Finding Dahshaa

Stephanie Irlbacher-Fox

Foreword by Bill Erasmus

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Self-Government, Social Suffering, and Aboriginal Policy in Canada

UBC Press · Vancouver · Toronto

20 19 18 17 16 15 14 13 12 11 10 09 5 4 3 2 1

Printed in Canada with vegetable-based inks on FSC-certified ancient-forest-free paper (100% post-consumer recycled) that is processed chlorine- and acid-free.

Library and Archives Canada Cataloguing in Publication

Irlbacher-Fox, Stephanie, 1971-
Finding dahshaa : self-government, social suffering, and Aboriginal policy in Canada / Stephanie Irlbacher-Fox.

Includes bibliographical references and index.
ISBN 978-0-7748-1624-3

1. Native peoples – Northwest Territories – Politics and government. 2. Native peoples – Northwest Territories – Government relations. 3. Native peoples – Northwest Territories – Social conditions. I. Title.

E92.I75 2009 323.11970719'3 C2009-900926-9

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada through the Book Publishing Industry Development Program (BPIDP), and of the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Walter and Duncan Gordon Foundation.

All author's royalties from sales of this book will be donated to the Educational Scholarship Fund of the Délînê Land Corporation (Northwest Territories).

UBC Press
The University of British Columbia
2029 West Mall
Vancouver, BC V6T 1Z2
604-822-5959 / Fax: 604-822-6083
www.ubcpress.ca

When Heaven's servants had made the earth, they took something resembling the hide of a large moose which was soft to the touch, and they spread it over the earth's surface.

Then they lifted it up again and the earth had become more beautiful.

Six times they repeated this process and that was how the world was made so beautiful.

My mother used to tell me that heaven created the earth.

– Dene Nation, *Denendeh: A Dene Celebration*

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Foreword

Bill Erasmus, Dene National Chief

This book is an important contribution to the study of the relationship between the Dene and Canada. Dr. Irlbacher-Fox is non-Indigenous, and she has spent most of her life living and working in Denendeh among the Dene, Métis, and Inuvialuit peoples. She has listened to us using both her mind and her heart, which shows in the passion and conviction she conveys in her research and writing. I welcome her contribution to bringing to light aspects of both the strengths and the struggles of the Dene.

In 1973, the Dene won a long-fought victory in the *Paulette* decision, a court decision that shattered the myth that Dene had surrendered their lands and extinguished their Aboriginal rights. In that court case, Fort Smith Chief François Paulette led the Dene to assert their place as stewards of Denendeh in the face of major development. Dene were then, as they are now, a majority of the residents in the Northwest Territories. The *Paulette* decision clearly stated that Treaties 8 and 11 that Dene had entered into with the Crown were not ones of extinguishment. Dene already knew that their ancestors had not given up the land and that the treaties described terms of peace and friendship. Treaty 8, which extends into the northern parts of Saskatchewan, Alberta, and British Columbia, was entered into not only by us but also by our Indigenous neighbours. Therefore, Canada must recognize that all numbered treaties are ones of peace and friendship and then address the articles of the treaties accordingly.

Despite the *Paulette* decision, Canada still maintains that it owns Dene lands, where generations of Dene far into the future will continue to live. Being Dene is to live as part of the land. Dene conceive of "land" not in the capitalist sense as a patch of ground legally surveyed, registered, and paid for. For Dene, the land is not property, which is the way Canada would prefer Dene to see it. The concept of land for Dene is understood as what non-Indigenous people would call the ecosystem or all of the life – animate and inanimate – that makes the world whole: earth, air, water,

minerals, insects, animals. The reality that Dene are part of the land will never change. When the Dene are forced to articulate their relationship to the land in Canada's terms, they assert collective ownership, which Canada has great difficulty in understanding because its Constitution is based on individual rather than collective rights. If Canada truly wishes to move forward in its relations with Indigenous peoples, it must accept that Dene and the land are indivisible. As Raymond Taniton is quoted as saying in the Introduction, Dene people cannot change into something else. So to assert that the Crown owns Dene lands is to assert that it has divided Dene from themselves. That makes no sense.

In 2008, Canada offered an apology for what generations of Indigenous peoples were forced to endure at residential schools. That experiment, of forced spiritual and social assimilation through institutionalization, failed not simply because it was executed with such evil brutality and inhumanity. It also failed because, despite everything, Dene and other Indigenous peoples continued to be who they are. Indian residential school survivors are here because they continued to love the land, to care for themselves and for each other. They, their families, and their communities found their strength and themselves in the timeless knowledge and beliefs of their people. Not everyone made it, and many still struggle. Indigenous peoples have come through that suffering and continue to move through and away from it on the strength of being Indigenous, rooted in their lands and ways of life. As part of the Indian residential school settlement, the prime minister of Canada apologized for the Indian residential school tragedy. Canada was required by the settlement to make an official apology. Action must be taken that will make that apology a living sensibility within Canada's Aboriginal policy. That sensibility would strive to understand and work with Indigenous peoples on the basis of who they know they are, not on the basis of what Canada thinks Indigenous peoples might or ought to be. If residential schools have taught Canada anything, it is that any policy based on changing Indigenous peoples, "to kill the Indian," as its first object, will ultimately fail.

Instead, there is a need to focus on the impulse toward reconciliation promised by the Truth and Reconciliation Commission, which began its work in 2008. People need to be able to tell their experiences, be listened to, and witness evidence that they have been heard. Evidence must be found in changes to Canada's approach to addressing the realities of Indigenous peoples. It would include Canada supporting the Declaration on the Rights of Indigenous Peoples, which the Harper government voted against in the United Nations General Assembly during 2007. It would also include Canada moving beyond diagnosing the deplorable conditions in

Indigenous communities and enabling communities to engage in innovative and sustainable measures to improve lives. It would include Canada reviewing all of its policies that are premised on the attitudes that resulted in tragedies such as Indian residential schools and ensuring that there is no continuity between such attitudes and policies and the ones that inform how Canada approaches initiatives with Indigenous peoples today. As this book shows, colonial attitudes are entrenched in the policies under which Canada negotiates today. And, finally, that evidence would include Canada accepting that Indigenous peoples are who they say they are and making social and political space for Indigenous peoples to exist as Indigenous peoples, in the spirit of the original treaties of peace and friendship that we continue to honour as the basis of our relations with Canada.

Acknowledgments

I am grateful for the opportunity to share the experience and knowledge in this book. Many people provided support and encouragement along the way. Among these, my first debt of both love and thanks is to my husband, Andrew, who is the rock on which my life is built, and to our sons, Everett and Simon.

For a non-Indigenous researcher, this sort of work demands constant personal decolonization. The love and stability provided by my family are critical in steadying me through that continuing journey. So too are the encouragement and intellectual validation offered by friends and colleagues. In particular, I thank Taiaiake Alfred, whose insights have been invaluable and whose own writing is so inspiring.

Early development of this work at Cambridge University was guided with great patience by Barbara Bodenhorn of the Department of Social Anthropology. Subsequent versions of the manuscript benefited from comments provided by Nigel De Souza and Elana Wilson; I thank Scott Duke for excellent editorial suggestions. At various points throughout research and writing, ideas were shaped by advice and encouragement from Piers Vitebsky, Michael Bravo, James Tully, Joyce Green, Colin Samson, Frances Abele, Michael Asch, Graham White, and the late Vine Deloria, Jr.

At home in the Northwest Territories, friends took time from their own commitments and responsibilities to aid me in my research. In particular, Dene National Chief Bill Erasmus gave generously of his time to teach me about Dene peoples, ways of life, and struggles, and I continue to learn much from him. Mahsi cho and quyanini to Bob Simpson and Vince Teddy for their friendship and collegiality. I want to thank Danny Gaudet for convincing me five years ago to work on Délînê negotiations for just three months and allowing me to experience that very special place, Délînê. I thank

Albert Lafferty and the Fort Providence Métis Council for the opportunity to research Dehcho Métis political history, a rich and rewarding experience working with council members and learning much about the place of the Métis peoples in the NWT. During fieldwork research, a number of government officials and negotiators from both the territorial and the federal governments participated in interviews, and although for reasons of confidentiality I cannot name them here I wish to thank them for their time and generosity, without which this book would not be possible. I would also like to acknowledge a debt of gratitude to the late John Bayly and the late Elder Albertine Rodh, who each gave generously of their time during the course of my research.

I have had the privilege of working for the community of Délînê on its self-government negotiation process for the past five years and continue to benefit from the generosity and wisdom of my many friends and colleagues there. Mahsi to Danny and Gloria Gaudet, Elders Alfred Taniton and Leon Modeste, Morris Neyelle, Jane Modeste, Patricia Modeste, Fred Kenny, A.J. Kenny, Raymond Tutcho, Raymond Taniton, Leroy Andre, Peter Menacho, and Les Baton. For the past several years, I have had the opportunity to work with incredible women committed to tanning moosehides; I thank them for their friendship and acknowledge their awesome strength: Denise Kurszewski, Diane Baxter, Ruth Wright, and Elaine Alexie. Mary Barnaby, Judy Lafferty, Margaret Kelly, and Mary Louise Drygeese, mashi for your patience and kindness, and for such generosity in sharing your knowledge. I would also like to thank friends whose wit and wisdom have sustained me during the life of this project: Candy Hardy, Kim Thompson, Ginger Gibson, Shannon Ward, Wynet Smith, Jackie Price, Julie Jackson, and Elder Bertha Francis.

I wish to express my gratitude for the efforts of several individuals in the production of this book. To Brandy Wilson, thank you for your friendship, artistic soul, and inspiration. And to the editorial staff at UBC Press, Jean Wilson, Darcy Cullen, Anna Eberhard-Friedlander, Holly Keller, and Laraine Coates, I am sincerely grateful for your dedication and commitment to seeing this project through.

Several institutions provided funding that allowed pursuing the research on which this book is based. For providing both funding and such a convivial and magical intellectual home during my years at Cambridge, I wish to warmly acknowledge Master Duncan Robinson and Fellows of Magdalene College, particularly Dr. Mark Billinge; the Donner Foundation; the Cambridge Commonwealth Trust; Director Julian Dowdeswell and the staff of the Scott Polar Research Institute; and the Social Sciences and Humanities

Research Council of Canada. The Walter and Duncan Gordon Foundation provided a generous grant to cover publication costs of this book; for that and for all of their wonderful work supporting research and community development projects throughout Northern Canada, I wish to thank the Board of Directors and James Stauch, manager of the foundation's Northern Program.

Pronunciation Guide

Délînê	Day-lee-nay
Délînê Got'ine	Day-lee-nay Go-tee-nay
Gwich'in	Gwit'-chin
Inuvialuit	Ee-noo-vee-a'-loo-eet
Liidlii Kue	Leed'-lee Kweh
Tlîchô	Klee-chon
dahshaa	Daa-sha'
Dene	Deh-neh
Inuvik	Ee-noo'-vik

Finding Dahshaa

Introduction

> Canada comes up with new programs and policies for Native people all the time. Self-government is one of those. It's like Canada is on this long journey, where bit by bit they are able to understand rights of People [Dene]; they are just at the beginning stage. And sure, we will sit with them and take those programs, that's for our People. What they haven't understood yet is that we are Dene, and nothing will change that. No policies or money or agreements or whatever. We are Bear Lake People, we have always lived here. We are not like the Mountain Dene, for instance. They live over there and have their ways, their area. We have our ways. That lake we depend on. And yet we get along with the Mountain People, even when we are different. It has always been like that. It will be like that a thousand years from now too. We are Dene, and that will never change.
>
> – Former Délînê Land Corporation president Raymond Taniton (interview, 2005)

This book is among the first of many analyses of self-government negotiations. It seeks in part to understand and deconstruct assumptions and premises of Aboriginal policy in Canada. The quotation above gives voice to an experience of a consistent message of Aboriginal policy in Canada: Indigenous peoples must change, and government can provide the tools, programs, and funds necessary to change. Change has many dimensions and is to various ends: more sophisticated governance tools; greater control; healthier communities; better educational attainment; modernizing practices and ways; achieving certainty of rights and lands and resources ownership. It seems that circumstances require change of Indigenous peoples, an adaptation necessary to achieve living conditions, life chances, and lives similar to those of other Canadians. It seems there is much to change about Indigenous communities, governance practices, cultures, and values.

Is it Indigenous peoples who need to change? Or might something else need to change?

This book presents a different perspective on change and Indigenous peoples, namely that Aboriginal policy itself should change to provide a far more effective route to improving the lives and life chances of Indigenous peoples.[1] This refocusing would result in changing oppressive circumstances rather than requiring people to change to better cope with oppressive circumstances. Change would substantively (rather than symbolically)

redress injustice and accommodate indigeneity instead of requiring change of Indigenous peoples in terms of their cultures, lifeways, and rights.

By examining self-government negotiations in the Northwest Territories (NWT), we can see how Canada promotes Indigenous change as a way to accommodate and normalize ongoing injustice as the basis of relations between the state and Indigenous peoples. Through positioning both Indigenous peoples and the injustices they suffer as non-modern and historical, and itself as a source of social, political, and material redemption, the state manages to legitimize both injustice and its ongoing colonial-based interventions into the lives of Indigenous peoples. This positioning is explored in the context of self-government negotiations through a combination of discourse analysis, narrative evidence of both Indigenous peoples and government negotiators, and ethnographic description of Dene moosehide tanning that functions as a Dene cultural referent for understanding Indigenous perspectives and interactions that take place during negotiations. To begin, this introduction overviews key conceptual and theoretical insights grounding the analysis in subsequent chapters.

Self-Government and Land Claims

This book is based on research into self-government negotiations in the Northwest Territories, Canada. It is not about land claims or co-management – although land claim negotiations and agreements are closely related to those of self-government. Land claims and self-government rights and authorities as understood by the Canadian state are distinct and until the 1995 Inherent Right Policy were dealt with separately. Despite this, land claim authorities are sometimes described as elements of self-government. However, in this book, the self-government rights and authorities being referenced are those under discussion in self-government negotiations proper.

Although there is an extensive literature on land claim and co-management arrangements in Canada based on experiences during and after their implementation (Berkes 1999; Berkes and Henley 1997; Feit 1998; Nadasdy 2003; Scott 2001; Spaeder and Feit 2005; Usher 2003), a parallel literature on self-government simply does not exist. A few self-government arrangements have been negotiated under the Inherent Right Policy, but there is very little scholarship on either the negotiation or implementation of self-government agreements, with the significant exception of contributions being made respecting the British Columbia Treaty Process (Penikett 2006; Woolford 2005). Instead, most scholarship tends to focus on legal and theoretical aspects of self-government or program-based examples of local control of programs or services (Belanger 2008; Hylton 1999; see also Newhouse and Belanger 2001). This is largely due to the fact that few self-government arrangements have been negotiated and implemented.

Ongoing Injustice

Injustice toward Indigenous peoples in Canada is not only historical. It is also on-going. Historical injustices are discrete, specific events experienced by communities and individuals. For example, dispossessing a First Nation of lands without consent or the Indian Act's outlawing cultural and spiritual practices. In contrast, ongoing injustice is the complex of existing policies, state institutions and governing arrangements, and fraudulent land and resource transactions that continue to be imposed on Indigenous peoples. These range from the existence of the Indian Act itself to Canada's assertion of ownership over lands and resources never relinquished by Indigenous peoples. Ongoing injustice includes the persistent colonial relationship between the Canadian state and Indigenous peoples. The legal relationship structured by statutes such as the Indian Act is evidence of this,[2] as are Third World living conditions plaguing Indigenous communities.

The content of the state's Aboriginal policy is based on both its legal obligations to Indigenous peoples and what the governor general of Canada in 2004 called the "shameful conditions" that many Indigenous communities suffer.[3] Yet it does so from a vantage point where shameful conditions are seen as a combination of legacies of "historical" injustice and the clash between modernity and indigeneity. So the only option is to work for a better future. This is because circumstances resulting in present conditions are characterized as unchangeable: past wrongs that stand as lessons to be learned from rather than injustices to undo. In that view it is only the nature of indigeneity that can change, specifically its perceived temporal quality of pastness. And so Aboriginal policy focuses on "present suffering" as though that suffering were unrelated to injustice and instead primarily the result of poor lifestyle choices and the non-modern nature of indigeneity itself.

This approach says that to assert that injustices matter is to live in the past and that chances for a better life emerge only if the past is left behind, because circumstances created "in the past" will not change. It requires that Indigenous peoples themselves must change – that is, from being Indigenous to being Indigenous in a way that reconciles Indigenous rights, interests, and being with what conforms to the norms of the Canadian Constitution, democracy, and dominant culture. Self-government (not self-determination) is designed to achieve this.

Conventional wisdom on solving the "Indian problem" (or, alternatively, the colonizer problem) suggests change of either the state or Indigenous peoples. It takes the form of proposing indigenization of the state and its agencies, various models of Indigenous assimilation, or power-sharing proposals that maintain the continuity of the institutional status quo. These suggestions seek to better accommodate difference and so restore Indigenous

peoples to wellness by changing Indigenous cultural norms to better operate within those social and political structures that have been oppressive to Indigenous peoples. Such change among Indigenous and non-Indigenous peoples and institutions will mean that finally Aboriginal rights are meaningfully reconciled with Canadian sovereignty.

Recent writings of scholars such as Glen Coulthard (2007), Paul Nadasdy (2003), Colin Samson (2003), and Dale Turner (2004) have shown that solutions emerging from the indigenization/assimilation paradigm such as land claims, self-government, and co-management have failed expectations. For those of us who live and work in predominantly Indigenous communities or within the Indian rights industry, this is no surprise.

Fortunately, a new paradigm advocating Indigenous resurgence has begun to be advanced by Indigenous scholars, a paradigm responding not only to the evident policy failure but also to the de-spiriting of the people that results from that failure. Developed through activist Indigenous scholarship advocating strategies for social and political change through personal rejection of colonization and regeneration of culture (Alfred 2005), writers have applied these concepts to personal and collective resumption of Indigenous ways to a range of diverse topics such as governance (Wilson and Yellow Bird 2005), pregnancy and birthing (Simpson 2006), and diet and exercise (Mihesuah 2003). As developed in the work of Taiaiake Alfred (2005), the paradigm rejects addressing Indigenous social suffering through redemptive programs of the state and instead proposes un-doing the causes of suffering through Indigenous resurgence as determined by Indigenous peoples, drawing on Indigenous philosophical and cultural ways. It calls for a rejection of colonized mindsets, among both Indigenous peoples and settlers, and, instead, a regeneration of Indigenous cultures through freedom in thought and action from a colonial relation between Indigenous peoples and the settler state. Resurgence, by opting for Indigenous connection to lands, resources, and cultures in peaceful ways outside the colonizer's sanction, presents a far greater challenge to the Canadian state than any legal reconciliation of Aboriginal rights with Canadian sovereignty. It poses a challenge to the key component of all Aboriginal policy that says Indigenous peoples must change (specifically "modernize") as the only route to (Western notions of) wellness and prosperity. The resurgence paradigm proposes ending suffering through self-decolonization and self-determination of individuals and collectives: Indigenous peoples being true to their Indigenous ways.

A fundamental element of this radical notion, that Indigenous peoples can find peace through being culturally, spiritually, intellectually, and physically themselves, drawing on all the tradition and change that entails, requires acknowledging the nature of injustice not simply as dispossessions,

ongoing structures of injustice, and banal indignities imposed by a colonial state. It requires rejecting the notion that the state cannot undo injustice and that injustice and present suffering are disconnected. If the mounting evidence of massive policy failure is considered, Indigenous resurgence presents the only viable path toward replacing Indigenous assimilation and social suffering with Indigenous being and well-being as the basis for Aboriginal-state relations.

This book takes up from the resurgence paradigm, partly by adding to the literature documenting shortcomings of Aboriginal rights-reconciliation approaches taken over the past thirty years in Canada (see Ladner 2001; Green 2003, 2008; Nadasdy 2003; Penikett 2006; Samson 2001; Woolford 2005). It shows that self-government negotiations marginalize and exclude Indigenous peoples' experiences and aspirations, to the point that agreements reached do not represent a form of self-determination but rather another iteration of colonization and forced dependence. This is shown partly by offering a theory of Aboriginal policy accounting for the role of what may be seen as often well-meant but ultimately misdirected actions perpetuating rather than alleviating social suffering among Indigenous peoples.

Canadian Aboriginal policy does not take responsibility for present suffering or for ongoing injustice. Its emphasis on both injustice and things Indigenous being historical restricts state actions to symbolic reparations and programs addressing present suffering, as though present suffering was not related to injustice. Meanwhile, injustice becomes embedded and normalized as the basis of the relationship between Indigenous peoples and the state. Self-government negotiations offer a window into understanding how this policy approach is expressed in concrete terms. The following chapters contain examples of how Canada, through its policies' temporal characterizations of injustice toward Indigenous peoples, denies and obscures the true sources of Indigenous peoples' suffering, namely the dispossession of lands, resources, and self-determination, which are only symbolically instead of substantively redressed through processes such as land claims and self-government.

Before discussing the differences between self-determination and self-government, it is important to explain why land claims can be viewed as symbolic rather than substantive reparations. Generally, land claims are evaluated at face value: if the government gave anyone millions of dollars, ownership of lands, and rights to resources, it would be a substantive settlement in the capitalist sense of having a cash or market value. News stories emphasize such values of land claim settlements, making much of market values of lands and resources, trilling about millions of dollars for small populations of individuals.

The fact that Canada does not live up to its legal obligations under land claim settlements is discussed in a later chapter. Implementation problems aside, it is important to understand that lands returned to Indigenous people under settlements usually represent small percentages of the original Indigenous territories. Rights to depleted resources are recognized but simultaneously curtailed by participation in and adherence to land and resource management regimes and regulations that consider settlers' and settler governments' interests, not just those of Indigenous peoples. Cash components of land claim settlements equal a small fraction of the market value of lands given up and do not provide "back-rent" or compensation for depletion or use of resources and lands since they were illegally dispossessed. The lands that are returned are subject to expropriation by the state, and most do not include sub-surface rights; agreements also ensure that access across returned lands by government or third parties is not impeded. As for the millions of dollars? Generally in the NWT, land claim organizations have placed most cash received from agreements into a combination of trusts and investments, since cash provided under final agreements is itself final. Since after the settlement is finalized most Indigenous lands and resources are no longer theirs, and the cash payment is the only one Indigenous peoples will receive, it must last for future generations. Payouts to individuals, if any, are usually from the proceeds of investment interest, amounting to several hundred dollars per adult per year. Individual access to funds may take the form of employment in Indigenous-owned companies, which also employ significant numbers of non-Indigenous people (see, for example, Aarviunaa 2004), and access to funding for education or cultural pursuits. Notably, some land claim governments have used income from investments to fund healing programs dedicated to cultural and social cohesion, to address the types of social suffering specific to a collective colonial experience.

Taken at face value, land claim agreements do lead to significant political recognition and rights recognition, including access to resources and land ownership. However, what is exchanged for the settlement is also significant: lands alone that Indigenous peoples must relinquish rights and title to are worth many, many times the market value of lands restored to Indigenous peoples. The spiritual and psychological values of the lands are often inestimable. Although some authority and participation in decision making are recognized, what is recognized does not nearly approximate the freedom Indigenous peoples enjoyed prior to the settler government asserting sovereignty. This is why land claims can be viewed as symbolic: they are settlements that return small fractions of lands, resources, and authorities to Indigenous peoples, and in that sense the settlements to

a great extent cement rather than change the fundamental dominant-subordinate relationship between the state and Indigenous peoples.

Self-Government and Self-Determination

Self-government should not be confused with the concept of self-determination. Self-government is a term denoting the extent to which Canada is willing to recognize Indigenous peoples' authorities in a range of areas, from education to natural resource management. Self-government (as the term is used throughout this book) refers to the various authorities available for negotiation as determined by the Canadian state, deriving from within the Canadian legal and constitutional framework. On that view, self-government is something that exists because Canada exists, circumscribed by Canadian law. Self-government is therefore not viewed as an aspect of self-determination that can exist apart from or outside of the Canadian constitutional framework. During 1995, Canada first officially recognized Indigenous peoples' inherent right to self-government within its Inherent Right Policy. The policy describes in detail Canada's view of the scope, nature, and extent of self-government, prescribing a limited framework for negotiations.[4] Canada's approach has been ostensibly to reach "practical arrangements" on how the right will be implemented rather than defining the right in an abstract sense. The series of events leading up to the establishment of the Inherent Right Policy included national consultations with Indigenous peoples and the failed Meech Lake (1990) and Charlottetown (1992) Constitutional Accords. These accords, negotiated between federal-provincial-Indigenous leaders, were meant primarily to address Quebec's concerns over the Canadian constitution and issues about the federal-provincial division of powers. In addition to recognizing Quebec as a distinct society, the 1992 accord recognized the Aboriginal right of self-government. These events, combined with first ministers-Indigenous leaders conferences during the 1980s about the nature and extent of Aboriginal rights, established broad-based consensus among Canadian government leaders that self-government is an existing right that should be implemented.

Self-government agreements are meant to describe the practical implementation of the right of self-government without extinguishing rights, but this has not been the case in practice. Certainty clauses have resulted in the agreements providing de facto definitions of the scope and extent of the right. Imposed by the federal government, certainty clauses require Indigenous peoples to express their inherent right to self-government only as described in the self-government agreement. Although the agreement may provide that aspects of the inherent right not dealt with in the agreement may be negotiated at a later date, certainty clauses essentially extinguish

those un-negotiated aspects. For example, in section 2.6 of the Tlîchô Agreement (2003), detailed certainty clauses include "cede, release, and surrender" language in reference to future rights conflicting with those described in the Tlîchô Agreement. Although many Indigenous negotiators are inclined to negotiate agreements establishing stability in their community's governance institutions, certainty is seen as a double-edged sword, providing stability while jeopardizing future negotiation of self-government rights that are not currently recognized in federal policy.

At negotiating tables, federal mandates are shaped by the content of completed self-government agreements (such as the 2003 Tlîchô Agreement), which are precedents used for comparison in other negotiations. Governments also emphasize the importance of harmonizing programs and services delivered by different governments, including program standards. Although often viewed as reasonable goals by all parties, compatibility and harmonization requirements may occasion burdensome administrative arrangements between governments or may prevent self-governments delivering services in a culturally appropriate manner. In addition, authorities may be fragmented between governments where Canada's view is that the inherent right extends only to specific aspects of a subject area. For example, a First Nation may have authority to pass laws yet will be denied the ability to establish a court system, resulting in First Nation law being prosecuted and enforced by non-Indigenous courts or enforcement officers. Essentially, self-government agreements are about the sharing of authority between different governments. However, in the NWT, often authorities secured in a self-government agreement may not extend beyond authorities available under current federal and territorial policy. For example, Canada's First Nations Policing Policy allows for establishing First Nations police forces, which are not uncommon in the provinces. However, establishing First Nations police forces is not possible through self-government agreements negotiated in the NWT simply because the territorial government has not yet passed a policing law. Legally, until the territorial government occupies that field of jurisdiction delegated to it by Canada under the NWT Act, that jurisdiction cannot be shared (see Irlbacher-Fox 2008).

That self-government and self-determination are two distinct concepts is borne out by the way communities view self-government agreements in relation to their circumstances and futures. In the NWT, I have not encountered an Indigenous community or people that has defined in precise detail a static conceptualization of self-determination or self-government. Even where Indigenous negotiators have detailed mandates ensuring accountability to their communities, the negotiations environment is bounded by the Inherent Right Policy and government mandates and is in that sense

driven largely by government rather than Indigenous mandates. Indigenous peoples' concepts of self-government do not necessarily describe specific institutional arrangements or the nature of authorities sought. Instead, these concepts provide general policy directions to Indigenous negotiators, providing flexibility to develop innovative mechanisms consistent with the fundamental values, goals, and aspirations expressed through their communities' visions of self-determination.

Visions of self-determination among Indigenous peoples I have worked with far exceed the limitations of self-government. Indigenous visions encompass natural resource management and economic capacities gained through land claims; seek sectoral or other agreements with governments and private industry; and have social, political, psychological, and spiritual dimensions resulting from the importance placed upon fostering Indigenous cultural identity, rights, and practices. Indigenous peoples therefore combine what requires change, namely the interference and control of government, and the negative consequences of that, with a collective sense of self-realization originating in Indigenous culture. And every Indigenous people has distinct senses of how that might shape practical arrangements negotiated through self-government and the various other agreements negotiated with the federal and territorial governments, industry, et cetera. One element all visions have in common is acknowledging the importance of flexibility in self-governing arrangements. This is because legal and policy environments change and evolve. As Indigenous institutions develop they can expect to engage with forces that are local, national, and global in scope and with changes encompassing social, political, spiritual, cultural, and environmental dimensions.

Self-government agreements are not viewed as the answer to all social and economic ills of Indigenous communities or as some final stage in a continued effort toward decolonization or reaching a mutually respectful partnership with Canada. Indigenous negotiators and elders have explained to me that agreements are viewed as one tool available among the many possibilities that may assist communities to achieve self-determination. They recognize that self-government agreements are imperfect, and often disappointing for communities, but the utility of an agreement is measured with a view to how it fits within the bigger picture and over the long term.

Often the utility and efficacy of self-government agreements are subject to how they are implemented. Frustration over land claim implementation has resulted in the establishment of the twenty-one-member Land Claim Agreement Coalition (LCAC), a group consisting of all comprehensive land claim governments in Canada, established to lobby Canada about common implementation concerns.[5] The LCAC has held two conferences

to discuss common issues and concerns, with the goals of initiating a federal implementation policy and improving federal land claim implementation practices. Its credibility has been significantly enhanced by audits by the Canadian auditor general calling for greater consistency and accountability and a more realistic approach to implementing federal land claim obligations (see, e.g., Government of Canada, Auditor General of Canada 2003). Land claim implementation flaws have subsequently led to scrupulous attention and significant resources being expended on implementation planning and readiness activities in advance of self-government agreements. As I have noted elsewhere (Irlbacher-Fox 2008), unless conditions creating an enabling environment exist, agreements and the rights they purport to implement may be rendered meaningless in practice.

Structure of the Book

The book explores how Aboriginal policy is expressed through self-government negotiations in the NWT, based on three case studies drawn from negotiations between Canada and the Inuvialuit and Gwich'in, the community of Délînê, and the Dehcho First Nations. They provide a sense of the diversity of circumstances, peoples, and potential of self-government negotiations in the NWT. The core of the analysis focuses on the relationship between ongoing injustices experienced by Indigenous peoples, the resulting social suffering, and self-government, prompted by the following three questions: How are injustice and social suffering relevant to the parties to self-government negotiations? How do government negotiators interpret and engage with injustice and suffering narratives during negotiations? Can self-government agreements address injustice and the resulting social suffering of Indigenous communities?

The case studies give a sense of how negotiations over different law-making authorities are shaped by both social suffering and the ways in which the state denies its role in perpetuating ongoing suffering. The case study drawn from the Dehcho process focuses on resource revenue sharing as an element of self-governments' financial independence from other governments which is an important element of the Dehcho vision of self-determination. Similarly, discussion of jurisdiction over Child and Family Services in Délînê allows a glimpse into how areas of jurisdiction may speak directly to the spiritual, social, and cultural resurgence at the heart of First Nations' motivations to negotiate. The example drawn from the Inuvialuit and Gwich'in negotiations over heritage, culture, and language reveals ways in which events viewed as "historical," even by Indigenous peoples themselves, continue to breathe and flex within peoples' lives and may in a sense be deepened when their relevance is denied recognition.

The contours of suffering, and how suffering is expressed and received within negotiations contexts, are drawn out largely through analytical tools borrowed from Iris Marion Young's (2000) theory of democratic decision making as applied to discourse within negotiations and sociological analyses of social suffering after Veena Das (1995). Young's theoretical insights are discussed in the context of the Dehcho case study, used to highlight the way that communicative norms of the state and those of Indigenous peoples can learn from or alternatively talk past one another. These are themes built on through subsequent examples. Das's concept of a state "theodicy" is applied to the settler-state's colonial-induced suffering, suffering remade as inherent Indigenous dysfunction, used to simultaneously distance the state's causal role in suffering and present that suffering as a rationale for ongoing state intervention. This argument is developed primarily in Chapter 4 by examining the negotiations of Délînê's authorities over Child and Family Services. The final case study provides an example where both incommensurate communicative norms and the theodicy's denial of state responsibility for suffering are brought to bear on an Inuvialuit negotiator's experience of residential school, a phenomenon that is a root cause of social suffering throughout Indigenous communities in Canada. Through this analysis, ways in which state policy and its orientations narrow and often predetermine negotiating outcomes are elucidated in terms of the types of self-government authorities discussed in negotiations. The final chapter takes up from the insights provided through examining the negotiating process, turning to discuss how agreements based on current policies will continue to promote suffering. It includes consideration of how Indigenous peoples' governments are forced to both compromise and strategize to obtain the tools they require to realize Indigenous visions of self-determination.

Ethnographic descriptions of Dene moosehide tanning provide a sense of the cultural context grounding self-government negotiations. Drawn from the author's experiences working with Sahtu elders and Gwich'in and Inuvialuit women tanning several moosehides over successive summers, tanning descriptions provide a Dene cultural referent for understanding the self-government process. The purpose is to relate social dynamics resulting from a cultural enterprise based on a collective animation of Dene values and ways and so function as an ethnographic contrast to the dynamics of the negotiations process. Moosehide tanning and its purpose are introduced fully in Chapter 2. One obvious distinction between negotiations and moosehide tanning is that, although negotiations are largely a male-dominated activity, moosehide tanning is the realm of Dene women. These contrasting activities themselves provide a gendered element to this study.

My perspective as a non-Indigenous practitioner and academic is tempered by over a decade of working exclusively for Indigenous peoples' organizations on self-government and related community development and territorial political development processes in the Northwest Territories. This included four years working as a full-time assistant negotiator and then a further three years as a consultant to the joint Inuvialuit and Gwich'in self-government negotiations (from 1996 to 2003), and for six years (from 2002 to the present) as a political advisor on the Délînê First Nation and Land Corporation's self-government negotiation team, and in support of their participation in NWT Devolution and Resource Revenue Sharing negotiations. In addition, I conducted six months of fieldwork in the Dehcho region during 2001 and then worked for four years (from 2003 to 2007) as a political advisor and researcher for the Fort Providence Métis Council, a member of the Dehcho First Nations.

This experience informs the perspective from which this book is written and I believe has opened up a unique way of seeing self-government negotiations. Although I was raised in Inuvik, NWT, my professional experience has meant travelling extensively throughout northern Canada to witness different negotiations and different cultures and peoples throughout. Despite the differences, in all places where I have worked, a critical motivation of Indigenous peoples for negotiating self-government seems always to be about achieving better lives and life chances. This book was written to provide insight into why self-government negotiations are so important and into the disconnection between the way Indigenous peoples and the state view self-government's purpose, a disconnection that has a profound effect on negotiation outcomes. My hope is that this book contributes to the identification of issues, problems, and challenges in both the negotiating processes and the policies shaping those processes. And that policy makers, scholars, and activists might make use of its insights to bring us closer to finding a way toward a just relationship between the state and Indigenous peoples in Canada.

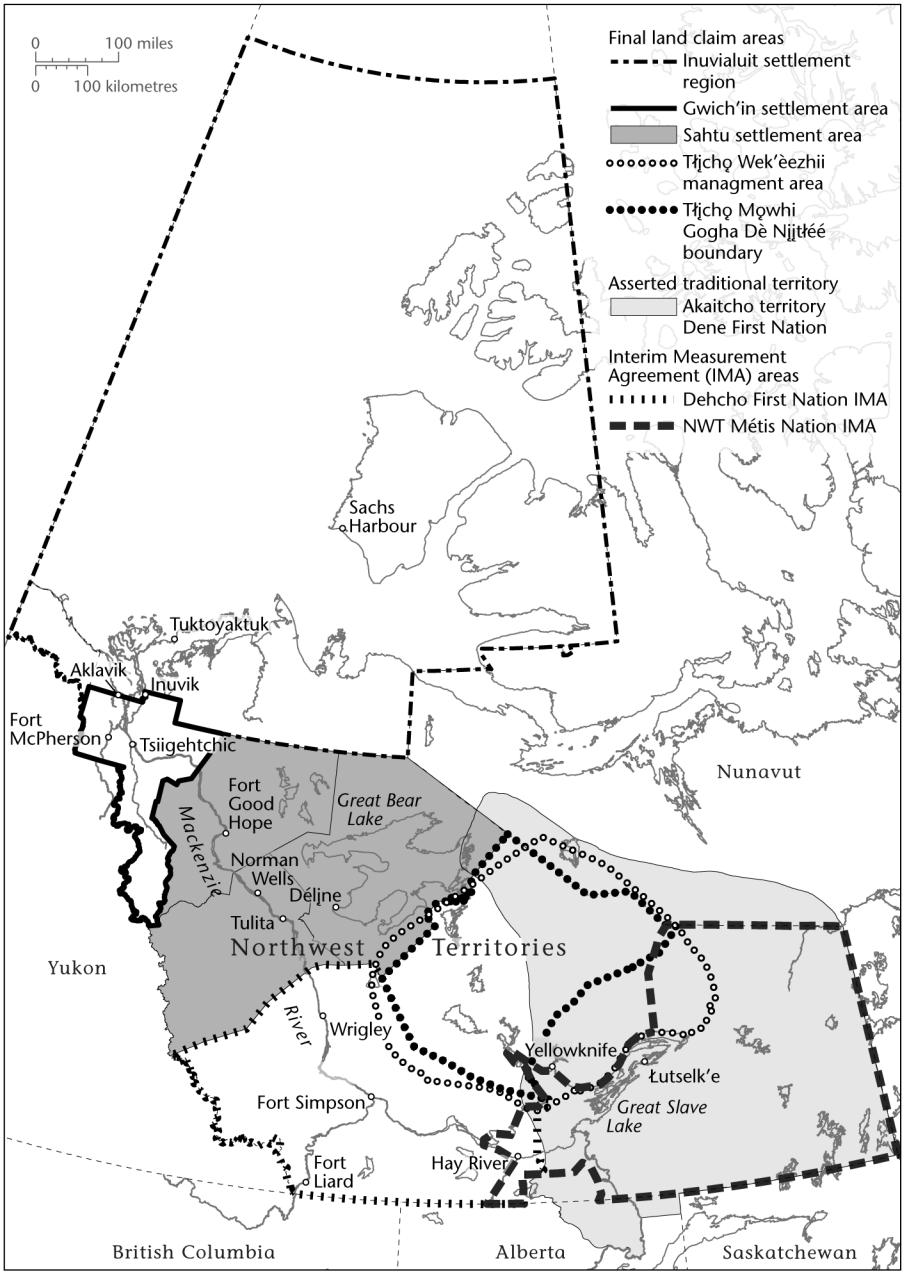
1
Context and Concepts

Self-Government Negotiations in the NWT

Negotiations over lands, resources, and governance between Canada and Indigenous peoples in the Northwest Territories have been ongoing for the past thirty years, processes analyzed to different degrees in works on northern political development (Cameron and White 1995; Dacks 1990; Dickerson 1992; Kulchyski 2005). Canada first began negotiations with Dene peoples in 1899 and 1921, entering into Treaties 8 and 11 respectively, in order to exploit northern mineral potential. "Half-breed" (Métis) Scrip Commissions accompanied the Treaty Commissions, seeking release of Métis Aboriginal rights. The Inuvialuit, approached about taking treaty in 1929, refused (Fumoleau 1976, 274). This chapter provides an overview of political development in the Northwest Territories with respect to Indigenous peoples' organizations and their struggle for rights recognition and assertion. It describes the self-government negotiations process in a generic sense, as background to the case studies in subsequent chapters. That description is followed by a discussion of main theoretical concepts fleshed out through the case studies, namely the concepts of social suffering and the dysfunction theodicy at the heart of the state's Aboriginal policy.

The NWT Context

Inuvialuit territories in the far northwest corner of the NWT, extending into the Beaufort Sea, are bordered inland by the delta and mountains of the Gwich'in (Dene). Their territories are rich in natural gas and mineral deposits respectively. Southeast of the Gwich'in are the Sahtu Dene, North Slavey peoples who include the Mountain, Bear Lake, and Hare, whose mixture of boreal forest and tundra lands anchored by the pristine freshwater Great Bear Lake includes significant oil reserves and is being increasingly staked for minerals such as uranium and silver. Their neighbours to the southeast are the Tlîchô Dene. The barrenlands, forests, and freshwater



Map 1 Settlement areas and asserted territories within the NWT.
Source: Government of the Northwest Territories, Department of Aboriginal Affairs and Intergovernmental Relations.

lakes in Tlîchô territory, bordering their Inuit neighbours to the north and Akaitcho (Chipewyan) Dene to the south, have become home to Canada's first four diamond mines since the 1990s. Southwest of the Akaitcho are the Dehcho (South Slavey) Dene, whose resolve to refuse development of significant oil, natural gas, and mineral potential in their traditional territories without adequate land protection and Dehcho involvement in decision making has resulted in unstable and protracted negotiations with Canada over lands, resources, and governance since the early 1990s. Different Métis peoples share these homelands with the Dene, most notably the Northwest Territory Métis Nation in the southern part of the Akaitcho area, the Sahtu Métis peoples, and the several Métis locals accepted as Dehcho First Nations. Formerly united through the now defunct Métis Association of the NWT, each Métis people now represents itself politically.

Although Dene entered into treaties with Canada in the early part of the twentieth century, their incomplete implementation and significant differences between Canada and Dene about their interpretation resulted in additional agreements being sought through the comprehensive land claim negotiations process. The Dene/Métis comprehensive land claim process was initiated in part as a result of a court case known as the *Paulette* case.[1] Fort Smith Chief Francois Paulette, along with sixteen NWT chiefs, attempted to register a caveat on the Mackenzie Valley lands in part to stop the construction of the Mackenzie Gas Pipeline. In 1973 Justice Morrow of the NWT Supreme Court found that there was substantial evidence that the Dene did not believe that Treaty 11 had extinguished their Aboriginal rights to the area and that treaties were unfulfilled. Although the ability to register a caveat was overturned by Canada's Supreme Court, the findings with respect to Aboriginal rights were not overturned. Within months of that decision, the Supreme Court of Canada decided the *Calder* case.[2] In *Calder*, the court determined that Aboriginal title of the Nisgaa' in British Columbia existed in common law. However, the court was split as to whether Aboriginal title had been extinguished. Three judges believed that it had not been extinguished by statute or treaty and three that it had been extinguished prior to British Columbia entering Confederation. The chief justice decided the case against the Nisgaa' but without ruling on whether Aboriginal title existed. Although specific to the Nisgaa', it was widely believed that the case had implications for Aboriginal title in other parts of the country. Canada was prompted by the findings of the *Paulette* and *Calder* rulings to hold public hearings on the pipeline (hearings that became known as the Berger Inquiry, see Berger 1977) and subsequently enter into negotiations with Dene and Métis (Chambers 1996; Dene Nation 1984; Watkins 1977).

Initially, Dene, represented by the Indian Brotherhood of the NWT (now

Dene Nation), worked together and in partnership with the now disbanded Métis Association of the NWT to negotiate an "umbrella" claim, similar to that of the Yukon First Nations. The coalition was tenuous, both among Dene regions and between the Dene and Métis. The Inuvialuit, who had originally begun negotiating an agreement in partnership with other Canadian Inuit peoples, decided during the mid-1970s to negotiate a separate agreement due in part to the increasing oil and gas exploration in Inuvialuit territories at the time.

Land claim processes heralded the emergence of Dene, Métis, and Inuvialuit peoples as leaders and decision makers challenging Ottawa's colonial control of the NWT, exploitative practices of multinational business interests, and dominance of resident white politicians and administrators. An energetic cadre of Indigenous activists, young men and women in their early twenties who after forming social networks at residential schools, and through their education in elite high school programs and university, were inspired by human rights and Indian rights movements sweeping North America to challenge the oppressive treatment that wrought poverty and misery in their communities. With the support of leaders and elders, they were in a position to analyze their situation and articulate Indigenous views in ways that could be neither ignored nor refuted by colonial administrators.

The Indian Brotherhood of the NWT emerged after several years of increasing activism by Dene leaders during the late 1960s, supported by a strong Dene culture and spirituality. The Dene Nation (1984) describes various social movements among the Dene taking place in the 1960s and 1970s, such as the establishment of co-operatives, friendship centres, Dene language school instruction for children, the recognition of prophets, and increasing ties with other Indigenous peoples and leaders supporting the Dene cause. At a meeting convened by Indian Affairs officials in Yellowknife during 1968, chiefs and band representatives repeatedly dismissed government officials from their presence when discussing ideas about forming an association to resolve treaty issues. The following year a decision to establish a national park in the Lutselk'e Dene territory was met with local resistance, prompting a delegation of twenty-one government officials to meet with the chief and community to pressure for their consent. Affronted, Chief Pierre Catholique convened a meeting of chiefs in Yellowknife soon after, inspiring commitment among leaders to support one another. According to Chief Catholique, "never again will one chief sit down with many government people. From now on, if 21 government people come to a meeting, 21 Indian leaders must come and sit across the table from them. From now on, we the chiefs, must talk with the government only when we are all together" (Dene Nation 1984, 24). Dene activism of the 1970s

culminated in the Dene Declaration, passed unanimously in 1975 at Liidlii Kue (Fort Simpson). Issued on the heels of the *Paulette* and *Calder* decisions resulting in Canada instituting a formal land claim policy, it articulated a Dene vision of self-determination within Canada. Specifically, it identified both Canada and the Government of the Northwest Territories as illegitimate governments, imposed on the Dene without consent, and called for recognition of Dene self-determination.

The Dene/Métis negotiations, which were ongoing during the same time period as the Berger Inquiry hearings, were a time of intensive research by Dene on their culture and history and political relations with Canada. Similarly, the Métis Association of the NWT conducted its own extensive oral history and cultural research, including research on the Scrip Commissions that had accompanied the Treaty Commissions. Together, the Dene and Métis conducted extensive land use and occupancy research and mapping.

The Dene/Métis claim negotiations lasted until 1990, when an agreement was reached with Canada. Throughout the two decades of its negotiations, the Dene and Métis relationship, and relations between different Dene regions, were at times tumultuous. Questions about the recognition of rights and identity of Métis peoples in relation to the Dene and the different economic pressures on the various Dene regions resulted in the coalition's increasing instability as the negotiations progressed. In 1990, Dene negotiators recommended an agreement to their people that included an extinguishment clause. The clause would have extinguished Dene/Métis Aboriginal rights in Denendeh in exchange for the rights as recognized in the agreement. Agreeing to the extinguishment contradicted the consistent instructions of elders that maintaining ownership and control of the land, and the ability to live on the land, were more important than money; the land was not for sale. At the Dene assembly in the summer of 1990 convened for the purpose of ratifying the agreement, instead of ratification approval, negotiators received extensive instructions for renegotiating the agreement. Canada subsequently refused to continue negotiations with the Dene Nation.

Instead, on November 12, 1990, Canada announced it would negotiate individual land claim agreements with Dene regions wishing to enter talks on the basis of the unaltered 1990 agreement. The Gwich'in, facing considerable development pressures and seeing land claim benefits accruing to their Inuvialuit neighbours, were the first to enter talks, reaching an agreement in 1992. The Sahtu Dene and Métis settled during 1993. Having reached agreements before the inherent right of self-government was recognized, the Gwich'in, Sahtu, and Inuvialuit are currently involved in self-government negotiations. The Tlîchô Dene reached an agreement during

2003, the first combined comprehensive land claim and self-government agreement in the NWT. North Slave Métis, headquartered in Yellowknife, have yet to achieve a process, and the Fort Smith-based Northwest Territory Métis Nation have reached an agreement in principle on a lands and governance agreement. Treaty land entitlement talks with Akaitcho Dene and the Dehcho process negotiations are ongoing.

The Negotiations Environment

Self-government negotiations in the NWT are the result of Canada's legal obligations described in land claim agreements and federal policy. The Gwich'in and Sahtu land claim agreements include provisions where Canada commits to negotiating self-government, detailed in Chapter 5 and Appendix B of each agreement. The Inuvialuit agreement, signed in 1984 prior to political consensus being reached among federal and provincial leaders that an Aboriginal right to self-government existed, contains a "trigger" provision, 4.3, whereby the Inuvialuit are entitled to engage in talks about reshaping the regional public government alongside any other Native group who may engage in such a process. Consequently, the Gwich'in Agreement's guarantee of self-government negotiations triggers section 4.3 of the Inuvialuit Agreement. The federal 1995 Inherent Right Policy describes the scope and extent of self-government rights to be addressed in self-government negotiations. Taken together, land claim agreement provisions and federal policy provide a clear description of the types of power that can be negotiated under self-government. These documents also recognize that the form of self-government will differ between regions and possibly even between communities within the same region. In addition, they reflect the federal preference that in the NWT self-government be combined with public government – municipalities and regional government – responsibilities, a preference particularly suited to smaller communities where the vast majority of people are Indigenous.

Negotiations are a bureaucratic construct, based on policies, procedures, and practices developed by governments. Negotiations are initiated by Indigenous peoples' governments, who may seek a process based on a land claim agreement obligation, within the context of negotiating a comprehensive claim, or a stand-alone process. Indigenous peoples' negotiators participate but often have little success in changing or significantly shaping the formal procedures that structure the conduct of negotiations. Every negotiation is governed by a process and schedule agreement describing which subjects are to be negotiated, a time frame to achieve an agreement, and "ground rules" guiding the process: recognition of each party's representatives, frequency of meetings, et cetera.

Governments possess seemingly unlimited personnel and expertise and have access to funding and resources far outstripping those of Indigenous negotiators. They also set the limits on what can be negotiated by establishing "bottom lines" (positions from which they will not waver) in mandate documents, which must be consistent with their various internal policies, jurisdictional and legal frameworks, and political interests. In contrast, Indigenous peoples' negotiating teams receive funding according to their adversaries' funding policies once negotiations start. They are required to submit reports on expenditures, sometimes including the products of their research and consultations, to Indian and Northern Affairs Canada (INAC), with whom they are negotiating. Often funding levels are determined according to criteria unrelated to the nature and amount of work required to negotiate, criteria conforming exclusively to INAC's or the Canadian Treasury Board's own administrative logic. Indigenous negotiators may also have mandates, usually determined based on consultations with both leaders and community members.

As elaborated in the following chapters, the frequency and format of negotiations vary depending on the circumstances and policies shaping them. As a rule, NWT negotiations are conducted in English, with Indigenous language translators present depending on demand and the ability of Indigenous organizations to pay for the service out of their yearly funding. Negotiating sessions are usually held for three to five days each month and usually in the communities that will be affected by the agreement. Held in meeting rooms ranging from corporate board rooms to community halls, the public sessions' atmosphere varies depending on the level of contentiousness or comfort generated by the issues under discussion and individuals in attendance. Meetings usually take place during business hours, beginning at 9 a.m., breaking for lunch, then continuing until 5 p.m. each day. Position papers, generated by individual teams based on their internal research (or, in the case of Indigenous teams, also through community consultation), are tabled by the parties at sessions or prior to sessions and are public documents, with the occasional exception of government positions which may be marked as confidential to the table and its participants. Confidentiality may apply when governments are tabling positions or information that may prejudice or misinform discussions at other negotiations to which they are party.

Community-based meetings are marked by a casualness of dress and demeanour among the parties often absent in the more formal meetings held in major centres where officials of various government departments are often present in addition to their negotiating teams. For community sessions, negotiators may wear jeans and casual shirts, suitable for travel by small aircraft

or several hours' drive on ice roads to meetings in small communities, often in temperatures falling below -30° Celsius during the winter months. Accommodations in communities range from comfortable to rustic, with arrangements occasionally complicated by unexpectedly being "weathered in," usually when small aircraft are unable to fly due to storms or fog.

Indigenous peoples' negotiators are usually Indigenous individuals having extensive knowledge of community, territorial, and federal institutions as well as fluency in the culture and/or language of their people; they may or may not have a university education. In contrast, the usually university-educated government negotiators are generally non-Indigenous, having little background or experience of Indigenous communities or issues. However, particularly for federal government teams, it is not unusual for one or more of the Ottawa-based team members to be Indigenous. As well, Canada's chief negotiators are hired on contract by the minister of INAC and may have close personal or political ties to that minister.

Although non-Indigenous negotiators' lack of knowledge of Indigenous peoples can significantly slow the pace of negotiations in some respects, it also provides an opportunity for Indigenous peoples' negotiators to educate government negotiators in an attempt to increase the likelihood of government negotiators taking a more sympathetic approach to negotiations. This is the Indigenous negotiator's double burden: to educate government negotiators away from erroneous assumptions, or plain ignorance, toward an Indigenous understanding of the negotiating context. Government negotiators have discretion to control the pace of progression through their mandates and may sometimes use that discretion strategically. According to one government negotiator, "I have seen colleagues power-trip at negotiations; there are situations where they have pulled things off the table or refused to give on something that is well within their mandates. Sometimes it's strategic; sometimes it's just to bring the First Nation negotiator under control, or it's about their own ego, where they want to get back at a First Nation negotiator who made them angry" (Federal negotiator, interview, 2002c). Generally, boardrooms are favoured as negotiating sites over hunting or fishing camps, although the latter are sometimes sites of negotiation. For example, the Délînê negotiating team has had "on-the-land" negotiating sessions; one in particular was used specifically to have the federal negotiator educated by the elders. Elders spent several days at the camp relating oral traditions about the Prophet Ayah and discussing how oral traditions influence the community's vision of self-determination. It was also an opportunity to teach the federal negotiator and the other government representatives about the lands, fish, and animals near Délînê that the people rely upon for their spiritual, material,

and cultural existence. For at least one government negotiator, a similar initiation and ongoing education and experience in the community changed him in what he regards as profound and personal ways. A former federal negotiator on another file also reported being profoundly affected by learning through individual interaction:

> Negotiating has had an effect on my perspective on Aboriginal rights and on me as a person. When I started negotiating, from an academic perspective I believed in Aboriginal rights, and my views were supportive, and I felt I had a good understanding academically. You can't understand what is being lost, what people are fighting for, until you see it for real. There is a real lack of understanding [by the public] of the human side. For example, when people say Aboriginal people are just there for handouts; then you go and see an elder in a community when it's minus forty degrees outside, with plastic bags on her feet because her slippers are worn out. Or when you represent the thing [the government] that has devastated their culture and then they invite you in for tea ... I'm a different person now. Nothing is black and white – I look for the grey; there is so much to learn from people ... It has humanized the academic understanding I had; I am more willing to push boundaries [inside government] as a result." (Federal negotiator, interview, 2002c)

However, despite the efforts of Indigenous negotiators, there are some government negotiators who simply refuse to see self-government issues informed by an Indigenous experience. One government negotiator I spoke with saw no reason why it might be necessary to be sympathetic to the Indigenous position. According to the negotiator, each party comes to negotiations with specific goals and is responsible for achieving those goals to the best of his or her ability. He believed there was no requirement of him to push boundaries to assist Indigenous negotiators; for him, all parties were aware of the mandates and legal frameworks within which a deal would be negotiated. For another government negotiator, "feeling" was not a factor. When pressed on how it felt personally when the First Nation he was negotiating with refused to recognize the Government of the Northwest Territories (GNWT) at negotiations (which he represented), he responded, "you don't take it personally. It's just another factor you deal with at negotiations. At other tables there are other issues that arise. You just deal with those, and eventually when it gets down to the details people realize that we are the government that has the experience and has to be dealt with. It's just another factor in the negotiating environment that has to be waited out" (Territorial negotiator, interview, 2002a).

Among Indigenous peoples' self-government negotiators, strategies at the table are often reflected in their interpersonal relations with government negotiators. The observation of the federal negotiator grappling with the irony of being invited to tea by the people whose lives the government had destroyed crystallizes a constant tension within self-government negotiations. One observer's remark to me revealed a sense of futility, frustration, and distrust that many Indigenous negotiators have gained through personal experience: "How do you negotiate with people who hate you?" Often, awareness of this tension complicates personal interactions and negotiations strategy. This generates its own type and level of stress when negotiators work together intensively for one or two weeks each month, over a period of years.

Different Indigenous peoples' negotiators manage personal interactions differently. At some tables, such as the Dehcho First Nations during 2000, a non-Dene negotiator and advisors viewed government negotiators simply as the enemy – with suspicion and distrust – and often treated them with rudeness and derision. It was a surprising contrast with the strong yet respectful and dignified approach of the Dehcho leaders themselves. Coupled with the non-Dene negotiator's tendency to release his reactions to government negotiating positions through the media rather than at the negotiating table, the atmosphere of the negotiations was one of tension and distrust. In contrast, the community of Délînê, represented by Délînê elders and a Métis negotiator selected by leaders and elders, built strong personal and professional relationships with Canada's negotiator, in order to educate the negotiator on the aspirations and circumstances of the community. The result was a highly participatory atmosphere fostering open discussion. The Inuvialuit and Gwich'in, represented by Inuvialuit, Gwich'in, and non-Indigenous negotiators, conducted their negotiations in a cordial yet reserved manner with Canada's representatives. Although those negotiations were sometimes heated, individuals often exchanged pleasantries, shared meals, and ended each session on a genial note. According to one former federal negotiator,

> We are all here to solve the same problem, stuck with each other for at least a week every month – the least we can do is try to be civil to one another. We're all in this thing together after all. For God's sake, sometimes it's like I've got Stockholm syndrome – I actually miss it! I think we are lucky to be here that way ... I have heard that this is one of the best negotiations files in the country to have, because we see each other as people, and that many other negotiations can get acrimonious. I think that spending energy and time disliking each other would not be a very

> productive way to approach this file; things get done more quickly if you create an open and co-operative atmosphere rather than a difficult one. Overall, doing this job is not easy, but I think all the teams have very good people on this file, and it shows in our progress. (Federal negotiator, interview, 2002b)

Negotiations are an intense and demanding pursuit; for all participants they involve weeks away from home for negotiations and related meetings; mentally and emotionally demanding days are spent in stuffy boardrooms, punctuated by meetings and shared meals with team members discussing and debriefing the day's events and issues. For Indigenous peoples' negotiators serving more than one community, additional requirements include travel to provide information and consult at community and leaders' meetings. Between sessions, all parties have the task of generating technical analyses and responses to negotiating proposals, informing and receiving instructions from their respective leaders, and for Indigenous negotiators planning and doing regular community consultations.

It is not unusual for government negotiators to be invited to community events or for the Indigenous team to sponsor a community feast and meeting where residents have the opportunity to talk with negotiators and ask questions about the agreement and issues being negotiated. In addition, government negotiators may be invited to community workshops and meetings on specific issues relevant to negotiations, to immerse them in the local culture, including exposure to experiences and issues which Indigenous negotiators are asked to have resolved through the negotiations. Holding negotiations in Indigenous peoples' communities is another way to provide an overall sense of the people and place the agreement will affect, their day-to-day living conditions, and local issues. In this way, government officials can experience to some extent how policies developed without reference to context interact with communities' realities. However, it is up to individual negotiators to integrate what they learn with their role within the bureaucracy and at negotiations.

Recipes for Explosions

A striking characteristic of self-government negotiations in the NWT is that few chief negotiators are women. On this issue, one of the few female chief negotiators had this to say:

> I'm not sure why there are no women negotiators. It's not a very fun job. It used to be, but now it's a grind. It just keeps going on and on and just gets frustrating. The other thing is that women have two jobs to do – raise

> their kids and do the wage labour, and negotiations involve lots of travelling and high stress. There was a survey on negotiators in INAC a couple years ago, and it found that the divorce level is three times as high among negotiators. It's a stressful job – you go away for a week where everyone craps on you, and you get home, and you are drained. There is nothing left to give. To me it's all about boundaries – you have to set them.
>
> And that is particularly true with Aboriginal rights negotiations. It's a very emotionally charged atmosphere. You are dealing with a population that is suffering and living with the consequences of colonization. Those wounds are very fresh and very alive – the negotiations often conjure up those fresh experiences.
>
> As a government, you see right there that you have destroyed a people. They are dysfunctional, their communities are suffering, and it is very personal. So you have to set boundaries on a personal level as a way to facilitate getting through that. And then when you get non-Native negotiators who go in there and don't have the cultural awareness or know the history behind that – it's just a recipe for an explosion. (Territorial negotiator, interview, 2002b)

Although her answer and the rest of our conversation assisted me in analyzing the participation of women in negotiations, what was striking was the way it also revealed the nature of the relationship between other characteristics of negotiations: the prevalence of individual and community suffering narratives in negotiations and the inability of government negotiators to engage with suffering at both personal and policy levels. The conversation I had with her that day provided a critical insight about self-government negotiations: the negotiations and their outcomes are about defining governmental authorities in a way that neither validates nor addresses the experience or resolution of social suffering endemic to Indigenous communities.

For many, particularly government negotiators, such a disconnection seems reasonable. One familiar refrain heard from many government negotiators in response to suffering narratives arising during negotiation discussions is "I'm not here to change the past. I am here to negotiate self-government." And the primary reason communities negotiate is not to change the past; rather, it is to limit to the greatest extent possible the continuing interference and control of governments and outsiders. This is in part because the past has certainly taught valuable lessons: governmental and non-Indigenous control that has wrought incomprehensible Indigenous destruction, from the first waves of disease and dispossession to the present continuing control under the Indian Act. It is present suffering, such as

poverty, disease, social pathologies, and addictions, that can be traced both to past injustices and to ongoing injustices and policy ineptitude that provide a major impetus for negotiating. Canada's first attempt at adjudicating claims and providing monetary compensation to Indian residential school survivors is one such example of ongoing injustice. It was abandoned when a government audit found that 90 percent of initiative funding was spent on the bureaucracy rather than being paid to claimants. An all-party parliamentary Standing Committee on Indian and Northern Affairs found that

> The Committee is drawn to the inescapable conclusion that the Alternative Dispute Resolution (ADR) process is an excessively costly and inappropriately applied failure, for which the Minister and her officials are unable to raise a convincing defense. Specifically the ADR process is a failure because:
>
> 1 It is strikingly disconnected from the so-called pilot projects that preceded it.
> 2 The consultative mechanisms that informed its development did not include a sufficiently broad range of participation by former residential school students and other relevant professionals – legal, cultural, psychological and healing.
> 3 It is failing to provide impartial and even-handed due process.
> 4 It is not attracting former students to apply in credible numbers.
> 5 It is structured to compensate too narrow a population of former students.
> 6 It provides grossly inadequate compensation when, grudgingly, it does so.
> 7 It excludes too many of the some 87,000 remaining former students from eligibility.
> 8 It is proceeding too slowly, allowing too many former students to die uncompensated.
> 9 It is using a model of dispute resolution that is disrespectful, humiliating and unfeeling and re-victimizes former students, who are now elderly and vulnerable.
> 10 It is an arbitrary administrative solution that is vulnerable to political whim.
> 11 Its high structural costs are fixed and will always be disproportionate to the size of compensation granted.
> 12 Its so-called verification process imposes an egregious burden of proof on the applicants that programs failure into the resolutions process, requires irrelevant data and imposes a cost on the applicant that can exceed the size of an award.
> 13 Former students do not trust the process.[3]

When Indigenous negotiators seek control of a jurisdiction, for example education, they have not only the argument that the inherent right of self-government requires the government to recognize Indigenous control. They also have numerous stories of residential school survivors, of public school curriculum deficiencies, of inadequate facilities and low graduation rates in communities to back up their arguments. Those are the types of arguments repeatedly given to Indigenous negotiators by community members at community consultations on negotiations. A clear message from communities, applicable to all government authorities being negotiated, is that there is a profound lack of trust in the government. This is based on wide-ranging experience of all generations, over the long term, which informs peoples' expectations of government action in the future.

However, government negotiators view their task as far more focused. Committed career bureaucrats are given a mandate to represent their governments' interests in reaching agreement on how to share powers over government services with Aboriginal governments that are perceived as having little relevant experience and huge capacity deficits. In its task, the government is to protect the rights of all people and to ensure that programs and services are delivered to a consistent standard within and between territories and provinces. In this sense, knowledge and experience that do not directly relate to discharging jurisdictional or administrative authorities are irrelevant. The governmental focus on determining power-sharing arrangements in accordance with its own political interests and without regard to community aspirations and experiences often results in the silencing of suffering narratives and Indigenous peoples' negative experiences of government control.[4] Yet perhaps this silencing does not occur intentionally, for the government position often is "The experiences you describe are regrettable. We are talking about legal jurisdiction over health care/education/et cetera, which is very costly to deliver, is highly technical, and in which you have no experience, and which must conform to uniform standards throughout the territory." Suffering wrought by external control is not a valid rationale in a negotiations context that focuses on addressing Indigenous peoples' legal rights. Valid rationales for increased Indigenous control are ones that prove a legal claim to authority or satisfy practical concerns about program delivery.

It is this last requirement that captures the irony that suffering is both silenced and used as a rationale by government to deny aspects of self-government. For it is the suffering, the social pathologies, the "capacity deficits" created through ongoing colonization that are a concern both in discussions of jurisdictional authority and in its implementation. The government's paradoxical treatment of suffering is brought into stark relief

in later chapters: suffering is not acceptable as a rationale for greater Indigenous control yet is a standard rationale for ongoing state intervention in and exercise of discretion over Indigenous authorities contained in self-government agreements.

Social Suffering

Descriptions of negotiations provided in this chapter would be incomplete without understanding what is meant by the term "social suffering" and its significance to Indigenous peoples' motivations for negotiating. Later chapters give diverse descriptions of the nature and effect of social suffering experienced in different communities and how suffering experiences inform Indigenous negotiating mandates. This section details the concept of social suffering. I begin from the understanding that the complex of colonialism in Canada – discrete historical events; ongoing injustices; and legal, social, and institutional structures and norms – induce social pathologies among Indigenous peoples. Throughout the book, descriptions of suffering and its significance are not intended to appropriate voices or reinscribe the pain and suffering of Indigenous peoples. Concern about reinscribing pain by scholars who write about suffering is prevalent throughout the social suffering literature (Wilkinson 2005). However, like scholars who write of the suffering of peoples in many places, the purpose here is to include suffering as an analytical category that otherwise would escape the conceptual bounds of academic disciplines unfamiliar with or unwilling to engage with suffering as a relevant component of the experience of social or political phenomena. Indeed, one of the motivations for choosing to analyze self-government through the lens of its implications for social suffering, and vice versa, is to illuminate the relationship between the two that has been silenced in both scholarship and the negotiations processes. However, this focus is intended neither to sensationalize nor trivialize suffering, nor to replace with academic understandings the voices and experiences of individuals who bear suffering in their daily lives. Rather, focusing on suffering as a category of analysis is meant to scaffold a "politics of hope" (Wilkinson 2005): to generate awareness of the many forms in which Indigenous peoples' social suffering is both caused and exists and how these forms have relevance for self-government negotiations. It is also meant to recognize the social and political importance that witnessing suffering has to contributing to social and societal change. As E.V. Daniel, a writer who examines social suffering wrought by the violence among Tamil peoples in Sri Lanka, states, "one may avoid [such] problems by doing nothing" (1996, 5). I have chosen to witness an important and much unanalyzed reality that is overwhelmingly present yet

unspoken, in both self-government scholarship and self-government negotiations in Canada. In doing so, the purpose is also partly to correct a widely held confusion of suffering with dysfunction, a terminological distinction elaborated below.

The term "social suffering" is used in part to expand understandings of the consequences of inequality, injustice, and oppression within social and political norms and institutions. Conceptualizing social pathologies that result from injustice as a category known as social suffering allows us, in part, to "devise sociological and anthropological scripts for bearing witness to the lived experiences of suffering" (Wilkinson 2006, 1). Writing on the human experience of suffering is not new: philosophers since the 1800s have been concerned with the nature of suffering and its implications for humanity. However, in recent years, as is noted by Wilkinson (2005), scholars have turned to exploring lived experiences of suffering in terms of its impact on sufferers, its meaning for social life, and its genesis within social, political, and economic structures. Within scholarship in Canada on Indigenous peoples and colonization, indigenous-state relations, and related literature, social pathologies in Indigenous communities are acknowledged as being primary motivators for political change (Adams 1999; Alfred 1999; Asch 1985; Cook and Lindau 2000; Hylton 1999; Warry 1998). However, only recently have Indigenous-specific social pathologies been conceptualized variously as historical trauma or social suffering. Naomi Adelson's (2001) work was among the first to conceptualize pathologies common to Indigenous communities in Canada specifically as social suffering resulting from colonization, and the concept of social suffering has increasingly been applied to the situation of Indigenous peoples in Canada (see Samson 2008 and other contributors to Kirmayer and Valaskakis 2008). And the historical trauma paradigm theorized by Maria Yellow Horse Brave Heart and Lemyra DeBruyn (1998) has increasingly gained currency among academics concerned with identifying the social impacts of colonization among Indigenous peoples in Canada (Kirmayer and Valaskakis 2008; Wesley-Esquimaux 2007).

Generally, social suffering research is ethnographically grounded, in part to put a human face on the "everyday miseries" encountered by marginalized groups of people (Bourdieu et al. 1999). Since the 1990s the concept of social suffering has grown in terms of disciplinary reach and situational diversity both in Europe and in North America, including in medical anthropology; anthropology of politics, war, and conflict; and sociology (Bourdieu et al. 1999; Daniel 1996; Das 1995, 2001; Farmer 1997; Frank 2001; Kleinman 1988; Kleinman and Kleinman 1991; Morris 1991; Scheper-Hughes 1992, 1998; Wilkinson 2005, 2006). Researchers' work concerned with

social suffering, and most notably the activist work of Paul Farmer (1997, 2005), who has contributed significantly to raising the political profile of suffering resulting from political and economic inequalities, finds commonality in its purpose as part of a politics seeking humanitarian resolutions to the various crises giving rise to suffering. Another common thread throughout the literature on social suffering is researchers' sense of being unable to adequately witness or give voice to suffering that is inherently unspeakable (Frank 2001), issuing as it does from physical, social, and psychic pain caught in a wilderness of inexpressibility far from the bounds of social norms and discourse. Related to this, within the literature there is a sustained interest in how individuals, communities, and peoples can move beyond suffering experiences, usually through culturally based frameworks of revisionist interpretation (Das and Kleinman 2001; Kleinman 1988; Scheper-Hughes 1998). Much of the Indigenous resurgence literature may be read partly as a praxis of reflexive recovery: suffering is acknowledged as issuing from colonial sources correctly identified through the embodied knowledge and experience of Indigenous peoples themselves. The articulation of suffering experiences by Indigenous scholars (such as colonization's complex of dispossession, disease, ongoing injustice, and their constructs) informs resurgence philosophy and action toward overcoming suffering and achieving spiritual, psychological, and cultural wellness.

Social suffering can generally be understood as the various social pathologies afflicting Indigenous communities in Canada, a complex of disease and unwellness, poverty, and social issues often referred to as "Third World conditions" common in Indigenous communities. Simplistic analyses of these conditions often champion the idea that Indigenous peoples are solely responsible for this situation, for example through unhealthy lifestyle choices, and that injustice is restricted to past events, which have no relation to the social ills evident in communities. In this way, Indigenous peoples suffering colonial pathologies are often characterized as "dysfunctional," a label that adheres suffering's causes to the sufferers. However, the argument advanced throughout this book is that these Third World conditions are actually the expected outcomes of colonization and injustice that are ongoing, an argument supported by evidence and insight within the work of a range of scholars, researchers, and medical experts familiar with the situation of Indigenous peoples in Canada and internationally.[5] In the words of one participant at a community workshop, "if it's all in the past, why does it hurt so much now?"

That question brought our small group discussion to a standstill. It was February 1998, and more than sixty people were separated into small groups throughout the cavernous meeting room at the Recreation Complex in

Inuvik. As a member of the Inuvialuit and Gwich'in negotiating team, I was responsible for facilitating small group discussions among community members during a two-day consultation meeting about our team's negotiating mandate. Seated in a semi-circle around a flip chart in a corner of the room, for several hours our group of about ten adults, elders, and youth discussed experiences of government services such as health, education, and justice. As expected, much of the discussion centred on painful residential school experiences, eventually turning to talk about how things should be done differently under self-government, with general statements being made about "the past." However, the question posed made us realize that participants were not talking about the past. What was being referenced by that question was how the many disconnections between ways and values of the mainstream society and those of the Inuvialuit and Gwich'in played out in government policy. Discussion centred on the ongoing experiences of injustice that extended across generations and into the future. The question raised a sentiment common among the group's participants: negative past experiences remain vital and in a sense are compounded by recent and similarly difficult experiences. Injustice still hurts now because discrete past events are the basis of ongoing unjust systems, policies, and practices – and resulting suffering. This larger complex of unrestituted wrongs and suffering shapes the lives of people in the present.

At the same meeting, discussion in another group led one prominent leader to declare she was "tired of all this wallowing in despair." Such was the extent that discussion of government programs and services resulted in sharing of suffering narratives.

Throughout this book the concept of dysfunction has been replaced by the concept of social suffering. Although the notion of dysfunction implies that people are responsible for their choices leading to unwellness, or can change the circumstances they are in, in order to become "functional," the term "social suffering" understands unwellness as symptoms of ongoing injustice, circumstances created and imposed by external agents. This term recognizes that the social pathologies endemic to Indigenous peoples are the reasonably expected result of ongoing injustice and are not a dimension of indigeneity. Recognizing the pathologies plaguing Indigenous communities and individuals as the expected outcomes of ongoing oppression is explored in Bonnie and Eduardo Duran's *Native American Postcolonial Psychology* (1995) and again specifically with respect to historical trauma by Maria Yellow Horse Brave Heart and Lemyra DeBruyn (1998). These works indicate that suffering is not simply about lifestyle choices made by the sufferers. In Canada, the nature and scale of social suffering within Indigenous communities coincide with ongoing injustices

suffered by Indigenous peoples as subjects of the Canadian state's Aboriginal policy. Below the concept of the state's dysfunction theodicy is introduced, elaborated throughout the three case studies in subsequent chapters.

The Dysfunction Theodicy

The focus on determining whether self-government agreements might address social suffering resulted in identification of what I assert as the state's "dysfunction theodicy." A theological concept, a theodicy is a rationale for the existence of evil despite God's existence. In times of suffering and pain, individuals often seek spiritual reassurance in the form of a reason for suffering. Religions provide such rationales through concepts such as karma, retribution for sin, or God's plan. Such reassurance provides those suffering with hope, comfort, or the basis for personal or spiritual action to ameliorate or prevent further suffering. Transferring this concept to political and social suffering, and specifically to the situation of Indigenous peoples in Canada, Canadian Aboriginal policy provides a rationale to Indigenous peoples for their suffering while simultaneously positioning the state as a source of redemption and healing. This positioning functions as the state's theodicy, characterizing Indigenous peoples as unmodern and dysfunctional, caused respectively by cultural difference and poor lifestyle choices. Injustice, being in the past and therefore neither a credible source of suffering nor a candidate for restitution, is substantively irrelevant. Unable to cope with modernity either culturally or morally, Indigenous peoples are encouraged to turn to the state as the source of redemption through programs and services that will assist both their modernization and their development of necessary knowledge and techniques to overcome self-imposed dysfunction. In this way the state can acknowledge that it may have made "mistakes" in dealing with Indigenous peoples in the past, mistakes whose role in current relations is primarily as lessons for the state's learning, rather than injustices inducing suffering and requiring substantive redress. In this view, Indigenous peoples who see the state as responsible for suffering simply misunderstand or are in denial of their situation, often accused of "living in the past" when they raise injustices as a rationale for increased autonomy or substantive redress.

The dysfunction theodicy is elaborated in the chapters that follow through analysis of discourse and outcomes of different self-government negotiations; however, this section looks at Aboriginal policies underlying dysfunction theodicy assumptions. A decade of participating in self-government negotiations, combined with an analysis of Canada's Statement on Indian Policy, better known as the White Paper (1969), Inherent Right Policy (1995), and Gathering Strength Policy (1998), led to identifying two key

policy assumptions of Canada that narrows the scope of both possible restitution for past injustices and the potential scope of policy choices shaping the future. Each of these policies marks an important turning point in state-Indigenous relations in Canada. The White Paper gained its notoriety for proposing to do away with recognition of Aboriginal rights and associated protections and programs, reviled so completely and effectively by Indigenous peoples that it was never fully implemented. The White Paper proposed as a key principle shifting responsibility for Indians and associated programs and benefits to provinces. Although this shift was not implemented in the provinces, in the NWT this is what has occurred to a large extent. Many Dene peoples believe the GNWT has usurped federal authority over Indigenous peoples to the extent that, for example, money for health and education for Treaty 8 and 11 peoples goes into the general revenues of the territorial government and is not separately accounted for, which has proven problematic for costing program and service implementation responsibilities when planning for self-government.

The 1998 Gathering Strength Policy, released in response to the 440 recommendations of the Royal Commission on Aboriginal Peoples (RCAP), established priorities in the Department of Indian and Northern Affairs, focusing mainly on governance renewal and capacity building initiatives. The 1995 Inherent Right Policy describes the broad scope and extent of authorities available under self-government. The following chapters examine exchanges between negotiators during negotiating sessions, where similar to the approach of the written policies government negotiators tend to characterize injustices as specific, unchangeable events. "Historical" and similar temporal terms signal that the current government is neither responsible for nor in a position to substantively address injustice as a cause of present suffering.

For example, at the outset of the White Paper (1969, 7), injustices, legal bases of Indigenous rights, and governmental actions and obligations are conflated by the term "history": "The weight of history affects us all, but it presses most heavily on the Indian people. Because of history, Indians today are the subject of legal discrimination; they have grievances because of past undertakings that have been broken or misunderstood; they do not have full control of their lands; and a higher proportion of Indians than other Canadians suffer poverty in all its debilitating forms. Because of history too, Indians look to a special department of the Federal Government for many of the services that other Canadians get from provincial or local governments."

Decades later, the Canadian government maintains a less strident yet similarly rhetorical reliance on temporal terms to characterize Indigenous

experiences. Laying the groundwork for policy priorities within INAC since 1998, the Gathering Strength Policy's opening remarks are eerily reminiscent of the temporal characterizations used to conflate injustice with history in the White Paper:

> As Aboriginal and non-Aboriginal Canadians seek to move forward together in a process of renewal, it is essential that we deal with the legacies of the past affecting the Aboriginal peoples of Canada, including the First Nations, Inuit, and Métis. Our purpose is not to rewrite history but, rather, learn from our past and to find ways to deal with the negative impacts that certain historical decisions continue to have in our society today. (Government of Canada, Department of Indian Affairs 1997, 4)

> The federal government is living up to its commitment, made in *Creating Opportunity – The Liberal Plan for Canada*, to build a new partnership with Aboriginal peoples and strengthen Aboriginal communities by enabling them to govern themselves. Our goal is to implement a process that will allow practical progress to be made, to restore dignity to Aboriginal peoples and empower them to become self-reliant. Aboriginal governments need to be able to govern in a manner that is responsive to the needs and interests of their people. Implementation of the inherent right of self-government will provide Aboriginal groups with the necessary tools to achieve this objective. (Government of Canada 1995, 1)

Although an in-depth analysis of government policy is not provided here, the above paragraphs are representative of the first of the two key assumptions within government policy: that injustice is historical. The result is that, by conflating specific unjust events, policies, and laws with "history," what is unjust becomes temporally separate from the present, unchangeable. This narrows options for restitution: we cannot change the past. The pursuit instead turns to justice "in our time," which instead of focusing on substantive restitution focuses on symbolic restitution such as land claims that return minuscule portions of Indigenous lands and resources or social programs that address social suffering. That suffering, such as poverty or unemployment, is actually the symptom of unrestituted deeper injustices, such as dispossession. Therefore, the result is that injustices, substantively unrestituted, can reasonably be expected to produce ongoing suffering. Aboriginal policy, then, and its associated mechanisms focus on symptoms of injustice rather than on substantively addressing injustice.

One result of the assumption that injustice cannot be changed is that

what can and must change are Indigenous peoples themselves. This is clear, for example, in the quotation provided above from the Gathering Strength Policy. It echoes another era, when assimilation of Indigenous (and indeed of all non-European) peoples was viewed as the answer to erasing inconvenient cultural, social, and economic difference. This orientation is echoed in the Inherent Right Policy, which emphasizes the need for Indigenous peoples to "modernize": "Many First Nations have expressed a strong desire to control their own affairs and communities, and deliver programs and services better tailored to their own values and cultures. They want to replace the outdated provisions of the Indian Act with a modern partnership which preserves their special historic relationship with the federal government."[6] In fact, an accurate description of the Indian Act would be colonial, not "outdated"; thus, the repair required is not so much modernization of a colonial relationship as decolonization. To simply modernize an unjust relationship creates a disabling environment, where no Indigenous people can reasonably be expected to become self-determining in the face of ongoing control and exercise of discretion by the state with respect to key governmental authorities.

The preoccupation with historicizing injustice extends to historicizing indigeneity itself. This phenomenon is not new and has been identified by Indigenous scholars as "Indian as past" (Deloria 2004; Fixico 2003; Jojola 2004; King 2003; Mihesuah 2003). This notion adheres particularly to culturally based practices and knowledge: for example, moosehide tanning done yesterday, which requires extensive familiarity with knowledge of moose, bush survival, and tanning techniques, is viewed as "traditional" knowledge rather than simply as Dene knowledge or contemporary moosehide-tanning knowledge.[7] Aboriginal policy casts the government as a benevolent helper, eager to minister to an encountered dysfunction that is unmodern and not of the government's making. Governmental help will result in a modernity of happiness, wellness, and assimilated "normalcy." At the same time, aspects of indigeneity will be preserved in ways compatible with this version of modernity. This merely requires profound change on the part of Indigenous people, since, according to the dysfunction theodicy, Indigenous dysfunction stems from a non-modern indigeneity.