times of war but also in times of peace and they bring attention to Lemkin's earlier definition of genocide;

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aims of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion and the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups [Original emphasis].

Legters (1988:770) also contributes to the debate by stating;

the more serious problem with the restrictive concept is that it blurs the very purpose of having denoted as a crime those practices directed against whole peoples or other definable social groups with the effect of destroying their integrity as groups. Despite the admitted danger of dilution to the point of meaninglessness, the door has to be opened enough to include less flagrantly murderous ways of achieving the same result... mass killing is not the only way to destroy a way of life or even exterminate a people.

Churchill (1998:7-8) credits Davis and Zannis (1973) as being one example of the scholarship that has "broken with orthodoxy" pertaining to genocide and indigenous peoples, an orthodoxy that for the most part has "simultaneously denied, justified, and in most cases celebrated" the genocide of Indigenous peoples. The contributions of Churchill (1998; 2000; 2001) are included in the discussion primarily because Churchill is not one to mince words, particularly when any discussion pertains to genocide and the indigenous peoples of Canada and the United States.

It is this researcher's belief that the application and effects of genocide have been pervasive, and subsequently ignored, for so long that indigenous peoples ('Indian' and 'First Nations') have internalized not only the many effects of totalization and attempted totalization, but have also internalized the direct and indirect applications of genocide. This internalization of genocide and totalization (those values and beliefs associated with capitalism) have manifested themselves in pathologies such as alcoholism and suicide. As Robinson and Quinney (1985:2) contend;

Many books have been written on the plight of Indian people. So many that the spirit and vitality of our people is often suffocated by them. We have been probed, prodded and analyzed as if an autopsy were being performed on dead peoples. Few people are willing to look beyond the devastating statistics of our poverty, unemployment, high suicide, alcoholism, cancer and mortality rates, poor housing, inadequate education, higher proportion of prison inmates... few people see the Life (sic) which has kept us going despite these deplorable effects of colonialism.

With regards to survival, Smith (1999:145) states that;

Celebrating survival is a particular sort of approach. While non-indigenous research has been intent on documenting the demise and cultural assimilation of indigenous peoples, celebrating survival accentuates not so much our demise but the degree to which indigenous peoples and communities have successfully retained cultural and spiritual values and authenticity.

This researcher further concludes that by focusing on the pathologies or effects of genocide and totalization, the result is that the responsibility or 'owning up to' responsibility is removed from the victimizers and is placed solely upon the victims. One potential danger is that the misplaced ownership of responsibility has further resulted in the association of particular genocidal pathologies as being part of the indigenous culture. An example by Leenaars, Brown, Taparti, Anowak and Hill-Keddie (1999:340) points out that a 1998 study concluded early researcher's in Australia and the Arctic may have made incorrect assumptions of indigenous culture and suicide;

These observers discussed suicide as a way of life of the Inuit, documenting, for example, cases of "altruistic" suicide. They noted that suicide, among the elderly, disabled, and sick, was

often undertaken to preserve the group. However, although suicide in the elderly, for example, occurred, Weyer and Boas may have exaggerated their reports, loosely collecting data from diverse events, not only self-inflicted death.

The collaboration between Indigenous Australian and Inuit academics points to the connection between genocide and suicide in the north and south. Leenaars et al (1999:337) associate suicide with genocide, specifically 'cultural genocide'. Furthermore, Leenaars et al (1999:340) define 'epidemiology' as, "the incidence, distribution and determinants of a disease or an event, such as suicide" and they borrow from Durkheim's 1857 work on suicide. The authors point out that, according to the old people in both continents, historically suicide was not common amongst indigenous peoples in the Arctic and Australia and is a fairly recent phenomenon associated with settlement. As Legters (1988:771-772) succinctly states;

When colonialism take the form of settler colonies, the possibilities, even likelihood, of genocide, come almost automatically to the fore. Settlement invariably means displacement, as well as the domination and exploitation endemic in all colonialism... the fact that much of the historical record of colonialism occurred before the word was invented and while the phenomenon was still regarded complacently as "natural", affords no relief from the charge of genocide.

An interpretation of genocide as 'cultural' is a partial definition of how genocide was originally defined and why. As Churchill (1998:408) states, the point that Lemkin was trying to make by differentiating between methods of genocide was that the different typologies corresponded to different periods in time and subsequent degrees of severity. Legters (1988:770) cautions that classifying genocide according to various typologies in essence dilutes the original meaning of genocide and he states that;

unhappily, the term that has often been used to cover these less murderous forms [of genocide], "cultural genocide", is a locution (sic) at the other end of the spectrum and one that virtually invites dilution of the seriousness obviously intended in the campaign to make genocide a crime.

Churchill (1998:401) warns against trivializing genocide to the point of "colloquialism". Davis & Zannis (1973:19) also caution against treating any form of

genocide as trivial. Instead, the three forms are legitimate “methods of committing genocide, and are not lesser crimes”. Nevertheless, it is important to show scholarly examples of how various typologies of genocide have been applied to the Indigenous experience in Canada. Novack (1970:5), writing about the genocide of Indians in Canada and the United States, states that;

The uprooting of the Indians played a significant part in clearing the way for bourgeois supremacy on this continent. However, the pages of the most learned historians contain little recognition and less understanding of this connection between the overthrow of Indian tribalism and the development of bourgeois society... as a rule, they regard the ousting and obliteration of the natives simply as an incident in the spread of the white man over the continent. They may condemn the treatment of the Indians as a lamentable blot on the historical record, but they do not see that is of any important bearing.

Although Novack was equating the rise of United States capitalism with the genocide of American Indians he did indirectly relegate the phenomenon to that of ‘cultural genocide’. The view that the totalizing effects of capitalism, or, totalization theory, is comparable to the phenomenon Davis and Zannis (1973:34) describe as ‘the genocide machine’;

The Genocide Machine is an extension of traditional colonialistic genocide with new modes of operation. It is characterized by a pervasive, repressed fear that corrodes the values and sanity of subject peoples and colonial powers alike. This fear acts to advance a super colonialism based entirely on economic considerations which respect no territorial boundaries and victimizes the people of even the great colonial powers.

Dobrowski & Walliman (1992:xv) associate various forms of genocide with modernity. For Dobrowski & Walliman, genocide can have many forms, from induced famine, mass killings or skills that threaten a traditional society. As nations became more and more civilized, groups of people increasingly used various forms of violence to ensure accumulation and retention of territorial, economic and political power. The practice of genocide, in conjunction with the rise and expansion of colonialism, is a campaign that had its beginnings well before the Second World War including the

annihilation of indigenous nations by invaders in their quest for wealth and power (Churchill 1998:401).

Boldt (2000:269) links the “genocide and ethnocide” perpetrated against Indians to the “national interest”, the political hegemony that bounds together the goals and interests of Canadians and their colonizing predecessors. Palmer (1992:1) states that ethnocide occurs when;

The culture of a people is destroyed, and the continued existence of the group as a distinct ethnic identity is thereby threatened. The physical destruction of the people is not necessary, but it often occurs simultaneously. Ethnocide has been particularly virulent against indigenous minorities under processes of colonial expansion, state development programs, and nation-state building.

If, as Palmer states, one aspect of ethnocide is the destruction of cultural identity, then pre-1951 *Indian Act* prohibitions against sun dances and potlatches are examples of ethnocide in Canada. Although the 1951 *Indian Act* amendments removed the prohibitions, it needs to be pointed out that the 1951 amendments received royal assent a scant five months after the United Nations (UN) resolution on the Prevention and Punishment of the Crime of Genocide came into force. First passed at a UN General Assembly in December 1948, the Genocide Resolution was in part a reaction to the worldwide outcry against atrocities committed during the Second World War. It was not until January 12, 1951 that the Genocide Resolution came into full effect, thereby making crimes of genocide punishable (Churchill 1998).

Although the 1951 *Indian Act* did not receive Royal Assent until June 1951 (Venne 1981:315), the parliamentary process is one that is filled with delays and it can be reasonably assumed that the government bill to change the *Indian Act* was introduced in Parliament well before 1951. Canadian parliament received the draft Genocide document and eventually signed it November 18, 1949 and after debate in the House of Commons and adopted the Genocide Convention May 21, 1952 (Davis & Zannis 1973:23).

It would appear that although the document was debated in Parliament, its eventual adoption was delayed until after the 1951 *Indian Act* changes came into effect, ensuring that the Canadian government would not be accused of committing any form of genocide, be that physical, biological or cultural. Some of the 1951 *Indian Act* changes

included defining who was an Indian and regulations allowing Indian children attend school off-reserve. Mawhiney (1994:31) states that;

These changes in the *Indian Act* occurred in part because of a shift in philosophical assumptions resulting from events of World War II. Canada's pre-war refusal to admit Jewish refugees fleeing Nazi persecution, and the world's horror at Nazi Germany's policies of genocide generated a flurry of activity to refute racist practices in democratic societies—including Canada.

Cairns (2000:26) provides further support;

One of the strands that led to the 1969 White Paper proposing to abolish separate Indian status was the desire to overcome Canada's credibility gap at the UN over its Indian policy.

It appears that Canada would have been in an uncomfortable position internationally with respect to its treatment of Indians and Indian culture. It is not so much the wrist slapping that Canada was avoiding by removing any hint of genocide against Canadian Indians but rather the backlash that would fall upon any type of international economic investment Canada was hoping to engage in. It is this concern that Canada was reacting to, or hoping to, offset. Such a government action is possible in this context, given that, during the Arctic resource development in the late 1960s and early 1970s, the government had little to say about any potential negative impacts to resource development. This is because, according to Davis & Zannis (1973:41), "if they oppose resource extraction they face severe economic reprisal."

By amending the *Indian Act* to eradicate those sections that banned the potlatch and sun dance, Canada would then be in a position to gain considerable economic and political wealth on an international level during post-war capitalist expansion. As it stands, the limitations to the Genocide Convention render it virtually ineffective. Genocide perpetrators can only be brought to justice in countries, or by countries, that have legislation pertaining to crimes of genocide. Countries also do not want to engage in finger-pointing and accuse another country of genocide should the accuser in turn become the accused (Davis & Zannis 1973: 17-18).

The next chapter focuses on the 1969 White Paper and the Royal Commission on Aboriginal People, 1996. Both policy documents were reviewed to determine how the community consultation process was similar or different for each.

Chapter Five: Setting the Framework for Future Policy Development: The 1969 White Paper and the *Royal Commission on Aboriginal Peoples, 1996.*

This section examines the role of the 1969 White Paper (*Statement of the Government of Canada on Indian Policy, 1969*) and the Royal Commission on Aboriginal Peoples (RCAP) as policy instruments within federal Indian policy-making. The first part of the chapter begins with a discussion on the role of royal commissions in general and then focuses on a discussion of the role of the RCAP as an instrument of consultation. The format is similarly followed with regards to the role and purpose of the 1969 White Paper. The 1969 White Paper is examined further in order to lay the foundation for a subsequent comparative analysis between its policy objectives and current Indian policy initiatives. Through the analysis it becomes apparent that the key roles of both processes and policies (1996 RCAP and 1969 White Paper) were to serve a consultative role that would facilitate future legislative changes to Indian policy.

5.1 RCAP, 1996: Consultation for the 1990s and beyond.

The Royal Commission on Aboriginal Peoples (RCAP) is the definitive tome on 'Aboriginal' policy for the 1990s and beyond. Appointed in 1991, the commission delivered its five volumes, including oral testimony and research reports, to Parliament in 1996 (Castellano Brant 1999). Within public policy, a royal commission is first and foremost a specific type of policy instrument, one that is deemed to be the least coercive in meeting policy objectives. As such, a government does not have to implement royal commission recommendations (Wilson 1971). Given that a royal commission is a policy tool used to reach government objectives one can ask what the government objectives may have been with respect to the RCAP.

The RCAP has not been without its share of controversy and that may be due to its role as a 'generic' policy instrument. Some of the usual complaints of a royal commission are cost, length of time required for its completion and the lack of government response to the recommendations in a royal commission (Wilson 1971). As a type of policy instrument, a royal commission represents the least amount of coercion needed by the government to realize its policy objectives (Jackson & Jackson 1994). The

policy objectives of a royal commission are not necessarily immediate final solutions to an issue but instead indicate a government's concern or intent to bring about solutions at some point in time.

Equally important is royal commissions present a forum for ideas and in essence help shape public perceptions of what is important and in turn influence public policy (Jensen 1994:45). One of the most obvious questions that needs to be asked is, if those involved with the RCAP were aware that their recommendations would not be specifically implemented, what was the reason for forging ahead? The answer in part lays within the pages of the RCAP section on Aboriginal policy-making. What has happened is that the RCAP framed its analysis not within the level of Aboriginal consultation and participation, but frames its analysis within the amount of consultation and participation that was absent. By doing this, the RCAP succeeds in developing its self-declared status as the facilitator of new paradigms by shifting the emphasis to consultation as participation, not only of all Aboriginal groups, but of Canadians as well. Should this be the case then we must also ask if the RCAP served as the definitive example of consultation of Aboriginal peoples on policy issues, then it would then be safe to conclude that any policy matters will be implemented without further public consultation. If this is the case, then part of the paradigm shift is the extent to which consultation has been removed from the policy-making process. As well, the processes of consultation and participation of both Aboriginal and non-Aboriginal people in the RCAP has strengthened the consultation component in recent Indian policy-making. The result is, with respect to current Indian policy, consultation has increasingly been used as a white paper, echoing similar procedures used in the 1969 White Paper process.

One of the key issues that the RCAP addressed was assimilation as one of four policy paradigms with respect to Aboriginal policy (RCAP 1997). As a part of its mandate policy documents developed since the early 1960s were analyzed to see to what extent Aboriginal peoples might have been included in policymaking, or, participated in the policy discourse. The RCAP defined paradigm as the "dominant pattern of discourse" (RCAP CD-ROM, Record 1946/11652, Public Policy and Aboriginal Peoples). Within

the field of public policy and political studies, paradigm has a specific definition, particularly when examining 'policy paradigm'. Doern and Phidd (1992:41) state that;

a well-developed paradigm provides a series of principles or assumptions that guide action and suggest solutions within a given policy field. Paradigms can become entrenched and thus change very slowly because they become tied to the education and socialization of professionals or experts and perhaps of the larger public as well. . . policy paradigms often screen out policy options. They may help to explain why some policies do not change or change very slowly. They also alert us to the role of professional experts who have power partly because they are the successful purveyors of the dominant paradigm.

In my opinion, it is possible that the RCAP as a policy instrument facilitated a consultative role that was once the exclusive policy instrument objective of the 1969 White Paper. According to Weaver (1981:92), in the early 1960s a royal commission was considered as a possible solution to meeting both Indian and non-Indians concerns about Indian conditions. During early government discussions prior to the release of the 1969 White Paper, a royal commission was seen as one possible avenue;

The royal commission should include both Metis and Eskimos in its mandate. Ignoring the social and historical realities of native people would reduce the government's chances of ever minimizing the problems. The royal commission would consult with the provinces and native people, and it would have the added advantage of being removed from the distrusted Indian department.

5.2 White papers in public policy-making.

As a specific *type* of policy instrument, a white paper represents the least amount of coercion needed by the government in order to achieve policy goals. For the most part, policy instruments "relate to the methods used by governments to attain their policy goals" (Jackson and Jackson 1994:571). The methods or policy tools are based on the level of coercion that is needed in order to achieve policy goals, ranging from the least (self-regulating groups or associations) to the most coercive (government-owned public corporations). As well, the policy objectives in a white paper cannot be changed and while the 1969 White Paper did not directly point out what the ultimate goals were, it is

possible to determine what is being proposed by examining the words used in the *Statement*. Pal (2001:35) states that a policy statement;

defines the problem, sets the goals that are to be achieved, and indicates the instruments or means whereby the problem is to be addressed and the goals achieved.

In 1969 the federal government was proposing the creation of a framework which would facilitate a “new policy” based on the following principles; removal of legislative and constitutional discrimination; positive recognition of Indian culture to Canada; same access to services and programs as other Canadians; recognition of ‘lawful obligations’; ‘those furthest behind helped the most’; and transfer of control of Indian land to Indians (1969 Indian Policy Statement:6). Boldt (2000:266) asserts that the 1969 White Paper was ‘retracted’ in 1971 and it was not until the 1980s that ‘new’ Indian policy was developed. He argues that the “new” policy initiatives included the 1983 Penner Report, inclusion of references to Aboriginal rights in the 1982 and 1983 Constitution, the First Minister’s Conferences on Self-government and various other statements of Indian policy (2000:267).

In order to facilitate a wide-ranging view of what components are contained within the *1969 White Paper*, and how these policy components are re-born in current Indian policy, a comparative analysis will be presented. By placing Indian policy in table format we are able to cross-reference and compare each policy document.

5.3 Implementation of the *1969 White Paper*: Reversal of Process and Procedure

As stated in the previous section, a white paper outlines the various policy directions that a government intends to take with respect to a particular issue. It is important at this point to identify what the federal government was proposing in its 1969 Statement on Indian Policy.

The *1969 Statement of the Government on Indian Policy* is comprised of five parts; the forward; summary, historical background; introduction of proposed policy and implementation procedures. It is not easy at first to discern what the proposed policy goal(s) is or are in the White Paper. As Weaver says (1981:5);

the ambiguity with which the policy as delivered to the public compounded the problem of its reception. It was unclear whether the policy was simply a proposal or a firm policy signifying government commitment.

One solution to the dilemma for this researcher was to 'filter' the reading of the White Paper through the 'totalization lens'. The 'totalization lens' required an analysis of the White Paper that was in turn guided by the recognition of federal government attempts to coerce Indian people into accepting the values and beliefs of capitalism. The result was that an 'alternative' interpretation of what the White Paper was proposing emerged. In this regard, the policy goal of the 1969 White Paper was as follows;

The policy rests upon the fundamental right of Indian people to full and equal participation in the cultural, social, economic and political life of Canada.
(1969 Statement of Indian Policy: 5).

In order to achieve the policy goal, long and short term benchmarks were outlined in the White Paper such as the indicated long term goal of constitutionally removing all references to "the legal distinction between Indians and other Canadians" (Indian Policy Statement: 5). In 1969 such a goal may have seemed light years away but the fact remains that the 1982 Constitution only refers to 'Indians' as part of a collective grouping of people under the designation, 'Aboriginal'. As Cairns (2000:76) states;

To group Indian, Inuit, and Metis in a single category exerts pressure to apply similar policies to Native peoples with very dissimilar histories and contemporary situations. It tempts analysts and commentators to discuss Aboriginal peoples, but to draw almost all of their data from status Indians.

As part of short term goal setting, "repeal of the Indian Act and enactment of transitional legislation to ensure the orderly management of Indian land" would facilitate the termination of legal status that separated Indians from other Canadians (Indian Policy Statement: 5).

The discourse regarding the *1969 White Paper* can be divided into two opposing views; the first, that the White Paper was retracted and the second view is that the White Paper was implemented. For example, Weaver (1981) indicates that the White Paper was

formally retracted in 1971, of which Doerr (1972) is in agreement while Tobias (1976) counters that 1973 was the official retraction year. A further element of confusion within the first viewpoint is the conflicting dates given as to when the White Paper was rescinded. One could speculate that the conflicting dates are due to the inability of people to specifically determine when the 1969 White Paper was actually rescinded. Although government officials can state that the White Paper was shelved, the literature does not specifically indicate evidence of this action and hence the conflicting viewpoints all around. With regards to my study, I have attempted to bring clarity to the aforementioned debate for two reasons. Firstly, if the White Paper proposals were rescinded soon after its release, a specific piece of legislation should be available that points to its retraction, on a specific date. Furthermore, if such legislative evidence exists, perhaps in the form of a bill or revised statute, there would be a clearer indication from scholars regarding the 'shelving' date. Furthermore, by comparing various Indian policy initiatives and literature regarding Indian policy, I have ascertained that much of the confusion regarding the White Paper is due to the inability to 'nail down' the exact date that the policy proposals were rescinded.

Historically, Canadian 'Indian' policy was, and continues to be, closely linked to the parliamentary process and this researcher concludes that Indian policymaking is influenced by the process and procedure that is evident in the Canadian legislative system. For the purposes of the White Paper analysis, this researcher has defined *process* as the steps that are required to achieve a policy goal and *procedure* as policy action, action that is gauged by the amount of public support at a given point in time. Any Indian policy that impacts upon Indian people usually had its beginnings in the House of Commons. Since Confederation, the management of Indian lands and people has resulted in the need for Parliament to draft bills that would result in specific legislation.

The point of procedure and Indian policy is made because *if* there is a procedure that governs the way in which policy is drafted and approved within Parliament, then it can be concluded that Indian policy must follow these procedural guidelines due to the fact that Indian policy has always had its beginnings in the House of Commons. An example of 'procedural' is *debate* as a form of required procedure in the House of Commons (Parliament). When a minister in the House of Commons introduces any Bill,

at some point that the Members of the House must debate the Bill. So, in simple terms, the debate can be regarded as a form of *consultation*. It is a form of consultation because, the Ministers as elected representatives of the people, are stating not only the government's views but also the peoples whom they represent. So, the debate is a form of consultation, albeit a formal and strict kind.

It is this researcher's conclusion that due to the public outcry after the release of the White Paper, the consultation process that was part of the White Paper was 'separated' or addressed separately from subsequent Indian policy process. The lack of Indian and non-Indian support for the *Statement on Indian Policy* objectives meant that the white paper objectives would need to be realized in a different manner. What we see occurring after 1969, therefore, is consultation (process) prior to policy implementation (procedure). This does not mean that, prior to policy implementation, the public's recommendations or concerns will be included in any policy changes. What this does mean is that the public will merely be informed of the implementation of a policy or policies. This policy reversal supports the Indian and non-Indian belief that the *1969 White Paper*, although formally retracted by the government was nevertheless implemented. My analysis also shows that by virtue of the procedural process in parliament, procedure itself links policymaking and the same can be said for Indian policy, in particular the *1969 Statement on Indian Policy*. We see that, as a 'generic' white paper statement of federal policy intentions, the *1969 Statement* outlined those steps in Indian policy procedures that would be eventually realized, regardless of the amount of time needed.

According to Marule (1978:104) the 1969 White Paper proposed a "framework" that would achieve the federal government's policy "goals" with respect to Indians. In order to achieve these "goals" the government would follow "steps" that would "create this necessary framework". If these two components that Marule mentions were to be placed on a table for analysis purposes, this is how those objectives would be placed, according to her analysis. Marule's analysis of the *1969 White Paper* components, we can see that process and procedure are contained within the policy objectives. Although she refers to the *Statement's* policy objectives as "goals" and "steps", she does not clearly delineate the goals and steps from the expected results. Her analysis, therefore, merely

shows that the results are a continuation of the goals/steps she indicates. Furthermore, she does not specifically indicate *what* legislation will be impacted with respect to Indian policy. The Indian reserve lands are clearly targeted in the 1969 White Paper as evidenced in the following, “to be an Indian is to lack power-the power to act as owner of your own lands, the power to spend your own money” (1969 Indian Policy Statement: 3). The then proposed changes to the Indian Act would ensure that a different land management regime would facilitate self-sufficiency by converting reserve land to private property. In order to assume control over how moneys would be handled by bands, Lands & Trusts would be involved. (embodied in the First Nations Land Management Act and the First Nations Government Initiative, 2001).

5.3 Economic Development and the 1969 White Paper: Severing Spiritual and Cultural Ties to the Land.

History has shown that the Indian people usually pay the highest cost when expansion and progress encroach on Indian lands.
(then National Indian Brotherhood President, Walter Deiter, June 1969).

One of the main policies proposed in the White Paper is increased economic development initiatives for Indians. What costs are associated with economic development on Indians lands? To speak of ‘Indian lands’ does not include the narrow definition offered by the Indian Act ‘reserve lands’ but refers to those indigenous lands prior to European immigration. As Stevenson (2001:66) points out a ‘pedagogy of the land’ did not legislate how land was valued or who could use it but instead conceptualized how land contributed to the existence of indigenous peoples and their worldview;

Pedagogy can be explained as the science of teaching or how we come to know. The land and its constituent parts (Earth, Air, water, animals, insects and spirit beings) all provide us with teachings in one fashion or another as Creator has meant it to be. There are other ways to learn than from the land directly, as in obtaining a formal education, or traditional teachings.

I think it can be said that the concept of economic development is not one that we have put forth to the government and said, 'here, this works, we know it works because we've always believed in it since time immemorial'. No, we do not say that, nor do the majority of Indigenous peoples believe in that philosophy. To do so is paramount to a disclaimer to the philosophy that we have been here on Turtle Island since time immemorial.

The concept of economic development has always guided federal Indian policy because it was, and is still seen as the only way to make the land and its original inhabitants self-sufficient. The ideology associated with the economic development of Indians and Indian land has meant that traditional ties to their land, ties based on spiritual connections to the socio-political development of the people, have been increasingly threatened. This ideology in turn was and is a philosophy that has guided Euro-Canadian settlers and their descendants because economic development via imperial expansion through settler landholdings was one of the main reasons that brought about changes to the land and Indian people (Barron 1984:28). Mander (as quoted in Ponting 1997:253-54) outlines the differences between "Aboriginal" and "Technological" peoples value systems whereby the values of "technological" people are guided by capitalism, a belief system that places a monetary value on people, place and time. Conversely, "Aboriginal" peoples are not guided by capitalist notions of placing monetary value on people, place or time. In particular, the 'economies' of both groups can clearly be differentiated when the notion of value is attached to the land. For the "technological" peoples, one of the basic values is the "concept of private property" which includes "resources, land, ability to buy and sell, and inheritance". For the "Aboriginal" peoples, there is "no private ownership of resources such as land, water, minerals, or plant life. No concept of selling land. No inheritance" (Mander as quoted in Ponting, 1997: 253-254).

There are three main features proposed in the 1969 White Paper that are directly related to termination of Indians; 1) the transfer of control of Indian lands to Indians and 2) the removal of the legislative and constitutional legislation that discriminates against Indians. The transfer of lands to Indian control is tied to the third feature, 3) repeal of the Indian Act. All three government objectives are currently in the 'negotiation' and 'consultation' stages before First Nations.

Table 5. 0 Reversal of Process and Procedure in Canadian ‘Indian’ Policy, 1969 to 2001.

1969 White Paper (Statement of Government on Indian Policy)	1994 Manitoba Framework Agreement Initiative, AMC/DIAND	1996 <i>First Nations Land Management Act</i>	2001 <i>First Nations Governance Initiative</i>
PROCESS PROCEDURE	AND	PROCEDURE	PROCEDURE
			PROCESS

Table 1 shows the four Indian policy documents that are discussed in this study. According to my table, the *1969 Statement* was comprised of both process and procedure. We can see that the process introduced in the *Statement* is comprised of repealing the *Indian Act* in order to give Indians control of reserve land; transferring federal programs and services for Indians to provinces; increasing funding for economic development, dismantling the department of Indian Affairs and appointing an Indian Claims Commissioner to oversee Indian land claims. It is this researcher’s assumption that any changes that are proposed with respect to Indian policy must be changed by legislative process. As pointed out previously in this chapter, the White Paper indicated that “transitional legislation” would need to be implemented until such time as Indians were in a position to become like other Canadians. The next chapter will focus on a discussion of three contemporary pieces of Indian policy legislation; the Manitoba Framework Agreement 1994 (FAI), the First Nations Land Management Act 1996 (FNLMA), and the First Nations Governance initiative 2001 (FNG). Each piece of policy differs from the 1969 White Paper in one key area; while the White Paper contained proposed policy statements, Indian policy in the mid to late nineties shifted to include legislation that specifically outlined changes to Indian policy.

Chapter Six: Contemporary Termination and Genocide in Canadian Indian Policy

This chapter will show how the 2001 *First Nations Governance Initiative*, the 1994 *Manitoba Framework Agreement Initiative*, and the 1996 *First Nations Land Management Act* are interconnected. Furthermore, the chapter will show how the 1969 *White Paper* served as a framework for all three pieces of aforementioned Indian policy and how consultation and negotiation are the new buzzwords for what was once known as process and procedure in policy-making. Are there any similarities or differences that would lead one to conclude that the White Paper has not been shelved and has gone on to influence the content of subsequent Indian policy?

The first section of the chapter will examine the Manitoba Framework Agreement Initiative (FAI) that was signed in 1994. The main question guiding the researcher is to what extent, if any, has the FAI been a pilot project, in the hopes of gauging what Indian and public reaction will be to further White Paper policy changes?

6.1 The 1994 Manitoba Framework Agreement Initiative: Setting the Stage for Future Community Consultations.

The goals of the Indian people cannot be set by others; they must spring from the Indian community itself-but government can create a framework within which all persons and groups can seek their goals (1969 Indian Policy Statement: 6).

The above quotation comes from the Foreward of the 1969 White Paper and foretells the creation of a current Indian policy initiative that is being implemented in Manitoba. Prior to examining the Framework Agreement, a brief discussion regarding the historical connections to the 1969 White Paper is necessary. The discussion raises the possibility that the 1994 Manitoba FAI process was not new and was possibly conceived in 1968 by AMC predecessor, the Manitoba Indian Brotherhood and Indian Affairs Minister Jean Chretien.

The genesis of the 1994 Manitoba FAI can be traced as far back as 1967, when a representative group of registered status Manitoba Indians broke away from a provincial organization that was comprised of registered Indians, Metis and non-status Indians. The decision to break away and form a new provincial organization that excluded Metis and

non-status Indians was decided at a 1967 Indian and Metis Communications conference and a new representative organization was borne, the Manitoba Indian Brotherhood (MIB) (Burke 1976:50).

Burke (1976:59) states that in December 1968, the MIB submitted to then minister of Indian Affairs Jean Chretien the MIB's proposal for the creation of a partnership between MIB and DIAND, a partnership that would see the creation of local government initiatives on Manitoba Indian reserves. MIB proposed, among other things, Indian participation in determining future direction and joint consultation with respect to any Indian Act changes. What is interesting for the purposes of this study is two other proposed partnership principles, "substantial decentralization of financial and program authority to enable quicker response to local needs" and "program administration to be assumed by Indian bands at a pace consistent with their willingness and capacity."

Reference to the last two principles in the original MIB submission to Chretien in 1968 is important because similar principles can be found in the 1994 Manitoba Framework Agreement. What is of further interest is that the 1968 MIB partnership proposals were potentially the springboard for perceived Indian consultation to the 1969 White Paper. Upon receipt of the MIB's partnership proposal and after a meeting with MIB, Chretien responded in kind with a policy proposal for Manitoba Indians. Burke (1976:4-50) says of the project;

Reserves were to be abolished and the Department of Indian Affairs phased out through bilateral agreement of the two 'partners' who would chart the future course for Canada's Indians. . . but first, Indian organizations had to be restructured. . . in Manitoba, this process was initiated a couple of years before the formalization of Indian policy by the June, 1969 white paper.

The Minister of Indian Affairs responded in kind outlining how the partnership would unfold and a meeting between the stakeholder groups took place in January 1969 to discuss the partnership logistics (Burke 1976:57).

In order to determine if the 1969 White Paper proposals were included in subsequent Indian policy, a comparative analysis between relevant pieces of legislation and the 1969 White Paper components will be undertaken in this chapter. The 1994

Framework Agreement will be examined clause by clause in order to ease comparative review, a table outlining each policy document is provided.

6.2 Comparing the 1969 White Paper and the 1994 Manitoba Framework Agreement.

In this section a number of comparative analyses was undertaken to determine the extent that the Manitoba Framework Agreement (FA) contains similar policy objectives that are in the 1969 White Paper. The main focus of the analyses was on the 'Principle's and 'Mutual Commitments' sections of the Framework Agreement because "the objectives of the Project will be realized on the basis of the core Principles and Mutual Commitments" (Framework Agreement, 1.3(a), p. 3). It is the Principles and Mutual Commitments of the FA that provide the framework needed to sustain and support the Project's objectives, which were to dismantle Indian Affairs, recognize First Nations governments in Manitoba and restore jurisdictions to the First Nations governments (DIAND1994:3). The first part of the analyses will examine the clauses in section 5.0 and 6.0 of the Manitoba Framework Agreement. The discussion will then focus on an analyses of the 1969 White Paper and will conclude with a synthesis of both policy documents, comparing policy objectives.

Table 6.0 Comparison of Indian policy, 1969 and 1994.

1969 White Paper (<i>Statement of the Government on Indian Policy</i>)	Manitoba Framework Agreement 1994
<p>Policy Objectives:</p> <ol style="list-style-type: none"> 1. repeal <i>Indian Act</i> to enable Indian control of Indian land by acquiring title; 2. transfer federal programs & services to provinces; 3. increase funding for economic development; 4. appointment of Indian Claims Commissioner; <ol style="list-style-type: none"> 1. remove legislative and constitutional bases of discrimination; 2. recognize distinct culture of Indians and Indians' contribution to Canada; 	<p>Policy Objectives:</p> <ol style="list-style-type: none"> 1. dismantle Department of Indian Affairs and Northern Development; 2. 'recognize' First Nations governments; 3. restore jurisdictions to First Nations <ol style="list-style-type: none"> 1. the framework objectives will be realized via a process formally referred to in the Framework Agreement as 'the Project'; 2. full informed consent of First Nations to be acquired throughout the Project; 3. the agreed to principles, mutual commitments and MOU will guide the Project so that the three objectives of the framework agreement are met.

6.3 Assessing the Manitoba Framework Agreement.

Clause 5.1 in the Framework Agreement states that, “First Nations’ Treaty rights, aboriginal rights and constitutional rights will in no way be diminished or adversely affected by this process” (DIAND 1994:6). The clause is true to a certain extent. It is true that the above-mentioned rights will not be affected with respect to any constitutional rights that ‘First Nations’ now enjoy. As it stands, s. 35 of the Constitution will override any clause of the FA rather than the other way around. The danger here is that the signatory ‘First Nations’ may have interpreted 5.1 of the FA to read with similar force as does s. 35(1) of the Constitution. My interpretation of 5.1 is that all three categories of rights will be interpreted according to s. 35 as a whole.

Clause 5.1 of the Manitoba FAI is misleading when the clause is broken down and each category of rights is examined. With respect to “First Nations’ Treaty rights” my first line of argument questions the reference to ‘First Nations’ as signatories to “Treaty”. Switlo (1997:139) presents a good argument in that ‘First Nations’ are not legally similar to Indian Bands and she cautions Chief and Council of Indian Bands against believing otherwise. British Columbia lawyer Janice Switlo explains that ‘First Nations’ are only referred to as the ‘governing bodies’ designed to administer residual land agreements and she quotes from the 1992 British Columbia Treaty Commission Agreement in order to prove her point;

‘First Nation’ means an Aboriginal *governing body*, however organized and established by Aboriginal people within their traditional territory in British Columbia, which has been mandated by its constituents to enter into treaty negotiations on their behalf with Canada and British Columbia (emphasis added in source). This definition makes no reference whatsoever to any Aboriginal nation or tribes and does not include the grassroots Aboriginal peoples.

Switlo (1997:139) further explains that, “a “First Nations” is not an Indian Band. An Indian Band is not “an Aboriginal governing body””, and she makes reference to the Indian Act definition of Indian band. The assessments of Switlo (1997; 1999) are included because her work has direct relevance to current Indian policy changes.

Although she is discussing the British Columbia treaty process, she has examined various pieces of legislation that will affect Indians on a national level.

As well, there is no definition of 'Treaty'; is 5.1 referring to the historical 'numbered' Treaties or to the modern comprehensive agreements, the so-called modern day Treaties? Two answers are possible; one, by including 'First Nations' to Treaty rights, the clause refers to modern day 'treaties', which are in essence agreements, and two; reference to historical numbered treaties is doubtful because those treaties were signed by Indians or Indian nations. By referring to "First Nations' Treaty rights" clause 5.1 could therefore be interpreted to mean that it is the modern day agreements, of which the FAI is one of many agreements to be negotiated by First Nations in future years.

A discussion of 'aboriginal rights' and 'constitutional rights' is necessary at this point. Again, I have included in my assessment s. 35 of the Constitution, including subsections 1 through 4. Clause 5.1 refers to both sets of rights, without clearly defining what those rights are. This non-definition of what constitutes 'aboriginal rights' has been and continues to be one of the criticisms of s. 35 of the Constitution. Indeed, one of the criticisms is that s. 35 is in essence 'an empty box' meaning that defining 'aboriginal rights' is open to interpretation. Certainly this has been the case in legal jurisprudence. The question of 'constitutional rights' is interesting and poses a paradox for 'Aboriginal' peoples and their rights. For example, the Constitution, or, 1982 Canada Act, is comprised of two parts. The first part contains the Charter of Rights and Freedoms, guaranteeing to all citizens of Canada, including 'Aboriginal' peoples, certain rights and privileges. This further begs the question of how s. 25 within the Charter affects s. 35.

It needs to be pointed out that the majority of 'Aboriginal' and non-Aboriginal peoples in this country rely much too heavily on s. 35 as being the (constitutional) protector of Aboriginal peoples in Canada. This is true to a certain extent if references are made only to s. 35 (1). The oft-quoted s.35 (1) reads; "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" (Imai 1998:215). The error is that s. 35 (1) does not represent an accurate interpretation of what is protected. If we rely solely on s. 35 (1), it would be reasonable to conclude that all treaty and aboriginal rights are protected but a further reference to the other three

subsection of s. 35 clearly show the limitations of s. 35 (1) and s. 35 as a whole. S. 35 of the Constitution reads:

35. (1). The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
(2). In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Metis peoples of Canada.
(3). For greater certainty, in subsection (1), “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
(4). Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Imai (1998:215) notes that, “this section protects rights which were existing as of April 17, 1982...although some rights were extinguished before that date, rights which were merely regulated continue to exist”. In the 1990s court decisions with respect to s. 35 aboriginal and treaty rights indicate that any aboriginal rights and treaty rights will be interpreted on a case by case basis. Aboriginal rights derive from three sources; prior occupancy (before Euro-Canadian settlement), the Royal Proclamation of 1763 and the historical treaties (Kulchyski 1994:8-9).

Prior occupation is the historical ground upon which Aboriginal rights rest. “They were here first” translates into: “at one time, all of this land was theirs. We rarely conquered them by force of arms. Now all this land is ours. We must owe them something.” That something is Aboriginal rights. Aboriginal rights can be said historically to derive from the prior occupancy of Aboriginal peoples, their occupation from time immemorial---or at least from the time of the coming of the Europeans---of lands now constituting Canada (Kulchyski 1994:7).

Clause 5.2 in the FA states that, “the inherent right of self-government, First Nations’ Treaty rights and Aboriginal rights will form the basis for the relationships which will be developed as a result of the process” (Framework Agreement, 1994:6).

One of the dangers in section 5.0 is clause 5.3, which states that, “in this process, the Treaty rights of First Nations will be given an interpretation, to be agreed upon by Canada and First Nations, in contemporary terms while giving full recognition to their original spirit and intent” (FA, p. 6). Again, the paradox is what is meant by First Nations

Treaty rights. Is the reference to the new modern day treaties or to the numbered treaties? My interpretation of this clause is that the reference is to agreements and numbered treaties. Switlo (1997:139) states that,

The Canadian government agenda is to persuade the Aboriginal peoples that the existing treaties are too difficult to interpret and therefore practically impossible to implement. The government suggests replacing them with new workable and practical “modern treaties”, which are in fact “land claims” settlements agreements.

If we keep in mind Switlo’s interpretation, then one possibility in the future is that the inclusion of clauses similar to 5.3 of the Framework Agreement could indirectly bring about the slow erosion of numbered treaties and ensuing rights. The possibility is that the Manitoba Framework Agreement could be indicative of a community having been consulted and seen as having surrendered or negotiated new interpretations of treaty rights.

Clause 5.4 of the FA addresses S. 35 of the Constitution in that, “First Nations governments in Manitoba and their powers will be consistent with Section 35 of the Constitution Act, 1982” (FA, p. 6). One interpretation of this clause is that S. 35 of the Constitution is applicable. S. 35 has four subsections and there is no indication that FA clause 5.4 is in reference to S. 35(1) so it is further assumed that S. 35 in its entirety is applicable. S. 35 of the Constitution states that,

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

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

(3). For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4). Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons (Imai 1998:215).

A brief discussion of S. 35 is necessary because FA clause 5.4 directly refers to S. 35. As such, the following discussion of S. 35 and its subsections will not be in any particular order. Furthermore, the interpretation of S. 35(1) is reduced to semantics;

'recognized and affirmed' does not mean that any existing rights are protected, merely that these rights are acknowledged

Clause 5.4 of the Framework Agreement refers specifically to S.35 of the Constitution and therefore cannot be read as embodying any one S. 35 subsection. It would stand to reason then, that the entire S. 35 subsections are applicable and will override the Framework Agreement clauses. It is here that FA clause 5.4 restricts FA clause 5.1. Subsection 35.(1) could be interpreted to read that only those rights that existed as of April, 1982 will be protected and any agreements or land claims settled after 1982 will not receive S. 35 protection (Imai 1998:215). The logical conclusion here is that, with respect to the Manitoba Framework Agreement, signed after 1982, there is no S. 35 protection. S. 35(3) clarifies that it will be land claims agreements and ensuing rights that will be protected. If this is the case, then one repercussion is that historical numbered treaties do not have S. 35 protection. Switlo (1997:145) alludes to this possibility when she states that,

unfortunately many Aboriginal people are easily misled given the technical complexities involved and are persuaded that their title and rights are being preserved. In fact, they will not be able to enforce them.

It becomes apparent that, prior to the release of the 1969 White Paper on Indian Policy, a framework was established that would support future policy objectives. It could be argued that the 1968 partnership agreement between DIAND, MIB and the federal government is not similar to the current Framework Agreement in Manitoba but the argument is tenuous at best. Although the partnership project did not meet the objectives of either the MIB or DIAND and was subsequently deemed a failure by the mid 1970s (Burke 1976:79) the framework needed to support future Indian-DIAND partnerships was established, "the department wanted to deal with a single Indian organization: one that could negotiate on behalf of all the province's native people".

The local government initiative contained within the documents is similar to that proposed in the 1994 Manitoba Framework Agreement Initiative in that a strong emphasis was placed on the use of community people to lead a consultation process to garner support for local government. A resolution was passed at a 1971 MIB conference, permitting the use of "local government liaison persons" to inform their fellow band

members of the benefits of local government (Burke 1976:201). In a 1999 evaluation of the Manitoba FAI, community consultations were seen as “the key element of the FAI” (MAANG 1999:xi). One needs to ask at this point, consultations for what? Burke states that;

The plus as far as the Department of Indian Affairs was concerned was that reserves embarked on the process of incorporating into municipalities. The Department envisioned that this would lead to a demand by reserves for the same services provided to non-Indian municipalities by provincial governments. This, in turn, would lead to agreements between reserves and the provinces resulting in a transfer of responsibility for Indians from the federal to provincial level. Once achieved, this realignment of responsibility would spell an end to Indians and reserves as special status entities and the beginning of Indian assimilation (Burke 1976:206).

The possibility that the 1994 AMC Framework Agreement Initiative and the 1968 MIB *Future Relationships* policy proposal are similar is not without merit and some possible explanations appear obvious. For instance, the principal negotiator and prime signatory for the 1994 FAI as Grand Chief of the AMC, was also an employee of MIB during its 1968 drafting of the *Future Relationships* document.

By bringing into focus similarities, it is hoped that community people can plan accordingly. With respect to the aforementioned discussion, both the 1968 MIB and 1994 AMC processes yielded complaints from community leaders stating that the language used in the documents was too technical (Burke 1976: 196; Brock 1995:150). Both Brock and Burke questioned the effectiveness of a process that was not easily understood by those it was designed to assist. Brock also asks why the dismantling of Indian Affairs was initiated in Manitoba and answers her own question by stating that it was the Manitoba Chiefs who were quick to respond to the federal government’s request for written proposals on how self-government should proceed. Brock is partially correct but declines to further research evidence to support her claim. However, she does add that, in Manitoba there was “the availability of an over arching political structure” and, more importantly, the majority of First Nations communities were signatories to a Treaty (Brock 1995:151).

Brock does not go into any great detail as to why she sees Indian signatories to Treaties as an important variable in the self-government process. I argue that Manitoba was deemed to be the prime location for terminating Indians from a bilateral relationship with the Crown in 1994 (or, since 1982, the federal government) because the 61 First Nations were in specific lands claims negotiations with the federal government. In no other province, save perhaps Saskatchewan, are the majority of Indians covered by Treaty. Although Cairns (2000:126) sees this fact as important at the same time he is unable to make the connection between identity and traditional land ties. At best, Cairns is only able to attach a 'blood-quantum' quota as being indicative of 'Aboriginal identity'.

Equally crucial is the participation of an identifiable political figure that would guide the self-government process. With respect to the Manitoba FAI, both Phil Fontaine, then Grand Chief of the AMC in 1994, and Indian Affairs Minister Ron Irwin, developed and maintained an air of collegiality that saw the FAI process through any potential pitfalls. The immediate availability of either representative ensured that the process was uninterrupted and when problems arose, a discussion between the two men set the process back on track (Brock 1995:152). What we have in the 1994 Framework Agreement then, is an amalgamation of three Indian policies, proposed since 1968 in one form or another; i.e. the MIB 1968, *Future Relationships*; 1971 *Wahbung*; and the 1994 Manitoba Framework Agreement Initiative, recommending the dismantling of Indian Affairs (Burke 1976); the recognition of Indian local governments in Manitoba; and the financial costs needed to realize the creation of the local governments (see Burke 1976; Brock 1995). Furthermore, both the 1968 MIB document and its 1971 *Wahbung* recommended that the control of Indian lands be returned to Indians and that land claims be settled (Wahbung 1971:20-21) and "the whole of the Indian Act must be revised and corrected in consultation with the Indian people" (Wahbung 1971:35). In year two of the 1994 Framework Agreement, there is a revision in the original timeframe to accommodate a shift to increased community consultations to coincide with the hiring of community people to serve as FAI coordinators (MAANG 1997).

There is a critical piece of information left out of the consultation process; communities are not being informed about exactly what it is they are being consulted on,

nor are Chiefs and Councils as well as Band members being informed of the process or the legislation that will impact upon them. All of these variables are tied together. It is naïve for anyone to think that Indians today are being consulted about the best ways to change the socio-economic and political conditions of this country so that changes will benefit Indians. This is because Indians today, as in 1968, contribute very little to the Canadian economy and as such, are viewed as a financial burden by most Canadians (see Flanagan 2000).

If Indians are not contributing to the Canadian economy, then, how legitimate is the consultation process? Can it even be called ‘consultation’? I would argue that ‘No’, it is wrong to call it consultation, rather, the process that Indians are currently faced with is a negotiation process. Indians across Canada are being coerced into negotiating the surrender of treaty reserve land (in the case of Indigenous British Columbia, aboriginal title to traditional territory) and it is this negotiation process that is served by the 1994 Manitoba FAI, and the 2001 First Nations Governance process. Boldt (2000:281) refers to the migration of Indians to urban areas. Boldt mentions the deliberate luring of Indians to urban areas. Assisted by the decreasing disbursement of program funding to reserves, “the Canadian government’s strategy of progressive structural integration has the effect of undermining the Indians’ historical claim to special status” (Boldt 2000:281). The under-funding of programs and services for reserves is an indirect form of termination. This type of coercion ensures that Indians will alienate their traditional ties to the land. This government tactic is their attempt to squeeze Indians from reserve land. According to Marule (1978), the focal point of federal Indian policy has always been the reserves. By terminating the “special status for Indians and Indian lands” the federal government will eventually be relieved of the trust responsibility (1978:103).

The majority of Indigenous Indians of this country reside in the prairie provinces, of which Saskatchewan and Manitoba represent the two provinces that are situated within the majority of Treaty territories (Buckley 1992). Manitoba alone is within Treaty 1, 3, 4, 5, 6, and 10 territories, territories of which do not even cover the original lands indigenously governed prior to Euro-Canadian settlement. If any form of consultation were part of the current changes to Indian policy, it was the Royal Commission on Aboriginal Peoples (RCAP) that rubber stamped any changes the federal government

would make. If the RCAP showed that the majority of Canadians and Indians and Aboriginal peoples were ready to support changes to how Indians were managed by the federal government, the FAI process laid the groundwork for extensive community consultations within First Nations communities.

6.4 First Nations Governance Initiative, 2001

One requirement of a liberal democratic society is that the populace is consulted or informed prior to changes in how that country is governed. There are various mechanisms that a government can employ to ensure to some degree that its citizens are aware of changes in policy that will affect that particular group (i.e. trial balloons, 'leaked' documents, etc). The charge that Indians were not consulted about what changes needed to be made prior to the release of the 1969 White Paper is well covered in other research. The lack of Indian consultation was one of the main reasons for the apparent shelving of the White Paper. But if we accept Burke's 1976 argument that the Manitoba Indians in 1968 were part of a consultation and negotiation process well before the release of Chretien's White Paper, the popular non-consultation aspect of the White Paper becomes weakened. The point that I want to make is this: since 1968, consultation and negotiation have become a necessary part of Indian policy albeit not within the same process. Why? Because the practice proved to be successful, as evidenced by the Manitoba Indians in 1968. Who initiated the local self-government initiative first, the MIB or the federal government, is not the point of research in this thesis, but rather the fact that the federal government did consult with Indians prior to the release of the White Paper is a very relevant point. It is an important point because after that initial consultation, a framework was drafted and delivered by Chretien in 1968 to the Manitoba chiefs, who accepted the terms as they understood them. As I have argued elsewhere in this thesis, the paradigm shift (to borrow again Weaver's term) in Indian policy occurred when consultation was separated from negotiation. In order to determine how the 2001 community consultation differed from any other aspect of Indian policy, I did a brief comparison between the 2001 community consultation process and the consultation process in 1968, as both processes were deemed to be a necessary part of the changes to the Indian Act. A rudimentary investigation was undertaken to determine the extent that

both processes differed or were similar to the other. I undertook a content analysis of the INAC website's First Nations Governance Website. A simple table diagram was completed in order to determine the communities consulted, including date of consultation, consultation team members, and time of day that the meeting was convened. Included also in the assessment was key issues, concerns and key terms or phrases of participant's. The following observations are not an in-depth analysis but are what I identified to be relevant to this thesis.

There were several different methods used to consult with First Nations regarding their views of changes to the *Indian Act* including questionnaires, a web-site, a toll-free number, mail-in opportunities and in-person meetings, both rural and urban. With respect to the in-person meetings, I was in attendance at the Winnipeg meeting that was held at the Indian and Metis Friendship Centre, June 2001. Access to the First Nations Governance initiative is available as is the FNG summaries (see <http://www.fng-gpn.gc.ca>) of the process to date and is updated and new information is posted regularly. Indian Affairs Minister Robert Nault announced the FNG activities would start at the end of April and conclude at the end of November 2002. The website information mentions that affiliated First Nations organizations would be used to assist with the consultation process. It is important at this point to discuss some of the changes that will impact directly upon Indians.

The FNG website has made available the Phase 1 Consultation Report. In the discussion regarding legal standing and capacity, a question is posed, asking respondents if the term "First Nations" should be included in any new legislation. There is a link between the question and a related piece of legislation that is part of the FNG initiative. Minister Nault has recently announced that in order to realize the FNG initiative, three additional initiatives will be introduced including necessary changes to other Indian legislation.

The community consultation process was announced by Indian Affairs Minister Robert Nault as part of the First Nations Governance legislation, which will usher in new changes to the Indian Act. Changes to the Indian Act will be necessary because the First Nations Land Management Act (FNLMA) eradicates those sections of the Indian Act that pertain to reserve lands. This will be brought about when band members vote on the

required land code, which will clearly outline how the land is to be managed and by whom. According to Switlo (1999), voting on the land code will bring into effect a legal surrender of reserve land to the Queen. It is viewed as a formal surrender of land to the Queen because the Land Management Framework Agreement because the Agreement is between the signatory bands and the Queen or one of her Privy Council representatives (Switlo 1999:6). Voting on the land code, which enacts the provisions of the FNLMA will in turn bring about the required changes to meet the deleted sections of the Indian Act. New legislation to amend the Indian Act will ensure that the vote (surrender) can be accommodated. While most First Nations in Canada advocate amending the Indian Act or completely doing away with it, I do not agree with this. Although restrictive depending on the type of activity the Indian Act oversees, the Indian Act does afford a certain amount of protection for 'reserve land'. Equally important, "reserves are important evidence to prove the existence and expanse of Aboriginal title (Switlo 1999:13).

According to Brizinski (1989:188) Indians did not agree that the Indian Act should be repealed because, "without it, the protection of their indigenous rights by the law would be endangered." Furthermore,

the regulations requiring incorporation had the effect of furthering assimilation by imposing a European system of ownership and control. The land lease requirement brought in provincial taxation, and use of reserve land as collateral opened the door to the possibility of expropriation (Marule 1978:108).

What has been erroneously assumed over the course of much of the literature regarding Indian policy in Canada is that Indian special status is derived from the Indian Act. In truth, Indian special status derives from the historical numbered treaties, the majority of which were signed on the prairies. This is simply a fact because the 'special status' of Indians is due to our traditional connections to the land prior to European occupation (see Royal Proclamation, 1763). The same government observation, that Indians can only be helped if they help themselves was heard in the policy discourse throughout the 1980s (Johnson 1984). There are two resounding philosophies that guide each of these directives; in order to succeed, Indians must ultimately leave the reserves because "economic opportunities" can be found off-reserve or, in order to become

economically self-sufficient and remain on reserves, reserve land must be developed (1965, Indians in Industry document; 1969 Statement; 1982 Strengthening Band Government; 1982 Optional Band Government). These policy philosophies are true, only if Indians place a high value on the benefits that economic opportunities bring. At the same time, we would need to first see and believe in opportunities arising from a materialistic view of the world. How are these policy directives to be realized and how are they linked to policies today? The final section of this chapter discusses how the *First Nations Land Management Act, 1996* will affect traditional ties to the land.

6.5 The First Nations Land Management Act, 1996 and Genocide.

During the writing of my thesis, I have been cognizant that British Columbia is home to an increasing number of initiatives designed to facilitate and embrace new 'First Nation' entities. The fact that British Columbia is used as the springboard for new national termination initiatives should ring alarm bells for treaty Indians in the rest of Canada because a precedent has been set. There are a number of factors involved; one, British Columbia was not ceded by Treaty prior to or after Confederation. Some would argue that the Douglas Treaties should classify as 'treaty' but counter-arguments are that the Douglas Treaties are little more than quasi real estate agreements (Harris 2002). Secondly, Indigenous peoples in British Columbia have been involved with outstanding land claims against the federal and provincial government, resulting in settlements that have been completed under the rubric of 'outstanding treaty land claims'. The resultant 'modern day treaties' in British Columbia amount to nothing more than "agreements" and are not treaties in the true sense of the word nor are there specific references to treaties in the legal documents (Alfred, 2001). Thirdly, the treaty realities of Prairie Indigenous Indians and West Coast Indigenous Indians are both different and similar.

Similar by virtue of the federal *Indian Act*, a legal document that defines who we are, a legal definition that in turn recognizes our treaty relationship with the Crown. The basis of the similarity then, is cause for the difference. The dangerous precedent is established when Prairie Treaty Indians confer and consult with non-Treaty Indians. A symbolic relationship is conveyed, a relationship that enhances the non-treaty status environment and is legitimized by Treaty Indians. The message conveyed is one of surrender, a surrender that places our Treaty status in jeopardy. We have been so eager to

facilitate change that we sometimes will agree to talk about anything at the drop of the federal government hat. I caution that there is a danger when we as indigenous peoples assemble together to talk with the federal government, or its representatives, about issues that are important to us. Many would say that this eagerness to assemble is simply due to decades of kowtowing to the demands of the Crown and the federal government. There is an imminent danger in that an assembly of Indians can be interpreted as legitimizing a process that is designed to facilitate the surrender of claims to Indigenous land. Such a tactic was part of the *1876 Indian Act*;

26. No release or surrender of a reserve, or portion of a reserve, held for the use of the Indians of any band or of any individual Indian, shall be valid or binding except on the following conditions-

1. The release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules... (Venne 1981:32).

One of the biggest battles going on in British Columbia divides families and communities into two basic camps; those that support the current legislated land claims surrender agreements and those that do not want to surrender claims to Indigenous territory. We in the Prairie provinces have not been immune to that fight. For us, the problem is exacerbated by the money that is tied to the lands claims process. By attaching a dollar amount to the treaty land entitlement process, bands are forced to adopt a foreign land value system that places a monetary value on traditional land and clearly brings into effect the original intent of the *1884 Indian Advancement Act (IAA)*. The policy objective of the IAA was stated in its long title, which stated that the IAA was;

an Act for conferring certain privileges on the more advanced Bands of Indians of Canada, with the view of training them for the exercise of municipal powers.
(Venne 1981:102).

The *First Nations Land Management Act, 1996 (FNLMA)* represents the final solution in Canadian Indian termination policy. What was historically seen as a solution to the Indian or native problem, Indian policy is now manifest as genocide policy. How is this to be accomplished? By severing traditional ties to Indigenous land through a re-defining of boundaries that have come to be synonymous with 'Indians' in Canada.

Discussion of the images of Indians is not within the scope of this thesis and is addressed elsewhere thoroughly by reputable Indigenous and Aboriginal scholars. What I do want to share at this point is that it is not so much any perceived physical sense of accoutrement (i.e. something that can be put on or worn and removed at will) that is being threatened but what is at stake is an Indigenous sense of identity that is derived from traditional connections to Indigenous land. We will be 'allowed' to keep our culture as 'Aboriginal Canadians' because the 'Indian' will no longer exist.

As one of the most wide-reaching policies, the current proposed changes to the Indian Act will bring unprecedented changes to the lives of Indian people. As such, this 'recent' Indian policy is clearly a termination policy. Sweeping changes to the Indian Act will be brought into play by virtue of the First Nations Land Management Act, an Act which requires band members to vote on a land code which will legally convert 'reserve land' to private property. The 'vote' is in actuality a surrender, a requirement which the federal government must obtain by virtue of the Royal Proclamation of 1763. Simply put: get rid of the reserve, get rid of the Indian. Switlo (1999) states that, "implementing the New Regime results in the surrender of reserves and the abandonment of title to the land."

As stated earlier in this thesis, the Indian Act is not the only piece of legislation that administers to Indian and lands reserved for Indians. Since Confederation, various federal government Acts and Bills have introduced legislation specifically designed to manage Indians. It is important to realize that any current proposed changes to Indian legislation is not new and has been debated and proposed since Confederation. Hence, the current proposed changes to the Indian Act have been previously proposed and/or initiated throughout Canada's history. What is different is the emphasis placed upon each policy objective contained within each piece of legislation (Tobias 1983: 43).

Manpower and land worth hundreds of millions of dollars
are waiting to be used - Canada's Indians and their reserves
(1965, Ottawa, Indian Affairs Branch, DIAND).

A short quote but nevertheless a revealing one and one that sets the tone for future Indian policy and this thesis. For example, the process and procedure that is part of the FNG and FNLMA were also discussed in 1982 and in 1969. A document outlining how

the federal government proposed 'strengthening Indian band government' recommends implementing changes to Indian Act legislation that is concurrent with policy recommendations in 2001. Should bands choose to adopt those changes, the traditional ties to reserve land will be weakened, if not permanently eradicated. According to DIAND (1982), there were a number of alternatives that would enable bands to achieve a greater amount of control over their lands. These changes would lessen the need for Minister approval regarding land management. Part of the problem, according to the document, is that the land management system in force at that time did not contain an amount of surety. Bands usually determined which band members occupied certain land areas on reserve by issuing Certificates of Possession and as such, there are no legal guarantees, or no way to control how that land will be managed. As it stands, the land management system in the *Indian Act* only provides for occupancy, with few avenues for legal action should disputes arise between Band members.

Tied to this is any concerns/disputes that might arise between third party interests to reserve land and the Band or Band members. Clearly the federal government and the Department of Indian Affairs wants to set the record straight. The bonus for those bands that adopt the optional legislation are law making powers, the ability to enter into agreements with other bands and/or government agencies and revenue building activities such as taxation of members and non-members. What all three pieces of legislation, proposed or already existing, have in common is the *Indian Advancement Act, 1884* (IAA). It is important at this point to explain briefly the IAA provisions because similar, if not exact, provisions can be found in the 1969 *White Paper*, the *First Nations Land Management Act* and the 2001 First Nations Governance legislation.

Legislation which would base Indian Band government upon the concept that the primary locus of decision-making is within the Indian Band itself, furthermore, is consistent with the principle that the membership of a Band should be the body which determines the nature, direction and pace of its internal social, economic, political and cultural development (Canada 1982a:1).

The full title of the *Indian Advancement Act* is "an act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers" (Venne 1981:102). Assented to in

April 1884, bands choosing to do so could opt into the IAA's municipal style of government starting in January 1885. Reserves were to be divided into sections whereby each section of land would then function much like a municipality, with separate elected governing units that would perform requisite administrative duties pertaining to land and people (s. 5, Indian Advancement Act). The bands would have the ability to make and monitor by-laws dealing with such issues as schools, public health, monitoring of elections, control of animals, community infrastructure and taxation of members and non-members of the band. In 1982 the DIAND issued a document that outlined optional band legislation that was similar to provisions in the 1884 *Indian Advancement Act*. Similar provisions are currently being considered by Bands across Canada, under the First Nations Land Management legislation. The legislation is 'optional' only because not all Bands will be advanced enough to adopt legislation that would enable them to manage their "internal social, economic, political and cultural development" (1982a:1) and herein is the similarity to the 1884 *Indian Advancement Act*. The DIAND documents states that some key issues would need to be taken into consideration before such optional band government legislation could be drafted, including; the diversity of bands across Canada, local support or a band charter or constitution, bylaw making capacity of bands or applicability of municipal style governing for bands, taxation of band members, management of land, membership and legal standing and capacity.

Although not directly stated, the legislation will be optional because a surrender of reserve land by Indians must be voluntary. Indeed, the optional legislation is not termed as a surrender but that is what it represents. Bands will be given the choice to remain under the current Indian Act provisions regarding land management or can opt into the optional legislation as an alternative (1982a: 1). Indian bands are cautioned by the department that should they propose to adopt the alternative legislation, the decision will be for the long-term and may not be reversible. Such long term ramifications will ultimately affect band members, therefore, a decision to opt into the legislation must have recognized membership support. In other words, the land surrender must be voted on by the majority of band members in order to be recognized as legal. This consensus can be acquired by a community "charter or constitution", outlining "the nature of the relationship which would exist between the Indian band government and the Band

membership” (1982:2). Although the government erroneously interprets the trust relationship as a dependency relationship, the federal government is constitutionally obligated to hold with respect to Indians and lands reserved for Indians because the newly confederated Canada agreed to administer that section of the British North America Act that dealt with Indians in 1867. By opting into the legislation,

Bands are to be able to have and to exercise a system of local self-government under which they become responsible for the essential elements of their own development, it would follow that the relationship between themselves and the minister would be significantly changed. One of the major changes which could be brought about by Indian Band government legislation might be that the minister would no longer be regarded as having a residual fiduciary trust responsibility for decisions made by an Indian Band (1982:7).

What is not fully stated, is that the minister ‘might’ have a reduced fiduciary obligation because of the optional aspect. Should bands choose the legislation, the ‘might’ changes to a situation of finality and there ‘will no longer be’ a fiduciary relationship.

In the 1876 Indian Act, one of the main policy objectives was to accustom Indians to the value of private property. Such a move was fully within the limits of S. 91, subsection 24 of the British North America Act of 1867 (Tobias 1983: 39). By introducing the location ticket, Indians who had reached a certain level of civilization would acquire lots of land, the location of which would be determined by band councils. The location tickets, issued by the superintendent general for Indian Affairs, stated who and where the located Indians would reside (Tobias 1983: 46). In this respect, the 1876 legislation regarding location tickets for Indian reserve land has similarities in the current First Nations Land Management framework.

Is there a direct link between those bands that were signatory to the First Nations Land Management Act and the stipulations that must be met under the Indian Advancement Act of 1884? Can a further correlation be made between both pieces of legislation and the current First Nations Governance Initiative? In 1884 a bill was introduced that would enable Indian bands to tax private property of its members. The minister of Indian Affairs was given greater say in the band’s political activities,

including regulations of band elections, band council size and removal of elected chief and council (Tobias 1983:46). Included also was the power of the superintendent general or his alternate to oversee the band elections process. Any of the terms that are spelled out in the Indian Advancement Act have been or are close to being met by the more 'advanced' First Nations bands in Canada. As well, the references to band elections and the use of an alternate to the minister of Indian Affairs is found in the FNLMA's inclusion of the verifier. The verifier must ensure that the community vote on the land code meets federal regulations. In other words, in order for a surrender of land by Indians, there must be surety and finality to the process (Switlo 1999).

After the introduction of the 1876 Indian Act, various amendments to that Act were made law. Although most scholars define the policy goal of the Indian Act as one of extinguishment, I am arguing in this thesis that termination is a more applicable term. What might be perceived as 'new Indian policy' has in fact been a re-hashing of bills and acts that have been on the federal government's shelves for the past hundred years. A case in point is the current proposed changes to the Indian Act via the First Nations Governance Initiative. While Indians in 1884 were wary of the loss of land and residual rights, those same losses are being touted by First Nations today as 'self-government'. The 1884 Indian Advancement Act was designed to facilitate those bands that were 'advanced' to the point that they could assume a municipal style government. This policy objective is evident in the title of the Act, its purpose of which is for, "...conferring certain privileges on the more advanced bands of Indians of Canada with the view of training them for exercise of Municipal Affairs"(Tobias 1983: 46). What is different between Indians today and those in the late 1880s is that the latter refused to voluntarily extinguish their claims to their land via the use of location tickets;

Because most bands refused to alienate their land, even for a limited period, persons who held location tickets and wanted to lease their land to non-Indians as source of revenue could not do so, because the band refused to vote for the required surrender (Tobias 1983:47).

The location ticket did not mean that Indians were in a position to acquire the full title or ownership of land . It simply meant that property management skills were taught but land title was not part of the bargain. (Barron 1984:30). The prime objective of the

location ticket policy was to erode communal ties to the land, “as an incentive to individual initiative and enterprise and it was deemed to be a half-way house to private ownership”. Unfortunately, today’s Indians are readily opting to terminate their ties to the land by virtue of the self-government process that is being offered by the federal government. Self-government will only be considered by the federal government if that process includes a formal surrender of Indian ‘reserve land’. The required surrender is a formality the government, as a representative of the Crown, must acquire as stipulated by the Royal Proclamation, 1763. Since the 1876 Indian Act, the policy objective has been clear; terminate the reserve, terminate the Indian;

Not only was the Indian as a distinct cultural group to disappear, but also the laboratory where these changes were brought about would disappear, for as the Indian was enfranchised, that is, became assimilated, he would take with him his share of the reserves. Therefore, when all Indians were enfranchised, there would no longer be any Indian reserves (Tobias 1983:45).

When the 1969 White Paper was released, prominent Indian leaders denounced its land surrender provisions, as evidenced in the following statement by Walter Dieter, President, National Indian Brotherhood, “ we fear the end result of the proposal will be the destruction of a nation of people by legislation and cultural genocide” (Winnipeg Free Press, June1969). DIAND (1982:4) states that, “the major item which would be addressed in the area of land management, however, would be that of the permanent alienation of reserve land. If a Band, for whatever reason, decided that there was the need to sell a certain portion of the reserve lands, then-under the terms which it would spell out in its Band charter for the relinquishment of their interest in that land.” A band would also determine its own membership and definition of Indian. Switlo (1999:3) states that, “implementing the New Regime results in the surrender of reserves and the abandonment of Aboriginal title. They will remain ‘reserves’, but underlying Aboriginal title will have been destroyed”.

The objective in this chapter was to show how the majority of the policy statements presented in the 1969 White Paper have been proposed at one time or another since Confederation, if not before. There is a formal process that must be followed and legislation usually adheres to this process, which has not changed very much (Jackson &

Jackson 1994). If those policy objectives contained within a piece of legislation are not realized during a set period of time, it can be reasonably assumed that it remains an active, viable piece of legislation. Contrary to the view that the 1969 White Paper was “recanted” and does not culminate in policy (Boldt 2000:272), any policy cannot be rescinded, taken back or ‘shelved’. In my opinion, the 1969 White Paper has always exercised influence on subsequent ‘Indian’ policy and this is due to its role as a policy instrument. At that time in history, Canadians were informed that the federal government was proposing to move in specific directions. Today, legislation such as the First Nations Land Management Act provide the tools necessary to realize Indian policy objectives first proposed in 1969.

The concluding chapter summarizes the thesis objectives and included is a final commentary on this researcher’s perspectives.

Chapter Seven: Conclusion

For Indigenous peoples in Canada, federal policy objectives will continue to be recycled until those particular policy objectives are reached. Prior to introducing my study, it was important to first explain who I am as a researcher because my identity as an Indigenous person certainly impacts upon my research. It is not easy for me to separate myself from what I might choose to research and the first chapter in my thesis addressed the researched as researcher dichotomy. In particular, my identity as a status Treaty Indian has certainly meant that I possess a different view about what it means to be 'Indian' versus what it means to be 'Indigenous' or 'Aboriginal'. Rather than being someone on the outside who was researching about the issue, I was an individual who had direct experience with many of the legally defined notions of 'Indian', including registration and membership in my Band, status card complete with nine digit numbers and access to education funding from my Band during my graduate studies. My investigation, therefore, into some of the current changes to the *Indian Act* is due to the fact that, for me, Indian policy is a lived experience. Regardless of the changes that will be brought about, I as a registered, status Indian will be directly impacted by those and any other changes in legislation pertaining to Canadian Indians. There is also a responsibility on the part of the Indigenous researcher to share or communicate to others what he or she knows, particularly if that information directly affects the community at large. I have been able to do this two ways; one, by participating in a colloquium that encouraged individuals to present information on research to the university and surrounding community and, two, by serving as sessional instructor in the Native Studies department. Both avenues of delivery place an emphasis on the oral transmission of history and knowledge, however defined, thereby lessening the need to 'verify' or authenticate what one knows by referring to textual sources of information. This does not lessen the accuracy or legitimacy but instead strengthens what one knows or what one has learned, knowledge gained by a lifetime of experiences. It is this emphasis on the validity and important placement of experiential learning and teaching that guided me throughout my studies.

The prior life knowledge that I had gained and brought into my graduate studies caused me a bit of consternation as I wrestled with the required adoption of formal academic methods and methodology. As academic researchers we are bound by university policies to bring into our work ways and means of approaching our research. The overall intent is to ensure that our research is ethical and is guided by methods that enable us to be as unbiased as possible when it comes to conducting research. This is especially important when the researched (myself as an Indigenous person) seeks to become the researcher. Added to the dynamic is how the researched perceive research. For myself, as a self-identified Indigenous Indian, I felt it imperative to address issues that would impact upon Indians due to impending changes to the *Indian Act*. It was for me, both a political and a moral issue that needed to be addressed.

The point that I hope I have made in my discussion about methods and methodology is that it is not so much a question of ‘methods or methodology’, rather, it is a question of conducting myself during my graduate work the same way I have during my life, conduct that is guided by generations of Indigenous life methods. Simply put, it is my life experiences that have laid the foundation for my academic studies and its prescribed methods and methodology, rather than the other way around. Those skills learned by me throughout my life have taught me lessons that have culminated in my ability to articulate my experiences in another language, i.e. as one who compares Indian policy.

One can understandably ask, what happens next? When the ‘native’ is put back into, or is in, Native Studies what invariably happens is that the research becomes politicized. This is true simply because the researched becomes the researcher, which means that there will be a re-framing and a re-distribution of intellectual power. There may even be situations whereby the ‘native’ researcher is presenting counter arguments to questions and debates that have been wielded, and agreed to, by non-Indigenous intellectuals since their arrival on this continent. Certainly a re-distribution of power, regardless of academic field, will become political and it is the politicization of issues that is the foundation of indigenist research. Two other important principles in indigenist research are resistance and giving voice to Indigenous peoples (Rigney 1999). The placement of these two principles in my own research can be found in my recognizing the

need to define current Indian policy as both termination and genocide practices. Both practices will be realized with further legislative changes that will convert 'reserve land' to private property and finally, to loss. Concurrently, my hesitancy to include in my study the myopic views of publicly acclaimed academics such as Flanagan (2000) and Cairns (2000) is a deliberate resistance to further colonialist manoeuvring. Although I have read the recent works of both writers and am familiar with their perspectives regarding First Nations and Aboriginal peoples, I refuse to verify what amounts to mere opinion by including their views into my literature review or elsewhere.

It is in the area of legislative changes pertaining to Indian, Metis and Inuit peoples that a clear distinction can be made between 'Indian' and 'Aboriginal' policy. For the purposes of my study I have defined 'Indian policy' to be those policies, programs and services that pertain to 'Indians' as defined by the federal *Indian Act*. Current examples of 'Indian policy' are the federal *Indian Act*, and the 1969 White Paper. Examples of 'Aboriginal policy' include the Royal Commission on Aboriginal Peoples and s. 35 of the Constitution, which clearly defines who is an Aboriginal person, as of 1982.

There is extensive literature written about Indian policy, including works that focus on the 1969 White Paper on Indian Policy. It is important to point out that white papers, regardless of supplementary purpose, serve a specific function in policy-making. First and foremost, white papers are in essence a declaration of government intent, whereby the objectives or policy goals are stated. During Trudeau's reign as Prime Minister, the use of white papers was extensive, in part due to the then Prime Minister's philosophy of participative democracy. Because of his personal political philosophy, the consultation of individuals was paramount and white papers served consultation purposes. Throughout my research into Canadian Indian policy it became apparent that there was a shift in how Indian policy changes would be made. I have borrowed Weaver's term (1990), 'paradigm shift' and taken it one step further, by adding that the paradigm shift in Indian policy occurred after 1969. Due to the massive lack of support that the 1969 White Paper received, whereby white papers are in essence a form of consultation, what occurs as a result of a lesson learned for the federal government after 1969 is that the consultation process is separated from procedural norms in policy-making. I have labelled this paradigm shift as a reversal of process and procedure and it

is this shift that Weaver touches on but fails to develop further. In essence what we witness in 2001 and earlier is the consultation process being used as a coercive tool to sell Indian policy changes not only to Indians but also to the general electorate as well. Public acquiescence is a given because the 1996 RCAP clearly showed that Aboriginals, Indigenous Indians and the rest of Canada supported discussions that dealt with clearly defined issues relating to governance, land and economic development. These issues were not randomly drawn out of a hat but are representative of previous attempts at garnering Indian and non-Indian support in the past i.e. the 1969 White Paper. In particular, it is in the area of economic development *as proposed by the federal government and co-opted Aboriginal supporters*, that termination and genocide will be realized. The 'how' and 'when' does not appear to be a problem as it was in the past. As of the mid 1990s, several government initiatives have fast-tracked historical policy objectives.

When attempting to gain an overview of historical Indian policy, most scholars are of the opinion that the goal of Indian policy was to realize three objectives: protection, civilization and assimilation. The majority of scholars fail to address termination and genocide as a fourth policy reality, although there are notable exceptions to the rule, including Ward Churchill, among others. As stated earlier in this study, the failure of academics and writers to acknowledge and accept the fact that termination and genocide are inherent in current Canadian Indian policy will further perpetuate the many psycho-social and political realities Indians face each day.

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