

Developing Sustainability: A Native / Environmentalist Prescription for Third-Level Government*

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On the licence plates, it is described as "Beautiful British Columbia"; in the travel brochures, they call the province SuperNatural B.C. Ironically, however, the province is becoming better known, not for its supernatural beauty, but for the conflicts which this wild beauty engenders. Native elders blockading logging trucks on a muddy haulroad on the hillside, environmentalists camped beside stalled mine drills in the province's oldest provincial park, wilderness activists fighting in court for their right of access into a wild, lush valley situated in a corporate Tree Farm Licence — all these confrontations have been nationally, indeed internationally, reported. What, the Canadian public asks, is happening in the rainforests of British Columbia?

The answer is only partially specific to British Columbia. Environmental conflicts are endemic worldwide, and the sustainability of the global environment has increasingly come into question in the last few years. After a decade of environmentalism in the 1970s, a whole range of new environmental threats has emerged which was little considered ten years ago — toxic wastes, the depletion of the ozone layer, the greenhouse effect, tropical deforestation, and so on. These are not minor quality-of-life issues, but profound systemic problems which threaten the carrying capacity of our planet. As one American authority, Lester Brown of the Washington-based Worldwatch Institute, put it: "We are losing at this point, clearly

* An earlier version of this paper was delivered at the Fifth Annual BC Studies Conference, 4-5 November 1988. It was prepared with the research assistance of Nils Zimmerman and Kim Brenneis, graduate students with the Natural Resources Management Program, Simon Fraser University. The author would like to thank the following individuals for their helpful comments: Fikret Berkes, Norman Dale, Julia Glover, Suzanne Hawkes, Alex Gryzbowski, Evelyn Pinkerton, Paul Tennant, Andrew Thompson, and the seminar group under the auspices of Philip Resnick.

losing the battle to save the planet. [Failure] will shake the world to its foundations.”¹

With such dire consequences looming, environmental problems challenge our inherited political and economic institutions and the management ideologies which these institutions embody. In response, many people are calling for radical new strategies to turn the tide of environmental decline — strategies which situate the struggle for environmental sustainability in the need for broader social changes that will provide greater social equity, protect vulnerable indigenous groups which have long lived in balance with their environment, and give a greater voice to local citizens and non-governmental groups. Encapsulated in the call for “sustainable development,” this was the central message of the United Nations World Commission on Environment and Development (the so-called Brundtland Commission) in its 1987 report, *Our Common Future*.²

At the forefront of conflict, British Columbia could yet be a leader in finding new ways to resolve our ecological impasse. A base for large timber and mining industries, the province is also endowed with a wondrous natural environment and a rich native cultural heritage. It is also a home for many native and environmental activists with the sort of community-based orientation that could provide a vital basis for such alternative forms of social development and ecological management envisioned by the Brundtland Commission.

Today, a loose native/environmental movement is emerging both in response to the province’s many environmental controversies and out of a shared commitment to the equitable resolution of native land claims. Yet the goals of this “movement” remain unclear. For one thing, the groups are motivated by different priorities. To natives, the priority is control; to environmentalists, it is conservation and protection. For another, differences exist within both groups over the fundamental causes of environmental decline and cultural erosion, and thus what remedies are needed. For many, the situation is seen to be resolvable within the existing economic system, so long as those affected are also able to profit from development. Others, however, place the blame squarely on the growth ethic of the modern economy, and on the corporatist state which presently supports it. For this group, structural changes are necessary to reshape both our market economy and the nature of state power. One recent study characterized

¹ “Environmental disaster looming, institute says,” *The Globe and Mail*, 22 March 1989, A3. Brown was commenting on the release of his institute’s *State of the World Report, 1989* (Washington, D.C.: Worldwatch Institute).

² The World Commission on Environment and Development, *Our Common Future* (New York: Oxford University Press, 1987).

the difference within native groups as between those seeking to become “partners in development” and those seeking to maintain their “homeland and hinterland.”³

Despite these differences, what brings the native and activist environmental movement together is their common demand for a more locally based form of control and development — one that meets the demands of the land claimants while also being more environmentally sensitive. Implicit in this movement is the need for a third level of governmental authority that can provide a now absent check against the powers of more centralized interests, a check that may be essential if society is to be made sustainable. With its focus on creating new institutions, rather than merely making minor changes to existing development patterns, the issue is “developing sustainability,” not just “sustainable development.” In this paper, we shall explore this increasingly popular argument for structural change, its role in the native and environmental movement in British Columbia, and how it might be fostered if provincial and federal policies are to take this approach to “sustainability” seriously. Despite the radical nature of the changes discussed, the complexity of the issues raised on all sides of the debate leads not to the dismantlement of the state, but to a greater power-sharing which re-balances central with enhanced local power.

I

Stein: A Case Study

Every native and environmental activist has his or her roots in a specific conflict in local areas — from the land claims of the Nisga’a and Gitsan-Wet’suwet’en in their northern territories to the wilderness advocates in the Stein and Strathcona Park in the south. For many of them, the search for a resolution of their specific concerns leads them to argue for larger reforms of an institutional, even constitutional, character. The controversy over the future of the Stein River Valley is only one battle, but its history, contemporary situation, and still problematic future are typical of the problems discussed in this paper. It provides a tangible counterpoint for what otherwise may be seen as an abstract, even philosophical, discussion.

1. *Historical*

The Stein Valley is a 1,060 square kilometre (430 square mile) intact wilderness watershed, located only a three-hour drive from Canada’s third

³ Frank Cassidy and Norman Dale, *After Native Claims: The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia* (Lantzville, B.C.: Oolichan and the Institute for Research on Public Policy, 1988).

largest metropolitan centre, Vancouver. It is a single, complete forest and river valley ecosystem. Its heart is a lush, wild river some eighty kilometres in length; its arteries are a series of long, large side creeks which fan out along the river's entire length and reach up through forests of Douglas fir, Ponderosa pine, cottonwood, and aspen into alpine meadows and glacier-fed lakes. The valley's frame is set by the ridge of mountains which surround it on all sides. Still untouched, it remains today a living ecological whole, the last large unroaded/unlogged watershed in southwestern British Columbia.

The valley has been the spiritual home for over 7,000 years for the Thompson (or Nlaka'pamux) Indians of the province's central interior. With several large village sites at or near the place where the Stein joins the much larger Fraser River, the valley was used for hunting and fishing. Above all, it was known as a place where young boys and girls went, often for months on end, to find their spiritual power, their "guardian spirits." "Certain celebrated shamans" are known to have utilized the area throughout their lives to build their healing and spiritual powers.⁴

The contemporary conflict over the valley's fate results, however, from the impact of a different intellectual and resource perspective, that of white resource exploiters. Since the first contact with the white man in 1808, the local area and its population have developed according to the classic boom-and-bust pattern set out in the literature on dependency theory.⁵ This theory describes how a region or country which tries to develop its economy by selling its resources abroad often becomes dependent and trapped as a "hewer of wood and drawer of water." As demonstrated elsewhere by the present author, this process very aptly describes the history of the native and non-native people in the vicinity of the Stein Valley.⁶

The driving historical force for change and development in the area has been the continuing pressure of profit-driven foreign markets on the re-

⁴ Charles Hill-Tout, "Notes on the Nlakapamuq of British Columbia, A Branch of the Great Salish Stock of North America" (1899), reprinted in *The Salish People*, Ralph Maud (ed.) (Vancouver: Talonbooks, 1978), Vol. 1, 48.

⁵ For a standard exposition, see Albert O. Hirschmann, *Essays in Trespassing: Economics to Politics and Beyond*, especially Chapter 4, "A generalized linkage approach to development, with special reference to staples" (Cambridge: Cambridge University Press, 1981). See also Thomas I. Gunton, *Resources, Regional Development and Provincial Policy: A Case Study of British Columbia* (Ottawa: Canadian Centre for Policy Alternatives, 1981), No. 7. For an innovative theoretical approach, see Clyde Weaver, *Anarchy, Planning and Regional Development* (New York: Wiley, 1983).

⁶ See *Stein: The Way of the River*, with Wendy Wickwire (Vancouver: Talonbooks, 1988). See also "From the Ground Up: Lessons from the Stein River Valley," in Magnusson et al. (eds.), *After Bennett: A new politics for British Columbia* (Vancouver: New Star, 1986).

source base. The export resources of the fur trade and gold rush in the early and mid-1800s were the foundations of early colonization, followed by the laying of the transcontinental railway through the area in the 1880s. With its easy connection to the world of exports and imports, the railroad above all irrevocably opened the local community to a competitive world, locking it into huge market forces, pressures for economic specialization, and the international division of labour. This international system has determined the fate of the region's ecosystems, and the inhabitants of them, ever since.

In addition to this concern for economic dependency, it is important to understand the process of colonization from a "social ecological" perspective,⁷ that is, as a process of both *socio-cultural* and *ecological* transformation. With economic colonization came a new community of non-natives, and their new cultural ways. Farming began to replace hunting and gathering, and monetary exchange began to replace co-operative production and consumption. The changes were profound, though even today some of the old ways still survive as evidenced by the continued use of family food fishing stations, and the continuance of hunting and some mushroom, root, and berry gathering. But by the 1860s, life had become settled in villages and in the reserves delineated by the new white rulers. At the same time as settlement occurred, decision-making authority was removed to inaccessible centres like London, Ottawa, and Victoria. To this day, distant, not local, politics and businesses have made the decisions which have guided the development of the area.

The corollary to the process of imposing a new society on the area was the emasculation of the society that was already there. The traditional economic, political, and cultural base declined drastically, undermining the indigenous community as a whole cultural being. For example, the strict, male-dominated, Victorian church school at Lytton prevented, on penalty of jailing, young people from spending time with the "old people" of the tribe. This effectively prevented the people from passing on that range of experience and knowledge which keeps native culture whole — that time in the mountains and by the river, those annual rounds of hunting, fishing, and gathering berries, those frequent opportunities to sing songs and practise community rituals. This enforced separation seriously eroded the collective ability to nurture and renew the character of a people who have lived in one place "from time immemorial." Cumulatively, the economic, political, and cultural changes which took place over the decades

⁷ For a discussion of this theoretical perspective, see Murray Bookchin, *The Ecology of Freedom* (1981).

produced the all-too-familiar levels of suicide, violence, alcoholism, unemployment, and squalor which persist in native communities virtually everywhere.

In this context, the Stein is not just the last unlogged watershed in southwestern B.C. It represents the last chance for one native culture to keep contact with the physical source of its existence. Moreover, at a time when the wisdom and spirituality of native ways is becoming appreciated by a growing segment of the population, the preservation of the Stein is a once-only chance to protect and learn from this place and people with a history and awareness different from, and in many ways more successful than, our own.⁸

2. *Contemporary*

The process which operates today is but a simple variation on this historic process. Economically, residents of the local towns are personally acquainted with the meaning of "boom-and-bust" and "one-industry town." The major regional logging contractor is the New Zealand multinational, Fletcher Challenge Canada Limited, formerly B.C. Forest Products. Its mill is located thirty kilometres south of the Stein in the relatively new, white-populated community of Boston Bar. Logging is the town's major employer, with some economic diversification in the form of servicing the national railroads and the Trans-Canada Highway which pass through it. The character of the mill's and community's dependence lies largely in supplying standard construction grade lumber to the international market at competitive prices.

The local community most proximate to the Stein, Lytton, is also a one-industry town. If the Stein were logged, a small, family-owned mill at Lytton would also process about 30 percent of the cut. The mill, a relatively efficient wood producer and the mainstay of that town's economy, is presently for sale.

In the Fraser Canyon area, as in much of the rest of the province, forestry companies are pursuing a shrinking forest base. This is the much-touted "falldown" effect, as the industry anticipates the day when it will have to

⁸ As Simon Fraser University archaeologist Knut Fladmark puts it: "It is worth considering which of those two cultural traditions will ultimately be seen as having been best adapted — the indigenous system, which sustained a stable, comfortable and creative human environment for tens of thousands of years, or the industrial newcomer, which manages to keep millions of people in luxury today but at tremendous cost to the environment. Perhaps we could learn some lessons from prehistory about how people can achieve stable cultural systems." *British Columbia Prehistory* (Ottawa: National Museums of Canada, 1986), 78.

adapt to second-growth stands of timber as a replacement for the declining and more voluminous virgin forests. In this situation, whether an area is economic to log or not, these companies are loath to give up control of any of the forest base — to see any of it “alienated” from the industry’s land base for native claims or environmental preservation.

In the Stein, as in B.C. generally, this determination has been shared by the provincial government, which has consistently pursued a pro-logging policy in the over thirteen-year period of conflict and controversy over the future of the Stein.⁹ Political decision-making in that period has been of the same character as that of the preceding 125 years since the white man arrived in the area en masse during the Gold Rush — central management with limited political input, let alone authority, given to the native or local community. Meanwhile, at the federal level, the native affairs bureaucracy has made no significant efforts to overcome the dependent situation of the local native population.

In recent years, however, the environmental movement and the growing movement for the settlement of native land claims have arisen to challenge this historic pattern. The “Save-the-Stein” coalition dates back to the early 1970s, with the preservation movement gaining more widespread support throughout the early 1980s. In 1985, the local Thompson (Nlaka’pamux) Tribal Council filed a comprehensive land claim which includes the Stein Valley. Thus, for over a decade, environmentalists carried the Stein preservation banner on their own but have, since 1985, depended on the Lytton band, and especially its ability to seek a court injunction against road-building and logging plans on the grounds of prejudice to their pending claim.

The collaboration, though mutually beneficial, has its share of mutual distrust. For example, logging interests in the town of Lytton repeatedly argue that some local band members (many of whom are employed in the mill) would in fact like to see the valley logged. In addition, the tribal council has itself been an active and successful developer throughout its territory, especially in adjacent areas like the Nicola Valley. It is not as philosophically committed either to environmental values or to structural economic changes as are many other tribal councils throughout the province. Moreover, even for the local band and many non-natives who support preservation of the valley, it is difficult to imagine being allowed by government ministries to implement their own alternative patterns of land

⁹ For a detailed review of these negotiations, see *Stein: The Way of the River*, op. cit., at Chapters 7 and 8.

management and economic development which can both protect their local environment and meet their economic needs.

The Stein is, in short, part of a far larger debate about fundamental cultural and social institutions. Environmentalists have argued for an array of changes — widespread preservation of natural areas, recognition of native land claims, the revitalization of local economies, reduction in the dependence on foreign-controlled markets and institutions, and local land management.¹⁰ Together with native activists, they challenge the mounting failures of the dominant culture's de-spiritualized belief system, and the corporate and bureaucratic institutions built upon it. Many of their demands are those now frequently lumped together under the broad banner of Sustainable Development.¹¹ Successful in some isolated battles over the short-term, the protagonists are, however, far from satisfied in their attempt to achieve the more basic changes which this new perspective seems to entail.

II

The Present State-of-the-Art: Moving Towards Co-management

Although the above analysis of the Stein issue attests to the useful insights of both dependency theory and critical ecological thinking, environmental activists reject the current social democratic solutions offered by proponents of dependency theory. This approach largely advocates more competent rational management under strong central control in order to achieve better strategic positioning in the international marketplace. Economic fundamentals are not in question. Certainly, environmental interests would be better served by a provincial or federal government which was more attuned to ecological values in the process of economic planning. But even sympathetic social democrats do not envision the fundamental restructuring of our political and economic institutions — let alone of our belief systems — deemed necessary by many environmentalists and natives.

The fulcrum for this difference is the extent and character of *local control* over both the market and political decisions.¹² On the one hand,

¹⁰ For one analysis of the Stein from this perspective, see *Stein Valley: An Economic Report for the People of the Thompson-Lillooet Region* (Vancouver: Institute for New Economics, 1985). *The New Catalyst*, a British Columbia journal published in Lillooet near the Stein River, is a good local reference for a broader survey of these demands.

¹¹ The Westwater Research Centre, University of British Columbia, has recently completed a comprehensive bibliography on the theme of Sustainable Development.

¹² For one critique of Leftist thinking from this general position, see Warren Magnusson and Rob Walker, "Decentring the State: Political Theory and Canadian Political Economy," *Studies in Political Economy* 26 (Summer 1988): 37-71.

social democratic reformers distrust giving up too much power to the community because they fear losing control to potentially rapacious local interests. In addition, most remain committed to maintaining a continuous flow of resources from the hinterland in order to stimulate the necessary economic activity in more developed metropolitan areas. In British Columbia, these are realistic concerns for a political party close to power, the result of which is the willingness to consider only the *delegation* of limited authority to local interests, which remain continuously under the watchful eye of the "state." On the other hand, community activists are suspicious of the true allegiance of the central state with its economic dependence on urban areas and large unions, and its policy acquiescence to corporate interests. Even where progressive authority is delegated, the apprehension remains that serious uses of that authority contrary to perceived central interests will lead to the dismantlement of the local institution, if not immediately, certainly after the next election when a less sympathetic government takes power.

1. *Co-management: The Contemporary Compromise*

The most promising practical approach attempted to date for achieving a more permanent balance in interests is the relatively new concept of "co-management." The term is usually understood to be a short form of "co-operative management." Similar to those forms of labour-management relations which stress power-sharing and collective decision-making, the concept is abstract, descriptive of a shifting category of working management models.

In Canada, co-management is most often used to refer to agreements between a government agency and local user groups on how to share management of a particular resource. As one recent article explained it:

Comanagement refers to institutional arrangements to which government agencies with jurisdiction over resources and user groups enter into agreements covering specific geographic regions. Each agreement spells out:

- a system of rights and obligations for those interested in the resource,
- a collection of rules indicating actions that users and managers are to take under various circumstances, and
- procedures for making collective decisions affecting the interests of government actors, user organizations, and individual users.

Comanagement does not require government agencies to relinquish or transfer legal authority or jurisdiction. It does, however, require public authorities to

share decision-making power with user groups. Hence, it accords users a role beyond that of consultant or adviser.¹³

In short, although some authors would limit the term co-management to situations where local bodies are given a "real voice" in decision-making,¹⁴ co-management has been taken to mean anything from providing positions for the user group on an advisory group to the minister (little change) to granting user self-management of an area's resources, with the government performing limited auditing and review functions (greater change). According to either definition, one benefit of co-management is in allowing different interests to co-exist and work out their differences, without requiring fundamental changes to these groups. To date, several such agreements have been worked out, although the negotiations have taken place at the pleasure of the government, so that the character of these agreements is certainly not what would have emerged had these been negotiations between equals. Nevertheless, there have been some significant advances made, in particular, with respect to wildlife co-management regimes in Canada's north.¹⁵

2. *The Native Context: Co-management vs. Self-Government*

Within the native context, co-management refers to the development between natives and a government agency, usually federal, of regimes of specified rights and duties over specific resources and territories. The *scope* of the agreement can range from the management of a single resource (usually fisheries) to the management of a large territory which includes a variety of resources. Much of the academic literature on the subject focuses on technical aspects of management of specific resources. In this article, however, we are concerned with broader territorial possibilities.

The bundle of *rights* in any co-management regime varies widely as well. For example, in the recent northern land claims settlement with the Inuvialuit of the Western Arctic, the native community is to be involved in numerous "advisory" capacities for managing resources over a wide

¹³ Gail Osherenko, "Can Co-management Save Arctic Wildlife?", *Environment* 30:6 (1988): 13.

¹⁴ This more demanding approach is evident in the excellent survey of fisheries co-management, Evelyn Pinkerton (ed.), *Co-Operative Management of Local Fisheries: New Directions for Improved Management and Community Development* (Vancouver: University of British Columbia Press, 1989). See especially the introductory essay by the editor, "Introduction: Attaining Better Fisheries Management through Co-Management — Prospects, Problems, and Propositions," 3-33.

¹⁵ See, for example, Peter J. Usher, "The Devolution of Wildlife Management and the Prospects for Wildlife Conservation in the Northwest Territories," Policy Paper #3 (Ottawa: Canadian Arctic Resources Committee, July 1986).

area, with much of the day-to-day control over the wildlife resource left to community-based "hunters and trappers committees." Final decisions, however, rest in ministers which have the authority to vary or reject recommendations of the joint management committees.¹⁶ Nevertheless, to the extent to which meaningful local authority is provided for, and local decisions are subject to review according to agreed processes and criteria (neither of which can be unilaterally changed by the government), the "advisory" approach can provide limited management participation at the local level.¹⁷

In large-scale land settlement agreements, however, co-management rights are not won without great cost. For example, in the James Bay Agreement (one of the first such regimes to be put in place), the native people received outright ownership to only 1 percent of the area which they surrendered (with exclusive harvesting rights over a larger area). Even this did not include sub-surface or water rights, and their security of tenure was limited insofar as they remained subject to future expropriation.¹⁸

An even more significant cost still is the requirement that the larger claim to title be sacrificed over vast traditional areas. The recently negotiated *Yukon Indian Land Claim Framework Agreement* is the most liberal of the agreements which have been negotiated in that, in some areas (Class A and B lands), title is not extinguished. Yet for most of the area claimed, the agreement provides for limited land tenure security in the nature of land *ownership*, not title, rights. Again it excludes sub-surface rights, while surface rights remain subject to the possibility of expropriation. Detailed co-management schemes for wildlife harvesting and protection are also set out over the agreed area. But, for these areas, the agreement also stipulates that each Yukon First Nation must "cede, release and surrender . . . all their aboriginal claims, rights, titles and interests" and renounce "any claim or demand of whatever kind or nature,

¹⁶ *The Western Arctic Claim: The Inuvialuit Final Agreement* (Canada: Department of Indian and Northern Affairs, 1984).

¹⁷ For a critical discussion of this agreement, see Nancy C. Doubleday, "Co-Management Provisions of the Inuvialuit Final Agreement," in Pinkerton, op. cit., at 209-27. Insofar as the agreement is characterized as "slightly to the government side of centre," Doubleday takes a wait-and-see approach to evaluating its effectiveness (221).

¹⁸ *James Bay and Northern Quebec Agreement*, Editeur Officiel du Quebec, 1976, and S.C. 1976-77 c. 32, S.Q. 1976 c. 46. For a good discussion on this and other agreements, see Richard Bartlett, *Subjugation, Self-Management, and Self-Government of Aboriginal Lands and Resources*, Background Paper No. 11, Aboriginal Peoples and Constitutional Reform, Institute of Intergovernmental Relations, Queen's University, Kingston, Ontario, 1986.

which they ever had, now have, or may hereafter have . . . based on any aboriginal claim.”¹⁹ In other agreements, title “extinguishment” applies to all settlement lands.

In considering the success of self-government negotiations, therefore, one has to evaluate the extent to which ultimate authority over natural resources actually passes to local native bands, especially over valuable and potentially disruptive sub-surface rights which are such an important source of the energy and mineral wealth upon which industrial societies subsist. Moreover, negotiations take place at such a glacial pace that many of the valuable timber and mineral resources are stripped away before any settlement is reached at all. No claim has yet been settled in British Columbia and, under the federal policy of negotiating only six at a time, it will be many decades before many of them even come up for discussion. Even the federal government recognizes that native people “have a legitimate concern that while they are negotiating, they will suddenly be confronted by the development and alienation of traditionally utilized lands.”²⁰

In short, even though they may incorporate extensive co-management provisions, because land claims settlements entail such a wide, voluntary renunciation of native territorial sovereignty, they have caused great disension among native communities, especially on the eve of their signing. Similarly, an alternative model of creating a delegated “municipal-style community self-government” has been challenged by such groups as the Union of B.C. Indian Chiefs (which represents the Thompson and Lillooet bands around the Stein) as an attempt to drive Indians off the cultural cliff into assimilation. Calling it the “Buffalo Jump of the 1980s,” the Union described such a delegated approach as a “subtle and sophisticated” process that is “co-opting the term *self-government* from Indian people.”²¹

Among federal government negotiators, the process of conferring community power on native peoples is generally perceived as a *competitive* one — give up what one must in order to achieve extinguishment of title and to safeguard access by the dominant society to important resources. Opportunities for *co-operative* action between central and local levels to achieve more sustainable resource management for the whole society are

¹⁹ *Yukon Indian Land Claim Framework Agreement*, November 1988, “Sub-Agreement on General Provisions,” S. 4.

²⁰ *Living Treaties: Lasting Agreements, Report of the Task Force to Review Comprehensive Claims Policy* (Ottawa: Department of Indian Affairs and Northern Development, 1985), 12.

²¹ See “The Buffalo Jump of the 1980’s” (Vancouver: Union of British Columbia Chiefs, 1988).

not envisioned (with the exception perhaps of the current Yukon negotiations).

Unlike the northern territories, in the southern provinces the Crown in right of the province holds title to natural resources, so that devolution of management powers from Ottawa cannot mean that native communities would acquire broad law-making, administrative, or other jurisdictional rights over natural resources without the express consent of the province (except those fisheries which are federally regulated). In British Columbia, the government steadfastly refuses to give any recognition at all to land claims, insisting that title has been extinguished and that the province's liability for it ended at the time of its union with Canada in 1871.

Considering the slowness of the federal government and the intransigence of the provincial government, it is little wonder that some native tribal groups (most notably the Gitksan Wet'suwet'en) have chosen to pursue their claim through the courts. Should they "win" aboriginal title or even specific resource rights in a manner which recognized the legal existence of prior native rights in the land, these rights could then override provincial objections and form the basis of a much expedited self-government process. Some important movement has occurred on these issues in recent years.²² Contrary to conventional wisdom, experience elsewhere (see below) indicates that this might be the very thing which would break the deadlock, and move the conflict towards a mutually beneficial solution.

3. *The Non-Native Context: Benefits Exceed Costs*

The above characterization might convey the impression that co-management is exclusively relevant to native peoples. To the limited extent to which it has been implemented to date, native peoples are certainly the inspiration and prime beneficiaries of the practice. Its implications are wider, however, as the benefits to all user groups seem greatly to outweigh the costs.

The benefits for native groups of co-management provisions in settlements like the James Bay Agreement (greater management authority, more secure hunting and fishing rights, income security programmes, etc.) have

²² See, most recently, *Westar Timber Ltd. v. Don Ryan*, a decision of the B.C. Court of Appeal, 9 June 1989, granting an injunction to the Gitksan against industrial bridge-building across the Babine River in the Gitksan traditional territory. In addition, their negotiations with the federal government are reported to be proceeding quickly, giving rise to some optimism that a framework agreement could be in place by 1991. "Northwest Indians move closer to self-government," *Vancouver Sun*, 15 January 1990, B1.

been well analyzed.²³ Pinkerton has examined in detail the management benefits for *both* native and non-native peoples involved in co-management schemes for coastal fisheries of Washington and Alaska: more democratic decision-making; more local benefits realized from the exploitation of the resource; more equitable distribution of the benefits; improved quality of information about the environmental and resource base; enhanced management and conservation of the resource; better relationships among the various types of resource users (in the fisheries case, sport, subsistence, and commercial fishermen), and between users and government agencies; and reduced costs of government management.²⁴

In light of these potential benefits, the approach holds *general* promise for native and non-native communities alike. In fact, after two judicial decisions in Washington state (the so-called Boldt I and Boldt II decisions) gave a virtual veto power over many land-use decisions to local native groups, traditional adversaries were forced to sit down and negotiate a comprehensive co-management agreement. The result was the highly successful "Timber/Fish/Wildlife Agreement." As one participant noted:

But I think almost all the participants will tell you that today we're a lot better in the State of Washington than we were a year ago, regardless of which community of interest you come from. And the agreement has been ratified by virtually every environmental organization, every timber organization. It passed our State Legislature 96-0 in the House and 49-0 in the Senate. A new system was now in place and operating.²⁵

With the economic benefits which accrue at the local level from co-management, the practice could also become a central component of a community-based strategy of economic development. Today, of course, the conventional idea which many communities have for economic development is to attract distant corporations with promises of secure access to the resource base, subsidized energy rates, low municipal taxes, and so on.

²³ See Fikret Berkes, "Co-management and the James Bay Agreement," in Evelyn Pinkerton (ed.), *op. cit.* Berkes comments that "they surrendered not all native claims but all rights in land . . . in return for specific rights under government law to try and protect their resource use rights and way of life. This changed them, almost overnight, from being complete outsiders to the resource decision-making process, to being co-equals with government resource managers in a formalized institutional structure" (191).

²⁴ Evelyn W. Pinkerton, "Co-operative Management of Local Fisheries: A Route to Development," in John W. Bennett and John Bowen (eds.), *Production and Autonomy: Anthropological Studies and Critiques of Development* (Lanham, Maryland: Society for Economic Anthropology and University Press of America, 1988), 257-74.

²⁵ Jim Waldo, "Redefining Winning: The Timber/Fish/Wildlife Process." Future Forests Conference, University of Victoria, British Columbia, March 1988. In *Forest Planning Canada* 4:3 (May/June 1988).

But this is the very structure whose sustainability is now in question. Thus the efficacy of any devolution of political management authority will be diminished unless done in conjunction with a similar process of local economic development.

The now well-established field of "community economic development" (or CED) provides just such a strategy for redirecting native and non-native community economies onto a more sustainable path under greater local control.²⁶ A primary objective of CED is to ensure that the revenues from community economic activities (including the "rents" or charges from resource exploitation) are retained at the local level, rather than "leaked" out as shareholder profits or as payments for imports. When these revenues are retained in the community, limited capital recirculates locally, generating even more benefits (the regional "multiplier effect"). Co-management thus goes hand-in-hand with CED as an integrated community strategy to use limited local resources more efficiently by redirecting the benefits locally under local control, rather than mortgaging the resource base still further to the extractive needs of external, large-scale economic interests. Indeed, the preservation of natural areas can more easily become an accepted local objective for one-industry logging towns where workable economic alternatives are conceived and implemented.

In conclusion, co-management is a valuable technique for giving local people a voice in the management of their resource base. Its benefits are political, economic, even cultural; and it is applicable to native and non-native alike. But the technique has been limited to the extent to which it has been achieved by sacrificing those large claims which would alter the structure of governmental authority. Its potential lies in fostering those changes in both the political and economic development spheres.

III

Third-Level Government: The Ultimate Objective?

For environmental activists, the greatest threat to planetary survival is the historic trend towards ever larger and more centralized corporate and

²⁶ The classic Canadian text on Community Economic Development is Susan Wismer and David Pell, *Community Profit: Community-Based Economic Development in Canada* (Toronto: IS Five Press, 1981). In British Columbia, the leading CED advocate is the Social Planning and Review Council of British Columbia (SPARC). The West Coast Education and Research Co-operative in Port Alberni is an important advisor to Indian bands on CED. For a balanced analysis of the potential of CED in the North, see David Pell and Susan Wismer, "The Role and Limitations of Community-Based Economic Development in Canada's North," *Alternatives* 14:1 (February 1987): 31-38.

bureaucratic institutions which are possessed of too much concentrated power and too great appetites. Resources are pulled in from the rural periphery to the industrial core; and the rate of extraction is increasingly challenged as unsustainable. Yet decision-making power is removed from the local level, the place where the impacts of decisions are felt. As a recent native/environmental conference hosted by the Nuu-chah-nulth Tribal Council in Tofino concluded:

Most of the land use conflicts that native peoples and environmentalists have been involved in are a reflection of a certain kind of political-economic system which encourages uncontrolled, widespread and short-term exploitation of natural resources — a process carried out in British Columbia by large corporations and facilitated by government policy and administration. In economic terms, it represents wholesale liquidation of natural resources capital, and the diversion of the profits into the hands of a few.²⁷

This sort of centralized over-extension is the deep socio-cultural problem for which local control is the antidote.²⁸ Indeed, the failure to achieve a significant decentralization of political authority is often cited as the single most important explanation of why the scale of environmental problems is increasing so dramatically despite twenty years of centralist environmental reforms.²⁹ Thus the Nuu-chah-nulth conference concluded by issuing the “Tin-Wis Accord,” one element of which committed its signatories to develop mechanisms “on a regional basis to resolve resource development and environmental issues and conflicts and to further the process of developing a ‘peoples’ alternatives [*sic*] to the policies of the present government.”³⁰

This call echoes the words of the Brundtland Commission:

The starting point for a just and humane policy for such [aboriginal] groups is the recognition and protection of their traditional rights to land and to the other resources that sustain their way of life — rights they may define in terms that do not fit into standard legal systems. These groups’ own institutions to regulate rights and obligations are crucial for maintaining the harmony with nature and the environmental awareness characteristic of the traditional way

²⁷ “Tin-Wis Congress: An Environmental Perspective,” background paper presented at the conference, *For Our Children: Creating a Sustainable Future for British Columbia*, Tin-Wis Guest House, Tofino, B.C. 3-5 February 1989 (hereinafter Tin-Wis Conference).

²⁸ The classic work in this tradition is E. F. Schumacher’s *Small is Beautiful: Economics as if People Mattered* (New York: Harper and Row, 1973). Bookchin’s “social ecology” (above) is also in this tradition.

²⁹ For a detailed analysis of this perspective, see Michael M’Gonigle, “The Tribune and the Tribe: Toward a Natural Law of the Market/Legal State,” *Ecology Law Quarterly* 13:2 (1986): 233-310.

³⁰ Tin-Wis Accord, Paragraph 3.

of life. Hence the recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use. And this recognition must also give local communities a decisive voice in the decisions about resource use in the area.³¹

In this formulation, decisive authority is not just rooted in native peoples and local communities but in their traditional values and institutions which could “enforce responsibility” among them as well.

While native people throughout Canada have for decades been demanding “self-government” for themselves, co-management in this larger context implies an even broader re-allocation of power between central and local authorities. To date, native title claims have been advanced in isolation from the interests of non-native local needs, and often without their co-operation. This strategy has met a competitive, foot-dragging governmental response which has been slow to negotiate and then, during negotiations, has eroded the claims below a level which most native groups in the province would now find acceptable.

The rationale described above for both land claims and environmentalism points to the need for a broader change, in short, for a territorially re-balanced constitutionalism affecting all levels of society, native *and* non-native. If this concern for the unsustainable character of our centralized industrial system is justified, the potential may well exist for a co-operative response, at least from a sympathetic government.

What this new constitutionalism might entail must be more carefully developed if that potential support from mainstream interests is to occur. It is a complex task. Above all, however, it will be seen as a radical proposal, especially in light of our cultural assumption that our present structure of governmental and economic power is somehow immutable. Yet the discussion which follows is really but a modern extension to an even lower level of long-established principles of federalism. Writing about the once revolutionary American federal system, Vincent Ostrom notes that it

presented an alternative both to confederation and a national government following the English model. This new concept allowed for a limited national government to be formed and to exist concurrently with independent and limited state governments. . . . The system was to be understood by looking at it from the bottom up.³²

In Canada, where sovereignty is already split between the federal and provincial levels, the recognition of native title rights does not mean the end

³¹ *Our Common Future*, op. cit, at 116-17.

³² Vincent Ostrom, *The Political Theory of a Compound Republic: Designing the American Experiment* (2nd ed.) (Lincoln: University of Nebraska Press, 1987), at 7 and 172.

of the state which would, after all, continue to extend its reach far beyond any single tribal area. Instead, it implies working out a further sharing of sovereign authority with a more decentralized level of government.

1. *The Territorial Foundation*

In the quest for significant decentralization, native claims play a critical role. The claim to a pre-existing native "title" in the land implies a direct, sovereign relationship to the land which precedes, and is independent of, the assertions of authority of the non-native society so recently arrived from afar. Native title thus offers a profoundly different starting point, a new term of reference, which is not only independent of, but counter-balanced against, the dominant Euro-colonial structure of centralized power and authority. For this reason, environmentalists are naturally drawn to it, even though its practical implications are so unclear to them that the whole strategy is ultimately taken on faith.

As we have seen, however, when one examines the history of the settlement process, the end result has largely meant the extinguishment of title in exchange for more limited, delegated rights. Even more important is the recognition that, in the contemporary struggle of all levels of society to achieve sustainability, native claims are in fact only one element, albeit an important one. Thus, the quest for an affirmation of native title is but one element of a broader solution to the modern crisis of sustainability, the basic tenet of which is that the primary locus of social decision-making should be a natural unit of territory, one defined both ecologically (for example, a large watershed) and culturally (the inhabitants of that unit).³³

There is, in this approach, an element of natural law — that is, a belief that human laws and institutions must themselves reflect the far deeper "laws of nature" if they are to sustain us over the long term. The exercise of management rights, for example, is most likely to succeed where they are embedded in the experience of the place. The trend of centralization has historically run counter to this natural law, from the erosion of native folkways to the demise of the self-reliant rural farming community. The crisis of sustainability which we face today flows from this — where rights are separated from responsibilities, serious problems result. Absentee ownership and centralist mismanagement of the environment go hand-in-hand. Ultimately, the native title claim finds its justification in this naturalistic perspective — in the social and ecological values which have tradition-

³³ See, for example, Kirkpatrick Sale, *Dwellers in the Land: The Bioregional Vision* (San Francisco: Sierra Club Books, 1985).

ally been constitutive of native culture. This may be the essential difference which elevates native rights above those of just another special interest group.

This natural law perspective helps us to make sense both of the native reluctance to part with their "title" and of the environmentalist support for it. Sovereignty (of the sustainable kind) is seen to emanate from the land, from the bottom up, not from the historical accident of the white "parliament." When natives talk of their spiritual ties to the land, white officialdom is simply uncomprehending, often dismissing both the spiritual perspective and its accompanying "folk" knowledge as quaint, romantic, or even reactionary — but, in any event, irrelevant. In fact, at stake are two conflicting conceptions of sovereignty — that of the removed omnipotent state, and that of the participatory ecological region — the tension between which is at the heart of the quest for sustainable development. To the decentralist, therefore, the challenge of sustainability is not for the state to continue to override natural laws with the further extinguishment of native "claims" and the continuing exploitation of remote areas at will, but to reverse the historical pattern of the "core-periphery" by finding new ways to redistribute power downward to a territorial unit. From the positivist perspective of modern power politics, this is utopian and unrealistic; from the naturalist perspective of social and ecological balance, it is necessary and inevitable.

2. *The Participatory Citizenry*

Land claims are clearly a close fit with a more naturalistic constitutionalism. But so too are the claims of other non-native "inhabitants." What qualifies both is the degree to which their values and practices foster long-term cultural and environmental stability within the place. This is ultimately the criterion which provides legitimacy to claims of local self-determination: a deep local knowledge and sincere respect for the integrity of place, and a commitment to the welfare of the local community. In British Columbia, evidence already exists of the potential for producing a broad-based, responsive local administration which incorporates these traits. This is to be found in the Islands Trust, which oversees the coastal Gulf Islands, a popular management body which has successfully implemented its unique conservationist mandate to "preserve and protect" the area under its jurisdiction.³⁴

³⁴ See *To Preserve and Protect: An Institutional Analysis of the British Columbia Islands Trust*, a report of the Natural Resources Management Program, Simon Fraser University, Burnaby, B.C., September 1987. See also Michael M'Gonigle,

Many traditional native values survive today, especially in the so-called "wisdom of the elders." Many of these same values are also being discovered by so-called "bioregionalists," decentralists committed to ecological "rehabitation" who in British Columbia are prominent in such places as Tofino, the Slocan Valley, the Gulf Islands and the Bridge River just north of the Stein. Meanwhile, other native people (including some young native leaders) are far removed from traditional values, some espousing the same development ethic as the white exploiters which their elders decry. Thus a decentralization of power will itself not always fulfil the cultural or environmental goals by which land claims are frequently justified.

Consider, for example, if native land claimants were successful in court, and the control of an area's resources passed quickly to local native owners. In such a case, power would shift to some degree, but only in a partial way. After such a change, power could concentrate in band developers who could well end up intensively exploiting the resources themselves or licensing the same megacorporations to extract the resources in exchange for some increased resource rents. Considering the pressure that would be exerted, this is not just hypothetical; on the contrary, exactly this scenario has been the experience in parts of the United States.³⁵

At issue, therefore, is not simply native title, but designing a structure of local control that fosters sustainable economic practices among natives and non-natives alike, while it also protects and enhances important cultural values. As one scholar/practitioner of native co-management has noted:

What of the social and political institutions that are arising? The pessimistic view would be to point to the development of oligarchies at the local level, in

"Decentralization and Sustainability as New Themes for Public Administration: The Case of the British Columbia Islands Trust," *Canadian Public Administration*, forthcoming, 1990. As an institution with power delegated from the provincial government, the Islands Trust has repeatedly had to fight for its survival against several attempts by the provincial government to weaken or disband it. Though it survived, its powers were curtailed over the years, despite strong support from the local residents of the area it serves. In 1989, new legislation reversed the historic trend and granted the body more authority and independence. Many might see this form of administration as an appropriate solution to the problems raised in this paper, but its delegated character may make it unstable in the long run, given the historic patterns described above.

³⁵ One of the most intense conflicts centres on native development corporations in the American Southwest, where large coal and uranium mega-projects have brought great wealth — and environmental and cultural disruption — to the resident Navajo and Hopi populations. For a critical study of the operation of native corporations in another state, Alaska, see Thomas Berger, *Village Journey, The Report of the Alaska Native Review Commission* (Don Mills, Ontario: Collins, 1985).

which a small elite controls all institutional life. Should this elite regard the advancement of the economic institutions as its top priority, then the other institutions cannot serve as countervailing forces. Should a vigorous tradition of participation and consensus at local and regional levels prevail, however, the conditions for revitalization of the indigenous management system would be favourable.³⁶

Most native land claimants recognize the private fee-simple property rights of third parties in their homelands, and state that they will not challenge such private property interests. Similarly, the Comprehensive Claims policy explicitly recognizes the right of third parties with interests in claimed areas to advise and consult during the Claims negotiations, and recognizes that the third-party claims must be respected.³⁷ But none of these points amounts to a provision for “co-operative management” of resources by the *community as a whole*.

To begin to consider a broader approach is not easy, however. Even with the most evidently sympathetic of attitudes, many native leaders will take offence at such an approach, concerned that yet another process of white “missionization” (to coin a phrase) is being initiated, this time under an “ecological” guise. Ultimately, however, the result of too limited a definition of the self-government objective could be increasing suspicion of native claims, especially if they were to become a practical likelihood in more populated areas of southern Canada. Racial tension, segregation of communities, and anti-native alliances of local non-natives and corporate interests would follow naturally. This is already evident in many logging communities where the so-called “Share” groups have been created with the backing of forestry corporations. Their anti-environmentalist campaigns to oppose conservation and instead “share” the resource with industry manifest an implicit hostility towards native leaders and their non-native supporters.³⁸

Both for reasons of ensuring a commitment to sustainability among

³⁶ Usher, *op. cit.*, 127.

³⁷ *In All Fairness: A Native Claims Policy* (Ottawa: Department of Indian and Northern Affairs, 1981).

³⁸ One forester recently wrote to the author that “there is no firm evidence to support the implicit claim that the Native Indian is a good conservationist. Indeed, there is evidence to the contrary, viz. — abused Reserve lands, over-hunting and wasteful utilization of animal carcasses. I have dates and photos!” This sort of skepticism is widespread, and raises concerns which would escalate should land settlements appear imminent. For a study of another acrimonious conflict, see Paul Driben, “Fishing in Uncharted Waters: A Perspective on the Indian Fishing Agreements Dispute in Northern Ontario,” *Alternatives* 15:1 (December 1987): 19-26.

natives and to avoid the polarization which weakens the whole native and non-native community in the face of external pressures, the quest for native self-government should be situated within a co-operative framework for equitable participation of the broader local community in local resource management. This does not mean that a third-level government must ultimately be colour-blind, a situation that would fail either to recognize prior aboriginal rights or to help maintain separate native cultural identity. Certainly special rights and areas for native cultural usage are a critical component and, to achieve this, natives must have a special decision-making role to protect traditional values and processes. Natives themselves, in fact, should well take the lead in developing forums and strategies for the inclusion of non-native participants.³⁹

But the objective of any settlement of native land claims should be *both* to retain title rights and to include participation by the non-native community as well. Although this may seem to compromise present native demands, in fact, those land settlement agreements which have been negotiated set out detailed provisions for an accommodation of native with non-native uses of local resources, but with non-native interests represented *on the other side* of the bargaining table. Unlike the approach discussed here, therefore, these competitive agreements have produced the "lowest common denominator" — they have been on terms which generally sacrifice title (rather than incorporating it), have restricted strong native authority to small territorial areas, and have left all local peoples without decisive authority over non-local development interests in most of the disputed areas.⁴⁰ As one commentator has noted about the Dene land claim:

I am by no means proposing a merger of nations or an end to the Dene Nation project for autonomy. Nor am I suggesting that the road will be easy after two centuries of colonial experience. But the road to an alliance of working people in the north is the road that will most benefit and strengthen the Dene Nation. The road of nationality antagonism is a road that will lead to a "war of all against all."⁴¹

³⁹ For a good discussion of how this leadership role might be exercised, see J. R. Macleod, "Strategies and Possibilities for Indian Leadership in Co-Management Initiatives in British Columbia," in Pinkerton (ed.), *op. cit.*, at 262-73.

⁴⁰ The retention by the central government of both sub-surface rights and the ability to expropriate is a restriction on native authority that reflects the compulsion of central authorities to retain their freedom of action to accumulate still more wealth from these areas in sectors which the non-native system deems to be important — minerals and energy.

⁴¹ Doug Daniels, "Dreams and Realities of Dene Government," *The Canadian Journal of Native Studies* 7:1 (1987): 95-110, at 108.

3. *The Centralist Response*

If the experience with co-management shows that the benefits exceed the costs, decentralizing political authority and economic control should become a serious policy objective for federal and provincial governments. Given the real constraints which this sort of shift would put on the traditional pattern of economic growth, however, the concept of what constitutes the “national interest” (and how it is to be achieved) must change for this approach to become even intellectually palatable. However, this is precisely what ecologists and others in the so-called “alternatives” movement have been saying for years — that good economic policy and the national interest do in fact lie in this direction. Indeed, experience to date with land settlements indicates that the disruption might not be as great as many fear.

Energy policies provide a good example. Were local communities given a significant responsibility for local resources which allowed them to veto the plans of an urban utility seeking to dam a local river for power production, energy policy would necessarily shift from rural production to urban conservation — exactly the sort of economically efficient policy change advocated for so long but to such little avail by energy planners.⁴² In contrast, after the recently implemented Free Trade Agreement, local energy resource exploitation is to be escalated through better co-ordination of international corporate developers by a central public export agency, Powerex.⁴³ Similar changes in resource practices could take place across the resource spectrum — from community forestry to municipal recycling. This is the reason for much non-native support for native claims — their inherent tendency, as an outcome of creating countervailing local authority, to achieve policy changes that move the dominant system towards long-term sustainability.

Achieving this degree of policy change through land settlements may be too much to expect, however. Many commentators believe that the settlement of native land claims will instead lead only to gradual economic reform, with greater economic co-operation and a more equitable distribution of the benefits, but without a dramatic curtailment in traditional patterns of exploitative economic activity:

⁴² The literature on this perspective is vast, beginning with the work of Amory Lovins in the early 1970s and continuing with more mainstream analyses such as the Harvard Energy Project studies in the late 1970s. More recently, see Jose Goldenberg et al., *Energy for a Sustainable World* (New Delhi: John Wiley & Sons, 1988).

⁴³ “Electricity exports attract attention,” *The Vancouver Sun*, Tuesday, 24 January 1989, C1.

Probably no notion about the future is so provocative of emotion as the idea that, after settlements, non-native interests might be abruptly cut off from the resources presently providing their livelihood. This notion is not supported by the facts. Native organizations and native governments have often gone to great lengths to reassure non-natives of their intentions to ease the pains which may come from resource re-allocation. In addition, many native groups, particularly in the fisheries sector, have sought to enhance current resource bases and develop new ones rather than displace non-natives from existing ones. . . .

Where native peoples seek access to resources which are presently being developed and managed mainly by non-natives, they often emphasize a desire to strengthen community harmony by including non-natives. . . .

Other signs point to additional factors which could result in some short-term slowing of resource development if settlements were reached. Native peoples have strong environmental concerns. . . .⁴⁴

Recent reports from the Northwest Territories attest to the potential for this more accommodationist result. With the impending settlement of the land claim, native and non-native leaders now seem willing, indeed eager, to consider a Mackenzie Valley natural gas pipeline, the same pipeline decried by them over a decade ago during the much-publicized hearings of the Berger Commission.⁴⁵ One Dene chief complained that "we've been educating our people for years, yet all some of them can think of now is that damn cheque they're supposed to get when we sign a settlement."⁴⁶

Rather than an economic revolution or economic chaos, third-level government thus might more closely resemble a change of economic managers at the local level. In British Columbia today, the *de facto* "co-managers" of our provincial land base are, with the Ministry of Forests, the major forest multinationals. Given the criticisms of the corporate tenure system, a community-based alternative could provide a more appropriate form of environmentally and socially sensitive economic management for our forest industry but without the disastrous downturn so commonly predicted today.

In addition, it is quite contradictory to look to centralist institutions for radical decentralist solutions, especially entrenched solutions that mean the diminution of central authority. Indeed, the objective of the civil disobedience which has marked the native and environmental scene in British Columbia has been to elicit a sort of progressive reform in higher levels of government. If its merits can be demonstrated, these reformist changes

⁴⁴ Cassidy and Dale, op. cit., 184-85.

⁴⁵ See "NWT supports proposal for huge exports of gas," *The Globe and Mail*, 15 March 1989, B1; and Carol Goar, "Mackenzie pipeline: Act II," *The Vancouver Sun*, 29 March 1989, A21.

⁴⁶ Daniels, op. cit., at 97.

could become more widely acceptable. While certainly a challenge to traditional corporate and bureaucratic power, a potential constituency for such reform does exist, especially among those individuals traditionally concerned about the province's historic economic "dependency" — but for whom the promise of state-guided capitalism has faded.

On the extreme, however, are those harshest critics of centralization who would like to see the state "wither away" altogether.⁴⁷ Given the historic role which the state has played in economic, political, and social colonization of hitherto self-regulating cultures and regions, this perspective is understandable. Nevertheless, federal and provincial authorities are often today the proponents of the highest standards of health and safety, the strictest prohibitions against discrimination, and the most severe environmental controls.⁴⁸

If some sort of accommodation must be reached, what might it look like? Here a distinction should be made between *title* rights that are rooted in native nationhood (regional sovereignty) and *jurisdictional* rights rooted in native and non-native statehood (countrywide sovereignty, including provincial and federal authorities). As discussed above, title refers to a general sovereign relationship to the land which *can* (but need not) be exclusive of other interests. Jurisdiction, on the other hand, refers to specific, limited rights which emanate from sovereignty. Thus, specific state jurisdictional rights may be recognized as applicable to a regional title area by the regional title-holders through negotiation with the state authority. Today, Canadian sovereignty is already split between the *federal* and *provincial* governments. In contrast, however, as the Federation of Canadian Municipalities puts it, *local* government "has no constitutional status of its own, and functions as a mere delegate of the senior orders of government, primarily the provincial."⁴⁹ Integrating these three different sources and levels of authority in a new way could provide the basis for third-level government.⁵⁰

⁴⁷ For one of the most uncompromising critiques of centralization, see Kirkpatrick Sale, *Human Scale* (New York: Coward, McCann & Geoghegan, 1980).

⁴⁸ How these strengths might be better developed poses interesting questions for administrative — as well as constitutional — re-design, with some promising models emerging in other jurisdictions such as New Zealand and Australia. See, for example, two articles by Alex Grzybowski, "New Zealand's New Environmental Administration: The Quest for Sustainable Development," Earthlife Canada Foundation, 1989, and "Environmental Management in New South Wales, Australia: One Approach to Legal Integration," Natural Resources Management Program, SFU. Both articles are available, with permission, from the present author.

⁴⁹ Cited in Warren Magnusson, "The local state in Canada: theoretical perspectives," *Canadian Public Administration* 28:4 (Winter 1985): 575, at 582.

⁵⁰ In a somewhat similar vein, Gordon Clark refers to the need for what he calls

The foundation for third-level government would ultimately be the recognition of regional title held by the people who live in a natural region, that title being historically rooted in the native community which has lived in the area "from time immemorial." This title recognition amounts to an acknowledgement by the dominant culture of the fact of historic aboriginal territorial "ownership" and the need to negotiate a sharing of this territory with non-native society.⁵¹ A precondition to this governmental recognition would thus be the reciprocal recognition by native groups of both a broad, co-ordinate level of state sovereignty beyond the title area, and the sharing of local title-power with non-native citizens in the area whose authority emanates from the continuance of specific jurisdictional rights of the state in that area. On this agreed foundation for third-level government, the specific components of that level would then become the major subject of discussion.

Provincial and federal governments do reflect a larger collective social interest that transcends specific regions and, therefore, such governments should retain co-ordinate jurisdiction over specified fields. Indeed, similarities exist between this proposal and the existing regulation of specific, constitutionally entrenched aboriginal rights by the federal government.⁵² The entrenchment of a broader third-level set of title rights is still missing, however, and with it the ability to bring balance to central government.

Contemplating such a re-alignment will be seen by many to be utopian. In response, it must be reiterated that the challenge of native land claims and, above all, the quest for global sustainability are historic ones requiring a re-examination of social and political fundamentals. A growing movement seeking such changes already exists; but as the state responds to that movement, a guiding vision is absent.

Adopting the perspective described here could begin to shift future land-claim negotiations from a competitive and onto a more co-operative footing. Agreeing in principle to recognize native title will go a long way towards making this shift. The negotiating process would still focus on the

"imperio" if municipalities are to have a real degree of independent authority. See "A Theory of Local Autonomy," *Annals of the Association of American Geographers* 74:2 (1984): 195.

⁵¹ Interview with Dr. Paul Tennant, Department of Political Science, University of British Columbia, August 1989.

⁵² For example, in the recent B.C. Court of Appeal decision in *Sparrow v. R.*, the aboriginal subsistence fishing right was affirmed as an inextinguishable right (constitutionally entrenched and protected under s. 35(1) of the Constitution Act) subject, however, to reasonable conservation regulations by the federal government. See the case at [1984] 2 WWR 577.

careful delineation of the nature of shared authority, but with native people ceding broad jurisdictional rights, not aboriginal title, to the central governments as a prerequisite to agreement. In return, the scope of title which would be recognized in the agreement would be affected by the scope of the non-native jurisdiction which was accepted with that title.

The process for such a negotiation could be undertaken by the provincial Crown inviting detailed proposals from the regions (proposals which would involve both native claims and non-native residents), to be evaluated according to province-wide guidelines agreed upon in advance. This process would encourage both the acceptance by all interests of broad principles to guide future decision-making, and the resolution of conflicts at the local levels as a precursor to negotiations with the central government.

This is not merely fanciful. A similar process has been successfully undertaken in Spain with the recent decentralization of authority to the Basque region.⁵³ In addition, the state of Washington has recently concluded a "Centennial Accord" with the twenty-six federally recognized Indian tribes in the state, a document which commits "the parties to implementation of [a] government-to-government relationship [which] respects the sovereign status of the parties."⁵⁴ The end product of the negotiating process so instituted might function like a form of strong regional government which incorporated native and non-native participation, within a federal system which irrevocably recognized clear title rights through agreements which were constitutionally entrenched under section 35 of the Constitution Act (as land settlement accords are at present).

Clearly, such a novel approach, which challenges our basic constitutional assumptions, requires much debate and study. To date, however, little serious thinking has even occurred in this direction. Part of our difficulty arises from our long neglect of the possibilities of local government. As one scholar notes:

Communities that are not provinces or nations, concerns that are local, and ideals that can be realized only in communal institutions are shunted to the margins of political consciousness. . . . What we need is a full-blooded *political* theory of the local state, that takes account of geographic diversity and his-

⁵³ Interview, Susan Abs, former employee of the Council of Europe during its regional decentralization program in the early 1980s, 22 March 1989. See also P. Donaghy and M. Newton, *Spain: A Guide to Political and Economic Institutions* (Cambridge: Cambridge University Press, 1987).

⁵⁴ Centennial Accord between the Federally Recognized Indian Tribes in Washington state and the State of Washington, signed 3 January 1989.

torical change, and recognizes that the locality can be as real a political community as the nation.⁵⁵

IV

Designing for Sustainability in the Stein River Valley

In light of the above discussion, let us briefly re-examine the Stein controversy to see how the major participants in the conflict might approach a solution in a constructive, yet fundamental, way.

1. *A Federal Role*

Until recently, the federal government has played no part in the Stein debate. With the land base vested in the Crown in right of the province, federal participation has been limited to its constitutional responsibility for native Indians and reserve lands. In 1988, however, the Native Economic Development Program, a federal agency, funded a large research project under the Nlaka'pamux Tribal Council into possible economic development scenarios for the valley.⁵⁶

The federal government has two immediate roles it might take. First, through its constitutional responsibility for native affairs, it can continue to support a solution that involves and benefits the native population in an ecologically sound manner. The NEDP study is one step in this direction, although a small one.

Second, even without an explicit constitutional justification, a federal presence could also be established through a national policy seriously promoting community-based "sustainable development." Bernard Glaesner defines "sustainable development" (what he calls "ecodevelopment") as having to meet four demands: satisfying social needs; maximizing social participation in decisions and actions affecting you; achieving ecological balance; and increasing self-reliance and reducing dependent relations.⁵⁷ These criteria provide useful guidelines for government economic policy and also help clarify the focus of appropriate political institutional design.

In promoting these objectives, the federal government could gradually shift the national economy and its constituent parts onto a more sustainable basis. With the dedication of significant funding into such a program,

⁵⁵ Magnusson, *op. cit.*, at 585.

⁵⁶ The reports of the NEDP study reveal two alternative visions — one based on low-cost hut-to-hut tourism drawing on traditional native architectural themes and foods, the other based on a more capital-intensive tourism complex.

⁵⁷ Bernard Glaesner, *Ecodevelopment: Concepts, Projects, Strategies* (Oxford: Pergamon Press, 1984), 211.

the federal government would possess a basis for action independent of constitutional authority. Using its financial clout, the federal government could help develop new business enterprises, diversify the local economy, and support new local management structures — all areas which are desperately needed in the unstable communities which surround the Stein. These changes begin to address the need for a new infrastructure — for “developing sustainability.” They go far beyond the blandly reformist recommendations of the National Task Force on Environment and Economy which was charged with developing an official national response to the Brundtland Commission.⁵⁸

With these incremental policy changes in motion, the government could begin the longer-term task of reformulating its policy towards native land claims along the lines suggested here. In 1986, in response to a task force report on federal policy (which noted that settlements “have been achieved only when the federal government was eager to facilitate an economic development project”⁵⁹), the government revised its claims policy even to the point of allowing title to “remain undisturbed in other lands selected by the claimant group.”⁶⁰ With this beginning (already somewhat evident in the draft Yukon agreement), the potential may exist for even greater change — when events convince government policy makers that decentralization is a workable way to fulfil its much-heralded commitment to Sustainable Development.

2. *A Provincial Role*

The provincial role is even more important, given its constitutional authority over both the land base and local government. Even taking such a shift in policy seriously is difficult for provincial politicians to the extent they are being asked to devolve (not simply delegate) much of the authority over natural resources which has accrued to them since Confederation. However, with the loss of many of the traditional tools for provincial

⁵⁸ *Report of the National Task Force on Environment and Economy* (Ottawa: Canadian Council of Resource and Environment Ministers, 24 September 1987). The report makes many vague proposals such as the system of Round Table discussions now being implemented, the commitment to some form of “conservation strategy,” and enhanced leadership by government and industry. Though useful, these do not commit bureaucratic and economic interests to any concrete process of reform which might threaten their sources of power and wealth.

⁵⁹ *Living Treaties, Lasting Agreements*, op. cit., 12.

⁶⁰ “Comprehensive Land Claims Policy” (Ottawa: Indian Affairs and Northern Development, 18 December 1986), 7, cited and discussed in Cassidy and Dale, op. cit., 10-11.

intervention in resource policy after the Free Trade Agreement,⁶¹ local solutions may well be looked upon more favourably by a progressive government eager to reassert some of the control which has been lost over corporate resource development.

Under the approach discussed here, the provincial government would move from being an active land owner/developer to being an enforcer of standards and facilitator of “appropriate” development — from title to jurisdiction. For those concerned about potentially rapacious local development, central authorities would retain some general standard-setting jurisdiction. At the same time, however, they would lose the power to initiate resource developments unilaterally at the local level. The distinction lies, for example, in having the power to set energy efficiency standards, but not to expropriate land for the construction of hydro-electric dams. This is akin to the existing Native Claims Policy which states that regions subject to agreements “will be further subject to present and future sound conservation policies.”⁶²

Overall, this approach means a “double veto” in both the local and central authorities over resource development. Hopefully, this would lead to a process of continuous mutual adjustment in future development planning that would take a wider range of environmental and social interests into account than has been the case to date. With only general standard-setting powers, this means an end to the ministerial “final authority” over specific projects, a power which has proven to be a serious sticking point in many negotiations.⁶³

Second, the provincial government could, like the federal government, redirect its presently extensive fiscal and legislative powers to facilitate the development of appropriate management institutions and businesses. Here again, new economic initiatives must accompany political changes. Irving Fox argues that two types of “communal institutions” are necessary: re-

⁶¹ See, for example, Tom Gunton, “Natural Resources and the Canada-U.S. Free Trade Agreement,” in Mel Watkins (ed.), *Alternatives to the Free Trade Agreement* (Ottawa: Canadian Centre for Policy Alternatives, October 1988).

⁶² Cited in Berkes, *op. cit.*, at 12.

⁶³ For example, one of the obstacles in arriving at a co-management scheme for native fisheries in central British Columbia is that the position of the federal department of fisheries “was that the Minister of Fisheries had to retain the ultimate authority and responsibility for management decision-making. In the Tribal Council’s view, acceptance of [this] position would have reduced the Indian role in management to consultation only and made the Indian authorities agents of the federal government.” See Mike Morrell, “The Struggle to Integrate Traditional Indian Systems and State Management in the Salmon Fisheries of the Skeena River, British Columbia,” in Pinkerton (ed.), *op. cit.*, 231, at 247.

gional resource boards and economic development centres.⁶⁴ This is so because, in addition to requiring greater self-management and a greater say in decision-making, enhanced local control requires strengthening the local economy and the benefits it derives from its resources.

To take one example, numerous studies advocate the creation of “community forests” for local management and use in place of corporate tree-farms,⁶⁵ a potentially more efficient policy for meeting those economic and environmental forestry objectives to which the provincial government has long paid lip service. These community tree-farms would operate under standards set by a provincial forestry ministry or conservation board. In addition, the province could also have a downstream role in setting up marketing boards to give local harvesters greater equality in bargaining power with established wood processors, at the same time as it offers technical support and financial assistance in setting up new local wood manufacturers and other businesses.

3. *A Third-Level Role*

In re-structuring institutions to facilitate local resource management of the Stein Valley (and the surrounding region), a number of components are evident. First, the native community must play a primary role, fully empowered to restrict development decisions affecting their cultural base, such as those being proposed for the Stein Valley. The Stein would, of course, be part of a larger native management role over the traditional territory, designed in a way to give effect to traditional values and processes in more than a purely symbolic manner. Such an innovative process may already be occurring, for example, in the participation by the Haida in the discussions over the new South Moresby National Park Reserve where native elders (“Firekeepers”) watch over decisions of the Haida Council to ensure that they accord with traditional ways.⁶⁶

⁶⁴ “Democracy and Regional Planning,” Special lecture, Simon Fraser University, 1 February 1989. Fox is a former Professor of Community and Regional Planning, University of British Columbia.

⁶⁵ See, for example, the still classic *Slocan Valley Management Plan* (New Denver, 1974). This plan was prepared by a local citizens’ group. See also the journal, *Forest Planning Canada*, which takes a community forestry perspective. One of the ongoing controversies in this area involves the Nisga’a allegation of gross mismanagement of the forest in their traditional territories of the Nass Valley by Westar. The Nisga’a now have their own “community” Tree Farm.

⁶⁶ Interview with John Broadhead, Islands Protection Society, 25 July 1988. This system seems to be working well. Where the process has broken down, however, is in the continuous struggle for final authority between the Haida and the federal Parks Canada. In the co-management regime currently in place, representation exists

The very fact of local management being exercised at all can be a most constructive step. In the Stein, for example, tourist traffic is rising dramatically. Recently, Japanese interests have sponsored an extensive assault on traditional mushroom-growing areas in the valley. Neither activity is regulated, and both are potentially very damaging. With the re-introduction of local native and non-native youth into wilderness training in the valley through the "Rediscovery" programme, a foundation now exists for local management in the valley that manages such trends and also offers employment in a way that is environmentally and culturally sustainable, regardless of who has final authority.

Second, native decision-making should itself be a part of (and, to an extent, accountable to) a larger community-wide structure, such as a regional resource council, involving a range of local interests that can collectively plan for the region and the valley. As Pinkerton notes, research in the United States "indicates that tribes in co-management arrangements can set up a system of checks and balances so that the larger community and even inter-tribal interests constrain the harvesting activities of fishermen."⁶⁷ This broader community group would be empowered with authority and a sufficient staff and resources to make informed decisions, all of which should be accompanied by a community economic development strategy. Once again, community control of land tenure (especially over forest lands and wilderness areas) is important here, something which could be irreversibly prejudiced by the provincial government's recent policy proposal to convert more productive forest land into corporate-controlled Tree Farm Licences.⁶⁸

Third, as discussed above, the community as a whole should have a veto power over major development decisions which affect their community. This is the essence of the third-level decentralization of power. One commentator recommends that co-management thus be redefined as co-ordinate, not co-operative, management:

The Nisga'a are seeking their own well-defined fishery and well-defined responsibilities and jurisdiction. The "co" in the Nisga'a co-management

equally between the two groups, but with the federal agency retaining final authority. A resolution in keeping with the argument advanced here would see Parks Canada affirming Haida title, but subject to co-management involving the local non-native population and the federal agency.

⁶⁷ Evelyn Pinkerton, "Rural resource planning in coastal British Columbia: Can fishing communities plan the future of their fisheries?", *Plan Canada* 29:2 (1986): 80-86.

⁶⁸ See *Forest Act*, R.S.B.C. 1979, c. 140, s. 27.1 and "Proposed Policy and Procedures for the Replacement of Major Volume Based Tenures with Tree Farm Licences," Memorandum of the Ministry of Forests, Victoria, British Columbia, 25 July 1988.

proposals refers to the need to *coordinate* independently developed and implemented fishing plans and policies. The Nisga'a are seeking the authority to manage their own resources *in coordination with* those who are managing other inter-related fisheries.⁶⁹

With central authorities retaining general standard-setting (including conservation) jurisdiction in the approach suggested here, management would indeed be of this more co-ordinated character.

The Stein issue has, to date, been treated in isolation from this larger territorial approach. Given native claims, it will not be resolved this way. Nevertheless, looked at in isolation, the same general principles can be applied as have been developed throughout this paper. Thus, should a preservationist decision result from the current debate, the institution established should not be along the traditional park model where control and administration is held outside the community, and to the detriment of native claims. As we have recently seen in British Columbia, such parks are not sacrosanct. Indeed, following the logic of the argument advanced throughout this paper, for this and other preserved areas, a new form of community "land trust" with detailed criteria for control and management could be developed to satisfy both native and non-native interests. Indeed, one can imagine how a third-level government might work by imagining a decentralized community-based land trust format for the province's entire park and wilderness system. This would not only be more stable and secure than the ever-changing park system as presently administered provincially, but would give each community, native and non-native, legal authority over, and a stake in, the local area for which it was responsible.

Immediate action is possible to begin to implement such changes. At a recent meeting to discuss wilderness, parks, and native claims, Don Ryan of the Gitksan Wet'suwet'en proposed that natives and environmentalists work together on their own "treaty."⁷⁰ Such a proposal holds the promise of initiating exactly the sort of bottom-up process discussed here. Only such a broad-based, popularly accountable process can hope to work out the inherent complexities in the decentralist vision — and prevent yet another oligarchy of power from arising at the local level.

Such a proposal poses a great challenge to native groups which have traditionally had great cultural differences between them. There is no one

⁶⁹ Marvin Shaffer, "Fisheries Co-management as a Component of Watershed Co-management," Fisheries Co-Management Conference, 8-10 May 1986, School of Community and Regional Planning, University of British Columbia, 7.

⁷⁰ *Wilderness, Parks and Native Land Claims*, report of a conference sponsored by the Canadian Parks and Wilderness Society, June 1989, at 63.

provincial native movement. One approach to this situation might be to devise a model process through a working group of natives, environmentalists, and academics who did not represent any particular interest group, but were chosen instead because of their sympathetic expertise. With such a product available to the government in advance of any actual change in policy, it would help alleviate the tendency for demands and conflicts to rise when such policy changes occur.

At the specific level of the Stein, the Nlaka'pamux and Lillooet peoples might consider unilaterally creating their own management plan for the valley, something which is urgently needed in any event given the management vacuum which presently exists for both tourists and mushroom harvesters.⁷¹ These plans should bring in local non-natives in a non-competitive manner, the only basis on which either side will discover the possibilities — economic, social, and political — which co-operative ecological community can bring. Here leadership is again required if the potential is to be realized, because action actually to create alternatives is necessary for success.

*Conclusion: Towards a Common Strategy
for Sustainability*

In responding to the serious process of ecological decline and cultural erosion which is occurring in British Columbia and worldwide, a change in consciousness and a change in institutional design are increasingly being demanded. As a central component of a shift to "sustainable development," central-local power relations would be realigned. It is to such a shift in power which specific issues like the Stein controversy in British Columbia point us, not to just another park grudgingly designated after acrimonious political debate and confrontation.

This is what the native and environmental movements are, at root, all about. For natives weary of the loss of sovereignty which each new land settlement has wrought, there is special advantage in taking a larger view of their struggle. Though bound to be controversial within native circles, the concept of a "third level" of government discussed here offers many advantages over the go-it-alone vision presently being adhered to — the greater support it will engender from non-native society, the greater chance which it provides to affirm rather than extinguish native title, even the

⁷¹ The beginnings of just such a strategy are already in evidence. See "Indians propose Tribal Heritage Park as alternative to logging," *Bridge River-Lillooet News*, 28 June 1989, 1.

potential application of this natural law to all native bands, including those which have seemingly had their title claims “extinguished.”

To achieve these changes, a common strategy and vision is necessary. Without it, even a sympathetic government might not be able to change the pattern of title extinguishment and delegated authority which has become the convention over the last decade. Such a sympathetic government could, however, achieve a momentous step in the direction of truly “developing sustainability” with the initiation of the sort of changes discussed here. In considering the historic task of structural change, it is obvious that the issues are complex, and the resistance great. If change is to be timely and constructive, a more focused native/environmental “movement” will be necessary. If the native and environmental struggle in British Columbia must be on the front pages here and abroad, let it be as leaders in the global movement to seek structural solutions to the planet’s eco-cultural plight.