

**NORTHERN SELF-GOVERNMENT
AND SUBSIDIARITY:
CENTRALIZATION VS. COMMUNITY
EMPOWERMENT**

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Executive Summary and Recommendations

A substantial amount of the political history of the north involves the tension between forces advocating a more decentralized government and forces advocating the continuation of a more centralized government. Our argument in this paper supports decentralization -- self-government for northern communities who desire it.

The argument is based on a number of factors. First of all the north is the most culturally diverse region in Canada. In responding to this cultural diversity, something is needed other than a uniform process for all northerners. Secondly, northerners face a number of severe social and economic problems. We feel that individuals in communities and regions in the north are the best resource to be used in tackling these problems. Therefore, we propose the application of the subsidiarity principle as a way of building viable systems of government that are "legitimate" in the eyes of all northerners. We suggest the following recommendations as the way of constructing self-government in the north.

1. **Northerners should determine the nature of the government process for northern territories.**

Rationale. Northerners are the most culturally diverse peoples in Canada. They should be able to decide the nature of the governmental system under which they live.

2. **The principle of subsidiarity should apply to all northerners. That is communities should be able to select the powers they feel they are capable of exercising in terms of building their system of government.**

Rationale. Not all communities or regions will want a similar set of powers to accomplish what they see as the needs of the community or region. Subsidiarity provides a way of accommodating these differences.

3. **Block funding should be available for self-governing communities and regions.**

Rationale. Self-government depends on a high degree of financial autonomy. If block funding is not available, self-government will not be a reality.

4. **Provision should be made in self-government legislation for financial accountability.**

Rationale. Without the necessity of accounting for all public expenditures, the legitimacy of governments in communities and regions can be undermined.

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CENTRALIZATION VS. COMMUNITY EMPOWERMENT**

I. Introduction

The Canadian North is very much involved in the process of remodeling territorial governments. This evolutionary process is of note because it appears two territorial governments may take a form very different from other jurisdictions in Canada. The last time it occurred (1905), the Northwest Territories government evolved into conventional provincial governments. Today, Nunavut and the Western Northwest Territories are likely to structure a process that may be very different from conventional provincial governments. And the pressure to devise different forms comes no doubt from indigenous forces in the eastern and western Arctic.

Interestingly, in 1905, individuals on the prairies saw the movement to provincial status for Alberta and Saskatchewan as a movement toward "self-government." In the north today one frequently encounters the same term, self-government. Use of the term today, especially for Aboriginal peoples, has a very different meaning, however. Self-government in northern territories implies individuals in communities and regions having a great deal of control of the public decision making process. It refers to what they call, "control of their own destiny." In effect, self-government as currently used implies a very decentralized process of government in which political power and initiatives reside and originate locally.

Regional and territorial governments would exist, and they do the things that local communities prefer not to do.

For many individuals, the process of self-government in the north applies the "subsidiarity" principle; i.e. governments at the local level are responsible for doing what they believe they do best. Thomas Kohler has defined susidiarity:

Simply put, subsidiarity is an organizational norm: It recommends that social institutions of all types be ordered so that decision-making can occur at the lowest capable level. The principle insists that the state and all other forms of community exist for the individual. Thus, corporate bodies should not take up what individuals can do, nor should larger groups assume what smaller associations can accomplish. Conversely, the state and other large corporate bodies have the responsibility to undertake those tasks that neither individuals nor smaller associations can perform. On this view, communities and social relationships exist to supply help (*subsidium*) to individuals in assuming self-responsibility. The subsidiary function of community rests not in displacing but in setting the

conditions for authentic self-rule.¹

This form of self-government is a very important component of the political culture of northern Canada. And it has been the case since the Canadian government began constructing permanent committees across the north.

Two issues arise from this notion of self-government. Is there consensus in the north on engineering a more decentralized political process? And the answer is probably not at this point in time. However, there does appear to be a high degree of support among Aboriginal peoples, and many non-Aboriginals alike, for a process that would remove some of the power and clout centered in Yellowknife for 25 years.

A second issue is, will Ottawa permit a territorial form of government that is significantly different from other provinces, or Yukon? Here again, the answer may hinge on "consensus." If northerners can agree on a package, even though it is different, Ottawa may have no choice but to allow "self-determination."

Thus, this paper is a discussion of ways territorial governments have evolved in the past, the issues that stand out in discussions about constructing forms of government, and some of the alternatives available in these discussions.

1) The Importance of "Cultural Accord"

Cultural Accord. An important premise underlying the development of self-government in the north is that an accord must exist between cultural beliefs and values of people in a society and the nature of the institutional process established to govern that society. For example, if individuals of a society value equal public participation in the political process by which their society is governed, and a government denies certain citizens the opportunity to participate in elections, or the opportunity to criticize government policy, then problems and challenges obviously will arise. In other words, the lack of accord between basic cultural values and the nature of the governmental process, can lead to a 'crisis of legitimacy' in the society. Individuals may wonder whether the existing governmental process is in fact the best one for their society.

They may ask, is their government a "legitimate" form of government? This conflict between fundamental beliefs and values individuals hold and the way in which their governmental system works is often characterized as a "clash in cultures."

It is a topic frequently discussed by anthropologists, questioned in judicial enquiries, and discussed in public policy studies.

As noted in previous sections of this paper, a strong community orientation for many Aboriginal peoples is part of the northern culture. For years northerners have lived under a system of government in which public decisions for communities were made from without -- public decisions involving education, health care, housing or social programs. In trying to change

¹Thomas C. Kohler, "Lessons From the Social Charter: State, Corporation, And The Meaning of Subsidiarity," University of Toronto Law Journal, 43, 3, 614-15.

the situation, many Aboriginal groups today advocate strong community government and equate strong community government with self-government.

For these peoples, self-government is not simply power at the community level; it is power at the community level used to preserve a lifestyle, or culture. In other words, self-government for many northern Aboriginals is strong community or regional government that will enable them to control their own destiny. Part of this destiny involves developing the local economy on their lands that will enable them some degree of independence from federal or territorial governments. For example, the power of self-government would be used to develop a local or regional economy that can provide a degree of self-sufficiency. With self-sufficiency, Aboriginal people will have the option to choose lifestyles -- maintain some traditional values, adopt some southern values, or find a blend of the two. Thus, part of the meaning of self-government for Aboriginal peoples is the creation of a system that will enable them a choice in lifestyles. Therefore, reaching an accord between their beliefs and values and the nature of their governmental process is a critical factor to be accounted for when devising self-government for Aboriginal people in the north.

2) The Argument that territories "are not the same as provinces"

In considering different ways of structuring self-government in the north, one factor should be remembered.

Territorial governments are governments in transition. Initially territorial governments were established as a way of governing sparsely populated regions. At the outset, they were administered by the federal government. As the population grew, and as Aboriginal peoples became politicized, the administrative process gradually (some say too gradually) gave way to a form of representative and responsible government. As mentioned previously, elected legislatures and executives gradually took charge of powers devolved from the federal government. The evolution of a conventional provincial government was the model followed in Alberta and Saskatchewan in 1905. And many Canadians have assumed that governments in Yukon, the NWT or Nunavut would follow the same path and somewhere down the line possibly attain provincehood.

One difference today, however, is that Aboriginal peoples in the north comprise a significant part of the population, a substantial majority in Nunavut. Many of these people have other ideas about self-government in northern territories. There does not seem to be any reason why models of self-government in northern territories should necessarily follow the example of Alberta or Saskatchewan. Differences have already emerged in the NWT through its non-partisan, "consensus" form of government.

There seems to be no reason why a new arrangement of powers between territorial and municipal or regional governments cannot be accommodated within Canadian federalism. Above all, flexibility is required for implementing self-government in the north. The question is, will non-Aboriginal northerners, or southern Canadians, accept a more decentralized form of

self-government in the territories? One might better understand a decentralized, self-government system for the north if one examines how communities there are now empowered, and what they are proposing as a new power arrangement.

3) Appropriate institutions as a partial solution to the difficulty of Native peoples "living in two worlds."

Devising a system of government for northern territories involves the historical experience of the north -- specifically, the fact that people have never really had the capacity to affect public decisions that strongly influence their lives. At this point in time, Aboriginal northerners see the opportunity to achieve greater control of their lives and they are determined to seize that opportunity.

There is also a cultural explanation for northern Aboriginals wanting greater control over their lives. This cultural explanation is linked to the place of the community in the northern culture. Northern Aboriginals would like to preserve something of this community culture. It encompasses certain beliefs and values inherent in their traditions. This does not by any stretch of the imagination mean that these people want to return totally to what is sometimes called a traditional lifestyle. That way of life has been permanently changed by their experiences with the dominant Canadian culture. Nevertheless, many northern Aboriginals would like to preserve certain aspects of their traditional culture for future generations. In their words, they do not want assimilation. They do not want completely to lose their cultural tradition and adopt totally the dominant Canadian culture. They will accept integration into the Canadian society. But that integration implies living a life in two worlds. Many Aboriginal peoples would like a home in the modern, dominant Canadian society and at the same time have a home in the more traditional, Aboriginal community -- with its language, family ties, perhaps hunting and trapping, and its community institutions.

Whether Aboriginal peoples can in fact find a way to exist in these two worlds remains to be seen. What is certain, however, is that without powers of self-government at the local or regional levels, there is little likelihood that Aboriginal peoples can survive in two worlds. Without specific powers, there is no chance that they can control the public decisions which are vital to their own survival -- utilization of lands, economic development and cultural preservation.

II. THE SOCIAL CONTEXT IN THE NORTH

Three main characteristics of northern societies are relevant to the design of appropriate structures of government for Yukon and the Northwest Territories. These are the diversity of cultures which exist within the northern population, the demographic distribution of members of these cultural groups within and across northern settlements, and the often poor social conditions which northern governments must address. Together,

these characteristics point to the local community as being the most fundamental political unit in the territorial north.

Cultures

Any appropriate design of governing structures for the North must be grounded in the premise that diverse cultures dictate more than one model of self-government. One of the cultural distinctions most evident to observers is the division between Native and non-Native northerners. In Yukon, approximately 82% of the population is non-Native, the remaining 18% of residents being primarily status Indians.² By contrast, only 39% of the population is non-Native in the Northwest Territories.³

The size and internal variety of the Native populations in the North are the most distinctive features of society in the NWT and Yukon. Culturally and demographically, the regions' indigenous societies continue to thrive. The political influence of these groups can therefore only be expected to grow in the coming decades. The designs of emerging institutions of government must, if they are to be legitimate, take the preferences of Native citizens strongly into account.

Employing the popular use of Aboriginal languages as an indicator of the vitality of northern Native cultures, it is clear that Native populations will continue to exist as distinctive groups within northern society. There is a notable difference between the two territories, however. In Yukon, Aboriginal languages are threatened, with only 5.6% of Native residents reporting the use of an Aboriginal language in their homes.⁴ The language retention rate among the remaining Native Yukoners is 35.5%.⁵ Aboriginal languages are more common in the more populous NWT. Here, 60% of Natives use an Aboriginal language in the home and Natives retain the use of their home languages at a rate of 86.9%.⁶ The preservation of Native languages and values will be further enhanced in both territories through Aboriginal and territorial government cultural programs.

The important position which Native people hold in the political systems of the territories is further assured by a strong rate of population growth. In 1986, Aboriginal peoples made up 40% of northern populations, an increase of eight percentage points over the previous five years.⁷

While it is crucially important that the priorities of Native people be taken into account, Aboriginal northerners do not constitute a unitary group. The cultural composition of the territories' Aboriginal population is very diverse. Each Native society encompasses its own political culture and the members of these societies hold opinions on which governing arrangements would be most legitimate.

In Yukon, there are at least 14 distinct First Nations,

²Yukon Data Book 1986-87 (Whitehorse, Outcrop, 1986). p.29.

³Northwest Territories Data Book 1990/91 (Yellowknife, Outcrop, 1990), p. 40.

⁴Allan Maslove and David C. Hawkes, "Canada's North: A Profile," 1986 Census Focus on Canada Series (Ottawa, 1990) p. 21.

⁵Ibid., p. 23.

⁶Ibid., pp. 21 and 23.

⁷Ibid., p. 15.

each of whose leadership is determined to build some form of self-government. These include the more isolated Vuntut Gwitchin around Old Crow to the groups along the Alcan Highway -- for example, the Liard First Nation, the Tlingit at Teslin or the Champagne and Aishihik First Nations west of Whitehorse (see Map 1). These First Nations, centred primarily in small communities, have distinct views about self-government. While some talk of confining self-government to members of the First Nations, others see self-government as public government applying to all residents of the community.

Because of the strength of the non-Native majority in Yukon, the preference of some Native residents for enhancing the powers of community governments is unlikely to be sufficient to launch any radical restructuring of the Yukon Territorial Government. It is both likely and appropriate, however, that communities with substantial First Nations populations will in the future come to exercise more authority than they do at present. Accommodations will have to be made for the aspirations of these groups.

Cultural differences within the Aboriginal population of the Northwest Territories are also extensive. Inuit make up 37% of territory's population. Most make their homes in the Nunavut Territory, covering the Central and Eastern Arctic (see Map 2). Without a basic road system in the region, most individuals reside in small isolated communities scattered around Baffin Island, the Barren Lands or the High Arctic. While these people are diverse and speak different dialects of Inuktitut, the drive to achieve Nunavut has provided a certain cultural coherence.

Most Inuit view a territorial form of government for Nunavut as self-government and are content to work out in the future the relationship between the central authority and municipal and regional governments. These people have never negotiated a treaty with the federal government, nor have they lived under band governments. With an 80% or more majority of Inuit in most communities, Inuit residents do not fear the influence of a non-Aboriginal population. Therefore, in Nunavut, territorial, regional and municipal public governments will in fact constitute self-government for Inuit.

In the Western portion of the NWT, cultural divisions are extensive. The Inuvialuit, also speaking an Inuktitut dialect, live primarily in four communities around the Mackenzie Delta and Beaufort Sea. Some of their people also reside in Aklavik and Inuvik. For years they have advocated strong regional government as a way of achieving self-government.

The Dene and Metis live up and down the MacKenzie Valley and south of Great Slave Lake. Together, they constitute 26% of the territory's population. Five Athapaskan language groups form distinct cultural entities and are separated by administrative regions. There are also some Cree (an Algonquian language) residents dispersed along the southern NWT border.

The Gwich'in form the first group in the lower MacKenzie Valley. Administratively this is the Delta region and the people live primarily in Fort McPherson and Arctic Red River, although some reside in Aklavik and Inuvik. South of the Delta is the

Sahtu region. These people speak North Slavey. They reside in Colville Lake, Fort Good Hope, Fort Franklin, Fort Norman and Norman Wells. Moving up the river, South Slavey is spoken in the third region, Deh Cho. Its communities include Wrigley, Fort Simpson, Fort Liard, Fort Providence, Hay River and Enterprise. Dogrib is spoken in the North Slave region along the west side of Great Slave Lake. Rae, Edzo, Lac La Martre, Rae Lakes, Snare Lakes and Detah are the communities in this region.

The South Slave region is the final administrative region with Chipewyan as the principal language. Its communities include Fort Resolution, Snowdrift and Fort Smith.

In the Western NWT, the Aboriginal and non-Aboriginal populations are evenly divided. There are about 32,000 residents in this part of the NWT, approximately 50% of whom are Aboriginal. Significantly, most non-Aboriginals are concentrated in Yellowknife. Other centres with high numbers of non-Aboriginals include Fort Smith, Hay River, Fort Simpson, Norman Wells and Inuvik. The ethnic diversity of the region leaves many Aboriginal residents uneasy about allowing a powerful territorial government to exist under which they may one day end up being governed as a minority. As a result, many are interested in creating strong community and regional governments. Thus, for most Aboriginal peoples in the Western NWT, self-government means strong community and regional governments.

Community Demographics

The significance of cultural differences on the appropriate design of governments in each region is affected by the demographic distribution of the various populations. Demographics are important because the ethnic composition of northern communities varies considerably. Patterns in this variance will influence the nature of self-government models adopted. For example, there are at least four types of northern communities.

Yellowknife (13,000) and Whitehorse (21,000) are in a category by themselves. Being the capitals of their respective territories, they are government towns in that most territorial and federal civil servants live in these centres. Over 90% of their populations are non-Aboriginal. These centres are classified "cities" and are very much like many southern cities; residents do enjoy comparable amenities. After these two municipalities, the similarity between northern and southern settlements ends. Most of the remaining northern communities are small and distinctive.

A second category comprises the half dozen or so communities that are predominantly non-Aboriginal. Examples would be Hay River, Norman Wells and Nanisivik in the NWT and Watson Lake in the Yukon. These communities range from a few hundred people (e.g. Nanisivik) to Watson Lake with almost 2,000 people and Hay River with about 3,000. In these communities, 80% or more of the people are non-Aboriginal.

A third category is that of the mixed community. Here the ethnic mix is fairly even, about 60% Aboriginal and 40% non-Aboriginal, or vice versa. Inuvik, Fort Simpson, Fort

Smith and Iqaluit are examples in the NWT and Haines Junction in the Yukon. Where the populations are fairly evenly divided ethnically, these communities may face a particular problem in terms of self-government because both populations are quite aware of the consequences of minority representation in government organizations.

In the final category are the communities that are predominantly Aboriginal. Most central and eastern Arctic communities are in this group, composed of about 90% Inuit. In the Western NWT, Fort Franklin or Snowdrift have over 90% Aboriginal people, and Fort Good Hope and Providence over 80%.

Inuvialuit communities are over 80% Aboriginal. In the Yukon, Old Crow is over the 90% range, and a number of communities along the highway system are approximately 80% Aboriginal --for example, Teslin. In many of these communities, Aboriginal peoples prefer to accept the strengthening of local government powers. This form of public government would in effect constitute Aboriginal self-government within the community.

The ethnic breakdown in communities is important as a factor influencing the nature of any self-governing system. Members of northern Aboriginal societies have traditionally related most closely to members of their immediate local communities. They continue to do so today, not the least because ethnic groups tend to be geographically concentrated. Because the non-Native populations of the North are also concentrated in the small number of larger settlements, the political significance of this group has a strong community basis too, although this is less often expressed in political preferences. These facts hold important implications for the legitimacy of government institutions. Cultural and demographic factors combine to make the local community the primary political unit in the North. The significance of this for the design of governments, however, can vary by region.

Social Conditions

Possibly the greatest challenge to governments serving Canada's territories is the collection of social problems which pervade many communities in the North. The smaller, more remote Aboriginal settlements are particularly afflicted by high levels of unemployment, low levels of personal income, low levels of formal educational attainment, poor housing, and serious family problems. Because these problems are widespread, it is tempting to treat them as pan-territorial issues. In their origins and in their effects, however, social problems are issues faced by local communities.

Poor social conditions are not equally serious in all parts of the North. The GNWT's Special Committee on the Northern Economy describes how 42% of residents in the Northwest Territories live in seven "developed" communities. As administrative or commercial centres, these are served by good transport and communications networks, enjoy access to sizable economic markets and provide high salaries and levels of employment. The large majority of residents in these communities are non-Native. The remaining 58% of Northwest Territories residents, however, live in the 46 smaller communities. Most among them are

Aboriginal.⁸ In Yukon, the pattern of developed and under-developed settlements is similar, although the more remote and smaller Native communities are fewer in number and smaller in population.

Whatever their design, governments in the territories will be required to address the often desperate and always costly social conditions which haunt many Aboriginal societies and their small and medium-sized communities. Although the problems are widespread across the North, their effects are suffered at the level of individual communities.

Unemployment stands as one of the most serious problems in the North. It imposes a more serious hardship on some regions and peoples than others, however. In January 1992, unemployment in Yukon, whose population is 80% non-Aboriginal, stood near the national average of 11.3% at 10.3%. The rate of unemployment in the NWT, however, was twice the Canadian average. Economic opportunities are typically not distributed evenly within the territories. The economic disparity between the larger, predominantly non-Native communities and the smaller, Native centres is marked. The NWT's Labour Force Survey, conducted in Winter, 1989, found that at that time, 31% of Inuit were unemployed, as were 27% of Inuvialuit, 35% of Dene and 19% of Metis.⁹ The unemployment rate for non-Native residents of the NWT, meanwhile, hovered near 5%.¹⁰ Among unemployed Natives in the NWT, 65% reported actively wanting a job.¹¹

Income levels for the two territories appear to be better than the national average only if one ignores the effect of a high cost of living and the influence which the very high incomes of many non-Native residents has on territorial averages. Average yearly personal income for Yukoners was \$26,190 in 1989, in the NWT was \$27,495, and nationally was \$23,840.¹² These figures, however, mask the great discrepancies between large and small communities. In the NWT's seven most prosperous settlements, residents earned incomes ranging on average from approximately \$31,000 in Iqaluit to \$37,000 in Yellowknife. Average personal incomes in all other settlements typically ranged between \$13,000 and \$17,000.¹³

The rejection of the territorially-administered educational system by Native northerners is partly to blame for the high levels of unemployment and low levels of wage income within this group. In Yukon in 1986, 29% of Aboriginal individuals over age 15 did not possess formal education to a grade 9 level.¹⁴ Fully 57% of Aboriginal residents in this age group had not

⁸Legislative Assembly of the Northwest Territories, The SCONE Report: Building Our Economic Future (Yellowknife, 1989), p. 22-27.

⁹Government of the Northwest Territories, Bureau of Statistics, The NWT Labor Free Survey, Winter 1989, Overall Results and Community Detail (Yellowknife, 1989, p. 14.

¹⁰Ibid.

¹¹Ibid.

¹²Government of the Northwest Territories, Bureau of Statistics, Statistics Quarterly, Vol. 14, No. 1 (Yellowknife, 1992), p. 21.

¹³Ibid., p. 22.

¹⁴Maslove and Hawkes, p. 25.

completed grade 9 in the NWT.¹⁵ Despite the demographic majority and young age of the NWT's Aboriginal population, fewer than 60 graduated from high school in 1991.¹⁶ The rate of functional illiteracy among Native residents of the NWT is estimated at 72%.¹⁷ Educational programs which are controlled by the territorial governments are slowly lowering the rate of drop-outs. Many Native residents point out, however, that with the disparate rates of economic growth in the different regions of the North, access to economic opportunity is not necessarily being increased.

A shortage of some social services has placed further strain on northern communities. For example, in the past, housing has been in such short supply in the NWT that residents are discouraged from relocating to find employment.¹⁸ Aboriginal residents endure nearly twice the levels of crowding in their accommodations compared with non-Aboriginals. In 1986, Aboriginal homes in the NWT supported an average of 0.97 persons per room, compared with 0.52 persons per room among non-Native residents.¹⁹ The equivalent figures for Yukon were 0.69 and 0.49 persons per room respectively.²⁰ Natives in the NWT were also twice as likely to lack central heating in their homes in comparison with non-Native residents. Thirty-nine per cent of Aboriginal Yukoners joined the 22% of non-Aboriginal Yukoners who lacked central heating.²¹ Lack of day care services in many communities prevents many women from seeking either wage employment or higher levels of education.²²

The difficult economic position of northern communities and their Aboriginal residents imposes significant costs on government social programs. In 1991, unemployment insurance benefits were distributed to an average of 2,000 recipients each month in the NWT at a yearly cost of \$31.1 million.²³ The total cost in Yukon in 1991 was \$28.1 million.²⁴ In September, 1991, 3,523 residents of the NWT relied on social assistance for their incomes. The total cost of social assistance in the territory in 1990 was \$21.7 million.²⁵

As is the case in other parts of the country, poor education, few employment opportunities and low levels of income among Aboriginal peoples in the North have generated serious social dysfunction within families and settlements. Again, these social ills particularly affect smaller communities which are predominantly Aboriginal, often, manifesting themselves in

¹⁵Ibid.

¹⁶Government of the Northwest Territories, Strength at Two Levels: Report of the Project to Review Operations and Structure of Northern Government (Yellowknife: Financial Management Board, 1991), p. 37.

¹⁷Ibid., p.26.

¹⁸The SCONE Report, p.19.

¹⁹Maslove and Hawkes, p.35.

²⁰Ibid.

²¹Ibid., p.37.

²²The SCONE Report, p.19.

²³Statistics Quarterly, p.26.

²⁴Ibid.

²⁵Ibid., p.14.

family breakdown. One source estimates that children from Native families are approximately six times more likely than non-Native children to be taken into state care.²⁶ Alcoholism and drug abuse are of great concern to northerners.²⁷ Suicide rates in Yukon in 1988 stood at 34 per 100,000 members of the population; the rate in the NWT that same year was 48 people per 100,000; the Canadian average was 16 per 100,000.²⁸

The prevalence of social problems is financially costly to the justice systems of the territories. In Yukon in 1985, the number of adults charged for contraventions of federal, territorial and municipal statutes was 1073 per 10,000 residents and in the NWT was 1,034; the Canadian average was 327.²⁹ In 1989, the rate of violent crimes per 100,000 residents is 3,000 in Yukon about 5,000 in the NWT; this is compared with a rate of just under 1,000 violent crimes per 100,000 persons in Canada as a whole.³⁰ The bulk of resources in the judicial system goes towards the processing of Aboriginal offenders. Over the 1986-87 period, 60% of admissions to the Whitehorse Correctional Centre were Native individuals, though Natives comprised only 18% of the territory's population.³¹ High costs are associated with the current means of dealing with these levels of crime. There were 242 members of the population for every Yukon police officer in 1987; in the NWT, this figure was 256 per officer. This represented two to three times the rate of policing carried out in Canadian provinces; the Canadian average over the same period was 488 persons per police officer.³²

Social problems emerge at the level of local communities and it is at this level that their effects are felt. Each community confronts its difficulties from within its own economic, geographic and cultural context. It follows that many pressing social issues in the North might most effectively be addressed through government intervention at the level of communities and small regions. The geographic concentration of ethnic groups and the cultural orientation of many residents towards the local community suggest that, in order for northern governments to tackle community-level social problems from a firm foundation of social legitimacy, the governing institutions should be structured in a way which recognizes the variety of conditions which can exist at the local level.

Cultural variety, demographic patterns, and difficult social conditions each stand as characteristics which are significantly relevant to the design of government institutions which are appropriate for the North. In the regions of Yukon, Nunavut, and the western Northwest Territories, cultural and demographic factors and considerations of social conditions

²⁶ Heino Lilles, "Some Problems in the Administration of Justice in Remote and Isolated Communities" for presentation at the C.I.A.J. Conference, Kananaskis, Alberta, October 11-14, 1989. p.9.

²⁷The SCONE Report, p.19.

²⁸Strength at Two Levels, p.25.

²⁹Lilles, p.18.

³⁰Strength at Two Levels, p.25.

³¹Lilles, p.4.

³²Ibid., pp.16-17.

point towards the local community as the prime building block of territorial governance.

III. THE HISTORICAL CONTEXT: THE EVOLUTION TO DATE OF CANADIAN-STYLE GOVERNMENT IN THE NORTH

It is not the social characteristics supporting the primacy of local communities, however, which have determined the structure of government in the North. The Canadian state has expanded itself into the Arctic only recently and it is the historic legacy of this development which has had the single greatest influence over the present design of governing institutions.

In the interest of delivering government services as it is done elsewhere in Canada, government intervention in northern societies has been undertaken through centralized institutions. Only within the past twenty-five years have northerners had any appreciable influence over their own governments' policies. And only now are northern residents being invited to voice their preferences concerning the overall organization of government institutions. The pattern which is emerging from their contributions is of a demand for a more decentralized distribution of authority. This contrasts with the hierarchical arrangement of governing authority which is evident in the Yukon Territorial Government and the Government of the Northwest Territories, designed as they are around the Canadian provincial-local model of government. At this early stage in the evolution of responsible and representative government in the North, territorial institutions are in a state of transition. It is not clear which set of influences -- the priorities of the regions' residents or the comfortable familiarity of the Southern Canadian model -- will shape the outline of the permanent institutions which have yet to emerge.

Two distinct forces have driven the evolution of government institutions in the Yukon and Northwest Territories. The first is the historically based vision supported by bureaucratic agencies of a centrally-controlled, administratively conventional mechanism for the smooth delivery of standardized government services. In some ways pulling against this statist imperative is the second influence, a set of pressures pointing toward an enhanced role for community-level governments and local self-determination.

Because territorial governments in Canada are currently in a state of transition, close attention must be paid to these two forces. The institutional structure of government in Yukon has nearly been finalized but the Yukon Territorial Government has yet to incorporate a place for the first nations governments which ongoing negotiations are expected to produce. Meanwhile, few institutions of government in the Northwest Territories are likely to remain unaltered by the changes being brought on by the creation of Nunavut. While Canadian-style government has expanded from its origins in Canada's North nearly a century ago, it is not clear which of these influences -- statism or community empowerment -- will shape the final, permanent institutions of government.

Almost by definition, territorial status has been assumed in Canada to represent a temporary stage in the evolution of government for remote regions. Areas which do not yet possess sufficient populations to justify the establishment of full-fledged provincial governments have first been governed as part of the federal government's administrative processes. For example, the first Northwest Territories Act was passed in Canada in 1873 following the federal government's acquisition of Rupert's Land. Following the significant increase in non-Native populations on the prairies, it was amended in 1905 to allow for the creation of the provinces of Alberta and Saskatchewan. In legal terms today, the remaining Yukon and Northwest Territories continue to be governed under the constitutional authority vested in the federal government.

Despite being legally subordinate, the institutions of government of the Northwest and Yukon territories have proceeded through stages of almost continuous evolution and development. This is particularly true of their representative institutions in recent years. What is noteworthy is the extent to which, despite these developments, institutional arrangements have continued to reflect state-centered priorities, often over and above the preferred styles of government of the territories' indigenous residents.

The expansion of government activity in the North has historically been initiated in response either to a need for the social services enjoyed by Canadians elsewhere or to the perceived need to lend order and direction to economic development. In the cause, then, of either the efficient delivery of standardized services or the coordinated control of resource exploitation, the federal government and its inheritors the territorial governments saw good reason to build and maintain administrative structures whose decision-making authority was quite highly centralized. Because of this interpretation of the role of government, administration has historically taken precedence over representation in the government of northerners. Thus, under the Northwest Territories Act of 1873 and the Yukon Territory Act of 1898, federal administration was established through a Commissioner-in-council form of government. Appointed by the Governor in Council, a commissioner acted as the chief executive officer for each territory. This official was assisted by a council appointed for each territory whose role was purely advisory.

In Yukon, the progression to an elected council began in 1899 in reaction to political pressure from a growing population. At first, one quarter of the new council's membership was elected.

By 1909, amendments to the Yukon Act had made the territory's council entirely elected. This did not alter the federal government's retention of complete legislative and administrative authority, however. For example, as a cost-cutting measure in 1918, Ottawa abolished the position of the commissioner entirely. The post was not reinstated as a distinct office until 1950, again in response to population growth driven by an economic boom. The size of the Yukon territorial council was gradually increased over the next three decades and in 1974, the body came to be referred to as the

Legislative Assembly. In 1978, its membership was increased one last time to its current size of sixteen.

The admission of elected Yukoners into the executive branch of their government proceeded slowly. Through the 1960s, responsibility for Yukon's administrative departments and agencies remained in the hands of the commissioner and a small executive committee. Only gradually was the committee expanded to admit elected representatives. A form of responsible government had been instituted in the Yukon by 1979, however. The membership of the governing executive committee was from then on composed entirely of elected members whose appointment was determined by the familiar criterion of political party support in the legislature. Today, the Yukon Territorial Government exercises powers roughly equivalent to those of the ten provinces, with the exception of control over Crown lands, non-renewable resources, forestry, and health care, which remain the responsibilities of federal government agencies. The devolution of some of these responsibilities is now being negotiated between the Yukon and federal governments. The legal paramountcy of federal law continues over all jurisdictions but, in practice, the position of commissioner stands as only a symbol of federal power.

The dominance of administrative priorities over the development of representative institutions is also evident in the history of the Northwest Territories. Those formal activities of government which took place in the NWT were monitored from Ottawa by a lone commissioner until 1921, when a territorial council was formed to assist him. In contrast to the case of Yukon, the desire of residents to have their views represented on council was ignored. This body's membership was composed entirely of representatives of those federal government departments which held an interest in the North. This remained the case for twenty-six years. The first resident of the NWT to be appointed to council took his seat in 1947. By 1975, council membership had increased to fifteen members, all elected.

The emergence of responsible institutions of government in the NWT followed much the same pattern as in Yukon. After the selection of Yellowknife as capital in 1967, the federally-appointed commissioner chaired an appointed, non-elected executive committee whose membership was expanded over the next fourteen years as its seats came gradually to be assumed by elected residents. By 1986, the NWT had effectively achieved responsible government through a Legislative Assembly composed of 24 members. Since elections in the NWT are non-partisan, the allocation of executive positions is determined by the Legislative Assembly as a whole rather than by the balance of partisan forces. By 1989, the executive council had assumed responsibility for all the functions of the Government of the Northwest Territories (GNWT) and the commissioner's position was effectively relegated to the equivalent of a lieutenant governor. The powers of the GNWT take in nearly all areas of provincial jurisdiction, though ownership of land and resources rests with the federal Crown and, legally, ultimate authority in all areas resides with the federal minister for Northern Affairs.

Until very recently, the evolution of representative bodies had little impact on the management of programs in northern regions. Administrative activity for the NWT, for example, was centralized at Ottawa until 1967. As has been described above, control over the territorial bureaucracies was slow to be transferred to the emergent representative bodies. Even after new political conventions had made territorial agencies responsible to the public, the administration of government in each territory continued to follow the style established during the earlier decades of federally-directed administration. Specifically, nearly all discretionary authority continued to lie with the departments located in the capitals.

While this feature may not have been surprising in Yukon, much of whose population is concentrated around the territorial capital, the centralized control of programs and services seemed to run counter to the geographic, economic, and cultural diversity of the Northwest Territories. This has nevertheless been the case, despite recommendations to enhance the role of local and regional government forwarded by official reviews of the territorial administration and by indigenous groups of northerners. The historic orientation of the territorial bureaucracy towards the uniform and highly coordinated delivery of services has largely resisted pressures for reform. It is this curious contradiction which characterizes the GNWT's current state of instability and, to a lesser degree, underlies calls for changes to the structure of governments in Yukon.

Yukon has not recently witnessed strong public pressure to revise its territorial government institutions. The provincial-local model of public government is familiar to the territory's strong non-Native majority and is not, on the whole, contested by members of this group. Among non-Native Yukoners, discussion on the constitutional future of the territory has tended to focus on issues secondary to the fundamental structures of government, such as the rate at which new areas of jurisdiction should be devolved from the federal government and the proper role for representatives of Yukon in the Canadian federation. The focus of this public interest has encouraged status Indian groups in Yukon to forward their proposals for institutional change through the mechanism of Native self-government. Through land claims negotiations with federal authorities and by seeking to have an Aboriginal right to self-government recognized by the Canadian judicial system, Native Yukoners who object to the provincial-local model of public government have sought to withdraw First Nation communities out from under areas of territorial government authority.

The drive to redesign institutions of government in the Northwest Territories has been a much more encompassing one. Both from within government agencies and from unofficial initiatives by Aboriginal groups, a pattern of proposals has emerged which promote the principle of decentralized exercise of authority in government.

As early as the mid-1960s, independent administrative studies recognized that the decentralization of authority to the local level in the NWT favoured both political legitimacy and bureaucratic effectiveness. The seminal report by A.W.R.

Carrothers of 1966,³³ whose recommendations led to the establishment of the modern GNWT at Yellowknife, noted in their survey of public opinion a "desire for more effective communication between government and the governed,"³⁴ a "strong desire... for political responsibility"³⁵ and, generally, a "clear desire to bring government closer to the people being governed."³⁶ The Commission saw the establishment of effective government at the local level as the solution to the challenges of scattered populations, poor communications and to the prevalent view of government as "people who look after others."³⁷

In a 1979 review of the implementation of the Carrothers report, the Special Representative for Constitutional Development in the Northwest Territories, C.M. Drury, also remarked on a strong sense of popular frustration over the 'hidden' authority of the Yellowknife government. Although noting the already deconcentrated and regionalized structure of the territorial bureaucracy, the report concluded that for true responsiveness to be achieved, governmental decisions must be taken by those who are most directly affected by these decisions.³⁸ This requires, in Drury's words, that federal and territorial governments "recognize a real and distinct first tier of government at the local level."³⁹ The report explicitly stated that GNWT departments should be altered to "foster and reflect the development of community government."⁴⁰

In the Northwest Territories, recommendations for enhanced responsibility at the community level have continued to be articulated in recent years. In November 1991, The Financial Management Board of the GNWT Cabinet commissioned a Project Committee to recommend means of improving the efficiency of government in the territory. Efficiency was defined as the "ratio of effectiveness to cost," but the Project Committee adopted an outlook on the organization of the GNWT which extended well beyond financial criteria.⁴¹ The conclusions in its Report raised themes similar to those addressed by the Drury and Carrothers Commissions much earlier. "Community governments are under-used in the north,"⁴² concluded the Committee. It found that costs of government are linked to a decline in the economic base at the community level. How this problem should be resolved must be left to the communities themselves, said the Report. Territorial government agencies at the local level should be

³³ *Report of the Advisory Commission on the Development of Government in the Northwest Territories* (Ottawa, 1966).

³⁴ *Ibid.*, p.189.

³⁵ *Ibid.*

³⁶ *Ibid.*, p.188.

³⁷ *Ibid.*, p.190.

³⁸ C.M. Drury, *Constitutional Development in the Northwest Territories: Report of the Special Representative* (Hull, Quebec, 1979) p. 3.

³⁹ *Ibid.*, p.42.

⁴⁰ *Ibid.*, p. 49.

⁴¹ GNWT, *Strength at Two Levels: Report of the Project to Review the Operations and Structure of Northern Government* (Yellowknife: Financial Management Board, 1991) p. 13.

⁴² *Ibid.*, p. 17.

consolidated and local councils delegated much greater authority over social and economic issues. By using the GNWT to allocate funds, resources and training to communities, said the Report, local governments should be given the ability to manage such issue-areas as day care, economic development, welfare, addiction treatment, and education:

In the period 1970-1990, the GNWT created local governments across the north, and turned over to them services which can be characterized as "services to property": water supply, sewage and waste collection, fire protection, recreation programs, and operation of local airports. In a sense, this can be regarded as "Phase 1" in the evolution of community government in the north.

* * *

"Phase 2" of community government intends to augment the current services to property with broader responsibilities for "services to people". Phase 2 in the development of community government represents a major step for the GNWT. It signals a new partnership and new balance in the relationship between the territorial Government and the communities of the north. It is a recognition that "managing the north" is a large and difficult task which requires the combined and fully harmonized efforts of two strong levels of government.⁴³

The Committee employed a diagram to describe existing power arrangement and a more preferable future scenario:

FIGURE 1

Programs and Services Turned Over to Local Government

Phase 1: 1970-1992

Phase 2: 1992-2000

- | | |
|----------------------|----------------------------|
| - Water/Sewer | - Day Care |
| - Street Lights | - Economic Development |
| - Airports | - Housing |
| - Fire Protection | - Drug & Alcohol Treatment |
| - Town Planning | - Welfare |
| - Garbage Collection | - Adult Education |
| - Street Maintenance | - Schools |
| - Recreation | - Crisis Shelters |
| | - Others? |

Source: GNWT, Strength at Two Levels: Report of the Project to Review the Operations and Structure of Northern Government (Yellowknife: Financial Management Board, 1991), p. 42.

Phase 2 enhances the power of local governments based upon the rationale that this will allow the territory to be governed

⁴³Strength at Two Levels, p. 39.

more efficiently. The list by no means represents all the powers desired by many communities. The pressure to reallocate greater governing authority to units of government located closer to the N.W.T.'s citizens has been evident not only in official administrative studies but in the philosophy behind initiatives by Aboriginal and community organizations.

Attempts to Institutionalize Local Control

In the late 1970s, Inuit in the Baffin region successfully challenged the territorial government over its refusal to incorporate popularly-directed regional councils. The model of the Baffin Regional Council, legally recognized and officially funded since 1980, has since been adopted by residents in other regions. Today, the Kitikmeot, Keewatin, Deh Cho, Shihta, and South Slave Lake Regional Councils and the Dogrib Tribal Council serve as advisory boards to the territorial administration and perform as boards of management for some delegated programs.

Also during the 1970s, three more encompassing projects for regional control over government were investigated by Aboriginal groups. The Inuvialuit of the western arctic developed a plan for a Western Arctic Regional Municipality within the NWT. The concept has recently been reinvigorated as the Western Regional Government proposal, a revised version designed to apply to the anticipated new western territory.

The Dene First Nations of the Western NWT pursued a more dramatic proposal in the 1970s for the establishment of a Native territorial jurisdiction to be called Denendeh. This objective was set aside largely in preference for individual land claims negotiations with the federal government, a central component of which is to be the establishment of local forms of Aboriginal self-government.

The Nunavut proposal for a fully independent government for Inuit in the eastern arctic, however, has succeeded. Although fundamentally different from the Denendeh plan in its embrace of public institutions, it too forwards an institutional design based upon the common cultural and economic characteristics of a geographically defined region as an alternative to hierarchical control through Yellowknife.

The GNWT has responded in limited fashion to the criticisms of centralized decision-making which have been leveled at it over the years. The bureaucracy, for example, has operated through regional bureaus for two decades. After an initially strong resistance, the principle of popularly-instituted regional councils was accepted. The most direct acknowledgment of a need for greater control at the local level was the 1987 *Charter Communities Act*, which makes available through negotiations with the territorial government certain limited means for local self-determination. It has garnered little interest on the part of community organizations, however. The Act is perceived to be too limited in its scope and a poor alternative to the more promising initiatives of negotiations for Aboriginal self-government and the creation of Nunavut. Instead, the unincorporated and incorporated settlements and larger hamlets, villages and towns exercise at best

municipal-style powers, with financial autonomy determined by their size of population. This remains the case despite statements by the NWT Executive Council indicating support for greater community autonomy.

The response of the Government of the Northwest Territories to the competing forces of centralized administration and greater community control has been to forward a slightly modified version of the unitary structure of government which has historically existed. Subordinate community governments operate in areas of jurisdiction similar to those of small non-northern municipalities, performing largely administrative duties, with the possibility of their acquiring greater powers subject to territorial government acquiescence. The ethnic, historical and economic diversity which exists in the territory can, in Yellowknife's view, be accommodated through a bureaucracy which is structured into five administrative regions. Any inadequacies in this arrangement can be rectified by means of consultation with and under some circumstances delegation to the regional councils, whose existence is based on territorial government funding. It is a vision of government which is quite consistent with the emphasis on administrative conventionality which has characterized northern government in the past.

It is also a vision which is generally supported by the federal government. In the view of Indian and Northern Affairs, the centralized territorial model of administration presents a means to self-government for northerners which offers a number of advantages. Relations with the supreme federal authority can be managed through simple government-to-government communications. The continued economic dependence of northern governments can be tracked through direct, hierarchical financial accountability. The federally-funded standardized services upon which northern residents have come to depend can be delivered through a familiar top-down mechanism. Finally, the model serves as a historically legitimate stepping-stone from which residents in these remote regions can in the future be admitted into the institutions of federalism which structure the lives of other Canadians. In Yukon, the model has been largely successful and is accepted by many non-Native residents. In the federal government's view, the western NWT and future Nunavut territories need only time to allow their societies to grow into the structure.

Since the governments at Ottawa, Whitehorse and Yellowknife are the only legally recognized representatives of northerners, the concepts of government adhered to by federal and territorial government decision-makers carry a momentum of their own in the political development of the North. The underlying tension between pressures for centrally-directed administrative authority and locally-directed popular control, however, remains unresolved. The assumptions of the federal and territorial governments about the future structure of territorial government are not congruent with stated visions of self-government held by the Aboriginal majority in the Northwest Territories and Native minority in Yukon. This incongruity could be troubling to observers for it emphasizes that the fundamental question remains unanswered: 'What should the nature of self-government

be in the North?'

IV. THE POLITICAL CONTEXT OF THE NORTH: SUGGESTED MODELS OF SELF-GOVERNMENT

Today the historical trend continues away from a uniformly imposed provincial-local model of centralized authority towards enhanced community control and a greater variety in governing arrangements. Because of the present political context of each region, however, the trend toward political decentralization is moving in a slightly different direction in Yukon, Nunavut, and the Western N.W.T. At least three basic models of government organization can be seen, therefore, in the territorial north. Each enhances the authority of community governments in a different way and to varying degrees.

Yukon: The Provincial-Local Model of Government with First Nations Representation and/or First Nations Governments

The territorial governmental process in Yukon follows the traditional provincial-local model. The territorial government is the "senior" institution, chartering municipal governments. Categories include cities, towns, villages and hamlets. The division of powers are determined in the charters. Much of the municipal revenue comes from the territorial government. This model constitutes public government in Yukon.

First Nations in the territory now have the option to negotiate with the federal government some form of self-government on lands received under land claim agreements.

Such an arrangement would in fact create a third tier of government in Yukon. It has yet to be established, however, what powers Aboriginal bands will possess in their communities, or how this level of government will be funded. No three-way arrangement involving federal, territorial and Aboriginal governments has been negotiated, and working out power and financial agreements is now the challenge.

The Eastern Arctic: Public Territorial Government of Inuit Design

The residents of the Eastern Arctic are now uniquely free among northern Aboriginal societies to fashion a territorial government which suits their needs. In accordance with the land claim settlement, Inuit are responsible for designing new institutions for the government of Nunavut. At this early stage in that process, the only certainty is that legislators in the new territory will exercise powers delegated to them through a mechanism of the federal Parliament similar to the Yukon and Northwest Territories Acts. Eventually, these powers will include all areas of jurisdiction currently occupied by the Government of the Northwest Territories. Besides their acceptance of public institutions as a principle of self-government for their region, however, Inuit are not bound to follow any model of government in particular.

Present trends in the Eastern Arctic may shape Nunavut's future institutions. The legacy of the GNWT's regionally-divided administrative structure, for example, is likely to influence the design of Nunavut's administrative branch. This influence will be enhanced by the process through which the GNWT transfers its responsibilities to the new government; the Nunavut government will probably exercise power through regional agencies of the GNWT when these are first transferred to its jurisdiction.

Under the new territorial government, however, regional decentralization might be more formally recognized at the political level. Nunavut's founders may choose to build on the model of GNWT Department of Health, within which regional boards of trustees nominated by municipal councils control most aspects of health care delivery. This is one way by which the interests of local communities can be respected in the processes of administering territorial government programs. The debate which is currently brewing over the location of the territorial capital suggests that even the centrally-controlled functions of a Nunavut government may see their associated administrative agencies deconcentrated to the largest urban centres in Kitikmeot, Keewatin, and Baffin.

Alternatively, the Eastern Arctic's system of Regional Councils could serve as the building blocks of a Nunavut government. The councils could be resuscitated into a system of regional legislatures. In this way, representatives of Inuit communities could directly control territorial programs, subject to some supervision from a small central Nunavut government. This possibility is rendered less likely, however, by the varying states of disrepair of the present regional councils and by the disfavour with which federal funding agencies will look upon this added level of complexity.

Current trends hint that Nunavut's founders may devise a system of territorial institutions which are governed by a publicly-elected central legislature but through which territorial programs are managed regionally, possibly under the direction of community representatives. It will be for Inuit and not outside observers, however, to decide.

The Western N.W.T.: An Incremental Approach to Community Primacy in Territorial Government

The western regions of the Northwest Territories are among the most politically complex in Canada's North. Communities in this region vary greatly in their economic bases and in the ethnic make-up of their populations. The preferences of First Nations, Inuvialuit and Metis communities, of over-arching Aboriginal peoples' organizations, of representatives of the western Arctic's strong non-Native presence, and of political representatives in the Government of the Northwest Territories vie for priority in the future design of the institutions which will survive the partition of the territory.

Nevertheless, when residents in this region were asked to forward suggestions for an ideal design of territorial government, a common thread emerged. In the organization of the institutions which govern them, residents in this region would like to see the local community recognized as the prime authority in the exercise of public power. This fact offers a basis upon which new institutions might span the differences between First Nations, Metis, Inuvialuit, and non-Native interests.

The residents themselves have put forward a mechanism through which local communities could establish a basis for a territory-wide government. In the spring of 1992, representatives from Aboriginal organizations and from the government of the Northwest Territories established a Commission for Constitutional Development (the Burka Commission) to seek input on which principles should guide the design of a government for the new western territory. Members of the public, municipal governments, first peoples' organizations and other public interest groups were invited to contribute.

The Commission's April, 1992 report summarized the results. In the opinion of residents of the western NWT, no government can legitimately exercise powers if these are delegated from a higher authority. Structures of government must therefore embody the principle that authority flows from the people upward. If indeed residents of the territories believe this to be the case, then empowering communities is the logical beginning for any governmental process.

The relationship between local and territorial authorities has been a central source of political tension in the N.W.T. since the federal government began to allow northerners to control their own governments. The Constitutional Commission's method of dealing with the problem was direct. It recommended turning the institutional structure upside down. In arguing that "all authority to govern belongs to the people and flows from them to their institutions of government," the Commission's Report began with the idea of popular sovereignty. In the Commission's ideal scenario, authority in the Western NWT would begin at the community level. Clusters of communities would be free to form "Districts" (or regions), each of which could represent each of the First Nations of the Western territory.⁴⁴

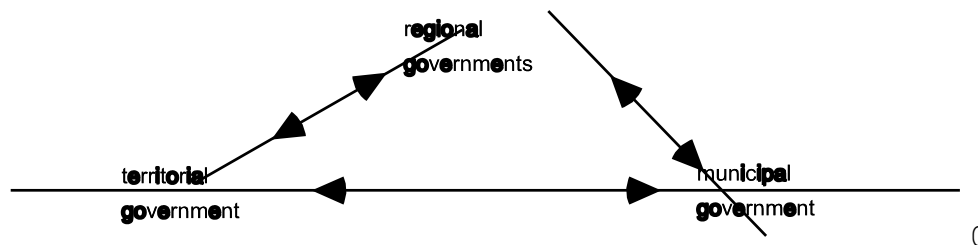
⁴⁴"Phase 1 - Working Toward a Common Future," pp. 44-50.

This would constitute the first line of government. The Report proposed district governments for the Inuvialuit, Gwich'in, Sahtu, Deh Cho, North Slave and South Slave regions. Cities or towns may choose to participate in a district government or they may choose to operate independently, effectively operating as their own district governments. Each district will have a legislature with powers equivalent to the legislatures of the provinces. In effect, the Commission was suggesting a form of subsidiarity.

The Commission recognizes a need for a territorial or "Central" authority but the Central Government's powers would consist only of those powers devolved from the district governments. In other words, the present flow of power would be reversed. Communities form district governments, which in turn empower any central authority



The origin of power is important to note. In the existing GNWT, the territorial government empowers municipal organizations which in turn form regional governments.



Each individual community would have to decide its preference for local institutional arrangements. In other words, the principle of subsidiarity would operate. Because a choice will have to be made based on the perceived needs of each community, the model allows for sensitivity to the many political and social particularities of the region. Whatever the configuration of institutions and powers under which local residents choose to be governed, pursuing the Constitutional Commission's proposal raises the possibility of a great deal more authority for communities in the Western NWT.

Strengthening the power of community governments will change the existing power arrangement in the territories. Strong community governments might be more compatible with northern Aboriginal cultures and enable diverse communities to deal with their problems. Proposals assembled by Native communities in the western N.W.T. have already been forwarded which suggest the types of powers which community governments might retain for themselves if the Constitutional Commission's proposals for popular sovereignty were followed. Acquiring control over government programs has been a crucial objective of some northern communities for years. For example, an extensive list of desired powers was put forward by Fort Good Hope's community band in 1982:

- (a) land use planning (regulation of all types of land use,

- including the regulation of non-renewable resource development and the siting of buildings, roads, and airstrips);
- (b) renewable resource management (including fisheries, wildlife, and forests);
- (c) environment;
- (d) health services (including the delivery of health services to people in the bush);
- (e) education (initially, the primary responsibility in this area will be to co-ordinate the planning and development of a recognized community education authority, as outlined in the plan presented by our community to the Territorial Government's Special Committee on Education in November 1981);
- (f) culture and recreation;
- (g) housing (including the purchase of housing for community government employees);
- (h) site development (including capital expenditures, operations and maintenance and acquisition and transfer of lands, buildings, equipment, and vehicles for community purposes);
- (i) expropriation of lands for community purposes;
- (j) economic development and employment;
- (k) utility franchises;
- (l) retail goods;
- (m) licensing of businesses and regulation of hours of business;
- (n) liveryes
- (o) by-laws for the protection of persons and property;
- (p) domestic animals;
- (q) selection of community holidays;
- (r) information services;
- (s) site services (including garbage pick-up and disposal, garbage dump site maintenance, water supply, sewage pick-up and disposal, airstrip maintenance, fire protection).

The exercise of these powers would in some areas be shared with the interim Territorial Government or its successor. In other areas, the community government would co-ordinate its exercise of powers over community lands, with the exercise of similar powers over outlying lands by Denendeh-wide authorities.⁴⁵

The above is a much more comprehensive list of powers for community governments than exists in the western N.W.T. at present. Significantly, it was developed by the community itself.

It includes not only basic needs such as economic development, education, health care, housing and social services but also planning, renewable resource management, culture, and by-laws regarding protection of persons and property.

If one compares the Fort Good Hope proposals with powers that are up for negotiation in self-government agreements, there is a striking similarity. Figures 2 and 3 are a compilation of

⁴⁵ Fort Good Hope Dene Community Council, "A Draft Proposal For Community Government," January 19, 1982, pp. 12-13.

negotiable powers spelled out in the Self-government chapter, The Umbrella Final Agreement with the Council For Yukon Indians, and the Final Agreement between the federal government and the Gwich'in Indians. [See Figures 2 and 3]

The powers listed in these documents are the powers that many people in communities feel they need in order to make self-government work. They are even more complete than the Fort Good Hope list. In addition to the standard services (e.g. education, economic development, health care, housing and social services) they add community infrastructure for First Nation governments, more explicit social services, such as civil and family matters or child welfare, guardianship and adoption, the administration of justice, and interestingly, the power to tax locally.

Figure 2

- 24.2.0 Subjects for Negotiation
- 24.2.1 Negotiations respecting a self-government agreement for a Yukon First Nation may include the following subjects:
 - 24.2.1.1 the Yukon First Nation constitution;
 - 24.2.1.2 the Yukon First Nation's community infrastructure, public works, government services and Local Government Services;
 - 24.2.1.3 community development and social programs;
 - 24.2.1.4 education and training;
 - 24.2.1.5 communications;
 - 24.2.1.6 culture and aboriginal languages;
 - 24.2.1.7 spiritual beliefs and practices;
 - 24.2.1.8 health services;
 - 24.2.1.9 personnel administration;
 - 24.2.1.10 civil and family matters;
 - 24.2.1.11 subject to federal tax law, the raising of revenue for local purposes including direct taxation;
 - 24.2.1.12 economic development;
 - 24.2.1.13 the administration of justice and the maintenance of law and order;
 - 24.2.1.14 relations with Canada, the Yukon and local governments;
 - 24.2.1.15 financial transfer arrangements;
 - 24.2.1.16 an implementation plan; and
 - 24.2.1.17 all matters ancillary to the foregoing, or as may be otherwise agreed.

Source: The Government of Canada, The Council For Yukon Indians and The Government of the Yukon, Umbrella Final Agreement: Council For Yukon Indians (Ottawa: Indian Affairs and Northern Development, 1993), p. 260.

Figure 3**Matters for Negotiation**

- 4.1 Self-government negotiations shall address, and self-government agreements may include the following matters in a manner not inconsistent with the Gwich'in Agreement:
- a) structures and procedures of Gwich'in First Nations Authorities and the Gwich'in Tribal Council or its successor including the development of Gwich'in First Nation constitutions;
 - b) accountability to Gwich'in of Gwich'in institutions;
 - c) legal status and capacity of Gwich'in in First Nations Authorities, the Gwich'in Tribal Council or its successor;
 - d) membership;
 - e) Gwich'in culture and language;
 - f) housing
 - g) raising of revenue for local purposes, including taxation;
 - h) education and training;
 - i) social services;
 - j) health services;
 - k) roads and traffic;
 - l) local government infrastructure, including programs and services;
 - m) economic development, including tourism;
 - n) child welfare, guardianship and customary adoption;
 - o) wills and estates;
 - p) administration of justice;
 - q) implementation plans and financial arrangements relating to self-government agreements;
 - r) procedures for the amendment of self-government agreements;
 - s) transition from existing Gwich'in institutions to future Gwich'in institutions;
 - t) matters related to the foregoing, or as may be otherwise agreed.

Source: Supplement to Comprehensive Land Claim Agreement Between Her Majesty The Queen In Right of Canada And The Gwich'in As Represented By The Gwich'in Tribal Council, (Ottawa: Indian Affairs and Northern Development), Revised September 13, 1991, pp. 3 & 4.

The similarity between the Fort Good Hope proposal and the aspirations of First Nations points to the possibility that recognizing communities as the first order of governing authority could serve to transcend the difficult issue of public versus ethnic control over governments in the region. If community governments in a restructured Western N.W.T. were permitted to choose the functions of government which they would command, the distinction between institutions operating under territorial authority and institutions operating under First Nations authority could be rendered all but moot. Communities and regions whose populations consisted primarily of a single First Nation would exercise authority in those jurisdictions which the First Nation deemed were important to its members collectively. Communities and regions with less particularistic concerns would receive a greater proportion of government services through the common central authority. Institutions of local government unique to each community would ensure that a balance could be achieved between majority and minority interests. In effect, a territorial government structured according to the principles forwarded by the residents of the Western N.W.T. could subsume many components of the exclusively Native governments which are currently being proposed.

The model of territorial government proposed by the Constitutional Commission represents the most recent, clear, and cohesive expression of the preferences of the residents of the western N.W.T. In this sense it represents the embodiment of the citizenry's concept of legitimate territorial government. The recommendations of the Commission can be held up not only as evidence of the popular will but as an ideal towards which present and future governing institutions can aspire. The Report's recommendations would be difficult to realize immediately but the principles which underlie them can be respected and built upon.

With the support of federal authorities, a constitution for a new government of the western N.W.T. could provide for a mechanism through which local communities and districts may establish by-law setting institutions. These institutions would be recognized as the prime legal authorities over the jurisdictions of government which the communities' residents choose to assign to them. The local and district governments which emerge could gradually assume these responsibilities at a rate set by the residents themselves, subject to tests of basic administrative capacity. The end result is unlikely to be a territorial government which operates entirely at a local level. Rather, this change would ensure that popular sovereignty and diversity are formally recognized in the institutions of territorial government. It would allow local residents to control the functions of government which have an impact upon their communities' most distinctive features. Even if the process of agreeing upon the design of local legislative institutions were a slow one, this change would instill a degree of legitimacy in the territorial government which the GNWT does not currently enjoy.

V. FINANCING, ACCOUNTABILITY AND LEGITIMACY

Establishing self-government for northerners through stronger community governments is not a matter simply of identifying appropriate institutional designs. This approach assumes there is a great deal of autonomy in northern communities yet these communities have never had the degree of autonomy enjoyed by communities in the south. One factor restricting autonomy is of course the financial situation. No level of government is absolutely autonomous, and rarely can governments claim any degree of autonomy unless they are financially independent. Northern governments are very dependent financially.

Structuring self-government systems, and empowering them, may be the easy task compared to financing them. Providing financial resources for any new systems of government, or old systems with more power for that matter, presents a formidable challenge today. In fact, in the debate over self-government it is still not clear if the net cost of self-government will be an increase in public spending. There are those who argue that supporting self-government should represent a shift in expenditures, a shift from funding a bureaucracy that supposedly supports Aboriginal peoples, to supporting self-government through direct block grants. Under self-government, Native peoples would then undertake their own solutions to their problems. Central to the rationale behind the move to self-government is the understanding that over the last century government policies have not provided the type of support that would assist Aboriginal peoples in getting at their problems. The argument is that with the power to control their own lives, Aboriginal peoples should be able to design their own course of action for determining their place in Canadian society.

No doubt, self-government is going to have to be supported by the public sector. As was noted in previous sections of this paper, economic conditions for most northerners in small communities are dismal. Low incomes and high unemployment pose severe economic problems and foster a host of very expensive social problems. By almost any measure, the Aboriginal economy in the north ranks far below the Canadian economy as a whole. Therefore, over the short run, there is no governmental process, self-government or otherwise, which is going to be able to rely solely on its own resources in providing northerners the level of services enjoyed by most Canadians. For one thing, the Aboriginal economy in the north lacks the infrastructure and resources needed to connect with the rest of the Canadian economy. Thus, public funding is needed to support the organizations and planning necessary to enable Aboriginal peoples to attain a higher degree of financial autonomy.

Northern governments are expensive. At present, about 81% of the revenue for the NWT and 82% of the revenue for Yukon is supplied by the federal government. This includes grants and transfer payments. In Yukon, approximately 34% of the labour force is employed by some level of government; in the NWT,

approximately 30%.⁴⁶ And if one calculates government expenditures on a per capita basis, the NWT and Yukon governments spend more than twice on their citizens than is spent by provincial governments on their citizens.⁴⁷

There is no getting around the fact that costs for everything, including government services, in small northern communities are astronomical. The price of constructing a house on Baffin Island is two to three times the cost of building one in Quebec. And when elaborate medical attention cannot be provided in small northern communities, the cost of airlifting patients to Montreal, Winnipeg, Edmonton or Vancouver is enormous. No government will ever be cheap in the north.

The self-government issue, however, is not just one of costs. The issue is whether Aboriginal peoples cannot do better at governing themselves rather than having it done by a centralized bureaucratic apparatus. Such a process has been the name of the game since the late 1950s and 1960s. Now, the argument is that Aboriginals should make their own decisions regarding economic development, education, health care, housing, social services planning, etc.

To turn the system upside down, however, means moving the resources into the hands of decision-makers at the local and regional levels of government. Block grants will be required, and then local governments can decide for themselves their priorities and determine how much funding will go toward these priorities. Block funding is essential or else there will be no self-government. If there is a magic formula for economic development in northern communities, the assumption is that Aboriginal people are more likely to find it than southern or Yellowknife civil servants.

In designing financing arrangements, the key issue is how self-government will be implemented. Will it be public government in communities or regions? Self-government powers could be expanded through existing local and regional levels of government. There is an infrastructure in place that can be strengthened and expanded to meet the needs of individuals in communities. This can be done without a great deal of difficulty in Nunavut because many Inuit are willing to use the existing GNWT model as the basis for government in Nunavut. And it can be done in other northern communities where a large majority of residents are Aboriginals. Municipal governing institutions can be expanded to assume any or all of the powers to be negotiated under self-government.

In the mixed communities, however, finding a way to implement self-government may be difficult. Again, using the

⁴⁶ YG, Economic Development, "Yukon Economic Forecast, Winter, 1993," (Whitehorse, 1993), p. 17; GNWT, "Budget Address," The Honourable John H. Pollard, (Yellowknife, 1993), p. 48.

⁴⁷ James Cunningham and Mark O. Dickerson, "Administration, Government and Financial Arrangements in the NWT," Rebecca Aird, ed., Running the North: The Getting and Spending of Public Finances by Canadian Territorial Governments (Ottawa: Canadian Arctic Resources Committee, 1988), p. 59.

issue of education, would Aboriginal people in Haines Junction or Fort Simpson, with self-government powers, set up an Aboriginal school system beside a territorial school system? The problem is that duplicating services for Aboriginals and non-Aboriginals could be an expensive process. Some Aboriginal leaders are suggesting that they can support their own services through land claim funds. This is certainly an option, so long as their people agree. At issue, however, is how long these funds will last if the principal is used to maintain services. Supporting services without generating any income could reduce the amount of funding to be used for economic development, or be used to establish a Trust Fund to support elders or other groups in the community. Using land claim resources to support specific services may limit other programs which might assist in developing the community.

Implementing self-government without providing the financial resources to support it would be ludicrous. It would not be true self-government. The Aboriginal economies of the north, as they stand today, will have difficulty supporting self-government. They need external funding to begin to change the situation in northern communities. Without supportive block funding, governments in communities or regions will never have the opportunity to assume powers for creating programs and services that will have a significant impact on their communities. Continuing external block funding for support is therefore the only way to begin to build a truly autonomous self-governing community or region. While it may be expensive to support Aboriginal self-government, it is not likely to be a great deal more expensive than supporting the Ottawa or Whitehorse or Yellowknife civil services. At the very least, self-government is not likely to be more expensive than funding the supporting services needed to combat current social problems.

The federal government will continue to press northern governments to contain their expenditures. Alterations and departures to the territorial model of administration in the North will, by contrast, entail higher operating costs over the short and medium term. Officials in Ottawa can be expected to argue that the federal government is fiscally incapable of supporting new costs, that, in the name of equity, cuts in public spending must be made in the north as elsewhere, and that decentralization carries with it duplication of services, the funding for which could better be channeled directly into programs.

Policy-makers must recognize, however, that the legitimacy of public institutions is priceless. It is an important duty of the federal government to ensure the responsible use of public finances. A duty even more fundamental than this, however, is the federal government's responsibility to ensure that all Canadians are governed by institutions which they willingly embrace. The Canadian north is at such an early stage of political development that the public legitimacy of its governing institutions has yet to be secured. In southern Canada, the process of achieving forms of government which meet with popular approval has taken more than a century to develop. Canadians indigenous to the far north must be allowed the same opportunity

to be governed as they themselves see fit.

Until the process of identifying appropriate governing institutions is complete, territorial governments cannot be treated in the same manner as administrative departments. To judge potential governing arrangements for the north primarily on the basis of financial considerations is to flaunt more than three decades of political evolution. The most striking feature of recent northern history is the rejection by many residents of governments which were structured according to the principle of administrative efficiency alone. To return to this as a driving principle of government is to repeat an error of the past. An unbalanced promotion of financial restraint would constitute a significant intervention by outside actors at a key transitional stage in the extension of the Canadian polity to the north. Financial costs are justifiable when they are incurred in the process of enhancing the legitimacy of emerging northern governments.

And finally, financial accountability should be a factor in any self-government arrangement. Provision for a public audit of all financial expenditures is crucial in maintaining the legitimacy of a governmental process. Without an open process, there are grounds for suspicion and inuendo. Therefore, any self-governing legislation should provide for the equivalent of an auditor general at the local or regional levels of government.

VI. Summary and Conclusion

Since the turn of the century, there has always been a debate in Northern Canada over the nature of the governmental process. Territorial governments are by definition governments in transition. They are governments in transition to something more permanent. And there has been, and still is, an intense debate over what the nature of a more permanent governmental process should look like. On the one hand, there are those who desire greater community control of decision-making and the delivery of services. At the same time, there are those who argue that efficiency in the north dictates centralized control of decision-making, and a bureaucratic process that delivers services in a uniform and highly-coordinated manner. Tension between these two forces is manifested in much of the political history of the north and, in fact, gave rise to the idea of creating Nunavut.

It is our contention that if people in the north desire a more decentralized process of government then so be it. The north is a cultural mosaic. And to provide accord between different cultural groups and their governmental process, it seems logical to decentralize the process and permit communities and regions to have greater self-governing powers. Decentralization would be one way of engendering legitimate governments in the north.

Part of our argument also reflects economic and social conditions in the north. There are extensive economic problems; unemployment is higher than in other regions in Canada, and average income is lower. Plus, there are extensive social problems in many communities. Our position is that the people

of these communities are the best resource for combating these problems. We feel they can probably devise better cures than can be devised by bureaucrats in Yellowknife, Whitehorse or Ottawa.

A third component of our argument also reflects northern diversity. Not all communities will desire similar powers at the local or regional levels of government. Therefore, the adoption of the "subsidiarity principle" may be a solution. In other words, there may evolve a patchwork of communities with different power arrangements across the north. We do not feel this is necessarily a problem. The fact is the north is a patchwork of cultures. Therefore, one should not be so rigid as to prescribe a uniform set of powers for all northern communities. Subsidiarity may be a way of accommodating extensive differences in the north.

The north is certainly one of the most diverse regions in Canada. As such, the north also poses one of the most interesting challenges for Canadian federalism. Decentralization and subsidiarity may provide the tools for this region to become a more integral part of the Canadian federation.

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