

**THE TŁıCHQ AGREEMENT AND SMALL ACTS OF FREEDOM: FROM SELF-
GOVERNMENT TO SELF-DETERMINATION**

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Chapter 1 – Introduction – Self-determination, Self-Government and Cultural Resistance by way of Subversion and Small Acts of Freedom

We are a nation, a special group of people with our own land. Our Indian Nation will evolve and develop its own way, in the way we Indian people choose. We do not have to become brown white-men to survive. We are Indian and proud to be Indians (Richard Nerysoo)

1.1 - Self-Determination and Dene Self-Government

Self-determination has many dimensions: political and economic freedom, the right to determine one's future, and the right to determine and control social, cultural and economic development. This thesis provides an analysis of the Canadian Government's policy for Aboriginal self-government in Canada. It seeks in part to explore whether or not self-government advances Indigenous peoples' right to self-determination. While these are broad questions, I look at one community in one moment in time as a case study. As illustrated by the above quote the right of self-determination is important to the Indigenous peoples of Canada's North.

The right of Indigenous peoples to self-determination has been recognized at the international level with the passing of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). The UNDRIP also denounced colonization and assimilation, and recognized that diversity of culture and civilization is beneficial to all humanity and that colonization prevents development of Indigenous peoples according to their own needs and interests (UN General Assembly 2007). Canada recently endorsed the UNDRIP suggesting that it is

moving towards the recognition of the right to self-determination.¹ However, since the 1984 Cree-Naskapi Act, the focus of the Canadian government has been self-government.

The practice of Dene self-government in the Northwest Territories (NWT) represents a good example of how self-government and self-determination can intersect. Aside from their involvement in the fur trade, the Dene had limited contact with settler Canadian's until oil was discovered in the 1920's (Fumoleau 2004, 201). Eager to access these resources, Canada quickly signed treaties with the Dene. Once the treaties were signed their lands were opened up for development, their resources were exploited and foreign systems of governance, health and education replaced Dene practices, without consent or agreement from the Dene. Since that time, the Dene have struggled for freedom from domination by the Canadian Government and the colonial style governance structures imposed on them. The Dene resisted the power and control of Canada over their lives and lands and proclaimed it as illegitimate (Dene Nation 1977, 3-4). They demanded recognition as a free and self-determining people within the Confederation of Canada (Dene Nation 1977, 3-4). The Government of Canada, however, has never recognized the original sovereignty of the Dene Nations, therefore participation within the colonial structure was necessary for the Dene to bring about change. Through the practice of self-government, the Dene are reasserting control over their lives and future. Instead of simply accepting administrative and political

¹ In the *Speech from the Throne* in March 2010, the Government of Canada announced that it would take steps to endorse the Declaration in a manner fully consistent with Canada's Constitution.

practices imposed by the self-government agreements, the Dene are using these constitutionally protected agreements to recover and revitalize ways of governing that are uniquely Dene. They are adapting traditional practices and beliefs to reflect their present political and social realities. By using these practices and beliefs in their current governments, they are operationalizing traditional Dene values and using their new governments to revitalize Dene traditions by passing laws and policies that reflect their unique worldview. Through these small acts of freedom, the Dene are strategically moving towards exercising their right to self-determination.

1.2 - Indigenous & Colonial perspectives on Self-Determination and Self-Government

The idea that Canada's Indigenous population holds the inherent right to self-government has been a longstanding issue of contention. From an Indigenous perspective, self-government and self-determination are not rights created or granted by Canada, but ones that have always existed. The Royal Proclamation and Peace and Friendship Treaties arguably demonstrate that Indigenous Nations were historically acknowledged as autonomous, self-governing Nations. However, there was a long history of European religions and philosophies that dictated the moral and cultural superiority of European Nations. Europeans viewed themselves as civilized and Indigenous Nations as savages. Therefore as the European colonies in Canada became less dependent on the cooperation of Indigenous Nations, colonial governments began limiting their autonomy, defining their authority and eventually completely disregarding their self-governing status. Through the Indian Act and

other legal instruments, Canada began limiting the scope of Indigenous peoples' rights. These rights are collectively referred to in Canada as *Aboriginal rights*.

Canada's approach has been that a legally defined group of Indigenous people that Canada identifies as *Aboriginal* have special rights because of their prior occupation, yet their rights do not flow from this, but these rights are only recognized in colonial law (Tully 2001, 47). Canada has created the legal term *Aboriginal*. *Aboriginal* in the Canadian Constitution is defined as Indian, Inuit or Metis. The term does not encompass all Indigenous people, but divides them into two categories: those that Canada recognizes as having *Aboriginal rights* and those who do not. The latter, often referred to as *non-status Indians*, are individuals who self-identify themselves as Indigenous. They may or may not be accepted by an Indigenous Nation as a member. However, Canada does not recognize them as *Aboriginal* nor does it grant them *Aboriginal rights*. Canada does not recognize the rights of Indigenous people as a result of their status as a sovereign Nation that predates the British North American (BNA) Act of 1867, but instead as the result of rights created by Canadian law.

Many peoples point to the Two-Row Wampum Treaty as the first recording of the right of an Indigenous nation to non-interference by colonial governments. This treaty, recognized by both Indigenous and European Nations, is considered by many Indigenous people to be the basis of all subsequent treaties between Europeans and Indigenous Nations (Borrows 1997, 170). This agreement was struck in 1613 between representatives of the Haudenosaunee and the Dutch government, and was recorded in a traditional wampum belt. The pattern on the belt consists of two rows

of purple wampum beads against a back-ground of white beads. It represents two vessels – a Haudenosaunee canoe and a European ship – traveling down the river of life together, parallel but never touching. This indicates both autonomy and respect. Peace and friendship is portrayed by the three white stripes. The wampum belt records the treaty of peaceful co-existence between the settlers and Indigenous peoples of Turtle Island (Borrows 1997, 170).

Further support for the recognition of the autonomy of Indigenous peoples comes by way of early treaties signed on the East Coast. When the British were entering into treaties with the Indigenous Nations of the Maritimes in the early 1700's, it was clear they treated the Indigenous peoples as nations. The new British governor of Canada was told by his superiors to enter into treaties with the Indigenous Nations of the area. Between 1752 and 1779 the British signed a series of peace and friendship treaties with many East Coast Nations including Mi'kmaq, Maliseet, Passamaquoddy, and Abenaki Nations. Since these original Peace and Friendship treaties many treaties have followed. Many Indigenous people maintain that the concepts expressed in the original peace and friendship treaties, including the Two-Row Wampum treaty, are the foundation from which all subsequent treaties need to be interpreted.

When the British and French first came to the lands that would eventually become Canada, they claimed ownership through the notion of terra nullius and eventually by way of the Doctrine of Discovery. The Doctrine of Discovery is a concept that has its roots in the Papal Bulls of the 15th century and was articulated by US Chief Justice Marshall in the 1820's (Williams 1990, 89). The Doctrine of

Discovery allowed Christian explorers to claim ownership of lands they "discovered" for their Christian Monarchs (Williams 1990, 99). The foundation of the Doctrine of Discovery was that any lands not inhabited by Christians were available to be claimed by the group who *discovered* the lands based on the belief that Indigenous people were *savages* and did not properly utilize their lands (Williams 1990, 99). Like other European Nations both the British and French had claimed ownership of land using the Doctrine of Discovery.

In the 1750's disputes over land ownership between the British and the French were escalating. British colonists wanted to take over French land and control the fur trade. The war that broke out, commonly referred to as *Seven Years War*, resulted in a Peace Treaty where by the British took ownership of most of the French land in North America. On October 7, 1763, King George III issued the Royal Proclamation. The purpose of the document was to organize the new British Empire and stabilize relations with Indigenous peoples of North America.

The Royal Proclamation refers to the "several Nations or Tribes of Indians with whom We [the British] are connected" (Proclamation of 1763). This implies a nation to nation relationship. The Proclamation also states that Indigenous peoples "should not be molested or disturbed," implying that they should be protected from abuse and encroachment (Proclamation of 1763). However, the Royal Proclamation confuses the issue as it proclaims ownership and control of the territory when it refers to, "Our [British] Dominions and Territories" and states that it is the "Royal Will and Pleasure" of the British government to allow Native peoples to use the land (Proclamation of 1763). The Proclamation of 1763 signifies the beginning of a shift

in the British approach to Indigenous peoples as it refers to Indigenous peoples as *Nations* that should be protected, but also states that they are under the control of the British Crown. By this time, British settlers were beginning to gain footing and were no longer as reliant on the Indigenous nations for survival.

Many Indigenous peoples regard the Royal Proclamation as an agreement which supports their right to self-determination. The written text of the Proclamation does not fully represent the Indigenous understanding of the document. When considered alongside the earlier Two-Row Wampum and friendship treaties, the Proclamation takes on greater meaning. The text, “should not be molested or disturbed” as recorded in the Proclamation, mandates non-interference in the land and governments of Indigenous peoples when understood within the context of the Two-Row Wampum treaty (Borrows 1997, 171). Interpreted together, they promise non-interference and form the basis for the early relationship between Indigenous peoples and the State (Borrows 1997, 171).

Through the BNA Act Canada was officially established as an independent nation in 1867 and the oppression of Indigenous nations by Canadian law and policy began. The first piece of legislation called the Indian Act was passed in 1876. The Indian Act created a definition of Indian status, encouraged assimilation by way of enfranchisement and imposed a foreign governing system of elected chiefs and band councils. The Indian Act represented a significant change in Indigenous policy from the Royal Proclamation (RP) of 1763. Unlike the RP, the Indian Act did not view Indigenous peoples as autonomous quasi-nations. Instead it fundamentally changed the relationship between *Indians* and the Crown. Unless they chose enfranchisement

into mainstream Canadian society, Indigenous Canadians became treated as wards of the state. The Act imposed colonial governing structures on Indigenous people and placed strict controls on many aspects of their lives. Indian Act policies marginalized, impoverished and traumatized Indigenous Nations (Dickason & McNab 2009, 228-229).

Between 1876 and 1969, Canadian policies relating to the rights of Indigenous Nations, were focused on assimilation . The 1969 White Paper represented a watershed for the assimilation-based policies of the Canadian Government. It called for the repeal of the Indian Act. The Government of the time identified the problem to be inequality among Canadians caused by the distinct legal status of Indians. The proposed solution was to eliminate Indian status and assimilate Indigenous Canadians into mainstream society. This move would have effectively eliminated the unique legal and political position of Indigenous peoples. The White Paper sparked an outcry from Indigenous people as they resisted assimilation. Indigenous Canadians refused to give up their distinctive identity and the rights attached to it as the first inhabitants of the lands that became Canada. The Indigenous Canadian response to the White Paper created a new wave of Indigenous mobilization. The White Paper did not become policy.

The concept of aboriginal title received its first support in Canadian law from the Supreme Court decision on the 1973 Calder case that recognized *Aboriginal Rights* to resources and lands. Frank Calder, a member of the Nisga'a Nation, maintained that his people never ceded their territory to Britain so their title to their territories had never been extinguished. Consequently, provincial land legislation on Nisga'a

traditional territory was invalid. Judge Judson, writing for 3 of the 7 justices, recognized that “Indians were there, organized in societies, occupying the lands as their forefathers had for centuries” (Morse 2008, 43). Justice Hall, representing 3 of the justices, supported the continued existence of Nisga’a title. He was even clearer on the matter when he quoted US Supreme Court Chief Justice Marshall.² Marshall recognized that Indigenous Nations were self-governing prior to the arrival of Europeans. Justice Hall quoted Marshall’s decision where he stated, “America, separated from Europe by a wide ocean was inhabited by a distinct people, divided into separate nations, independent of the rest of the world, having institutions of their own and governing themselves by their own laws” (Morse 2008, 43). The seventh judge dismissed the case on a technicality. The significance is recognition by six of the seven judges that Aboriginal title to the lands existed at the time of colonization of British Columbia. The Calder decision also challenged the assumption of federal and provincial governments that colonial laws and legislation automatically applied to Indigenous peoples and Indigenous lands. Following the decision the federal government announced its willingness to resume treaty-making after a 40 year hiatus (Morse 2008, 43).

Negotiations for self-government and land-claim agreements began, but produced very few results. Many claims, such as the NWT Dene-Métis Claim, were unsuccessful. The few agreements that were concluded include those for the Cree, Naskapi and Inuit of Northern Québec under the 1975 *James Bay and Northern*

² In 1823, Chief Justice Marshall presiding over *Johnson v. M’Intosh* ruled that tribal lands could not be purchased directly from Native Americans, only the government could make this type of deal.

Québec Agreement and the 1978 *Northeastern Québec Agreement*; and seven Yukon First Nations, pursuant to a 1993 Umbrella Final Agreement .

Although Aboriginal and Treaty rights were affirmed and protected in Section 35 of *The Constitution Act 1982*, the rights were never defined: “None of these self-government arrangements, establishing differing governance structures and authority, is explicitly covered by section 35 of the *Constitution Act, 1982*” (Canada, Parliamentary Research Branch 1999). Other land claim agreements that were reached without self-government provisions include the 1993 Nunavut Land Claims Agreement, the 1992 Gwich’in Comprehensive Land Claim Agreement and the 1994 Sahtu Dene and Métis Comprehensive Land Claim Agreement. Self-government agreements have not yet been concluded with the Gwich’in and Sahtu. Under the Nunavut Land Claims Agreement and federal legislation establishing the new territory as of 1 April 1999, Nunavut has a public rather than an Inuit-exclusive government structure. Its self-governance model is not protected as an inherent aboriginal right under section 35 of the Constitution (Canada 1999, under “The Progress of Self-Government Negotiations”).

With the failure of the government to define aboriginal rights, Aboriginal nations turned to litigation to resolve their grievances and the courts began to define *inherent rights*. The Government, knowing that it would be better to negotiate than litigate, was motivated to take steps to recognize inherent rights. As part of their election promises, Jean Cretien’s Liberals made that promise and committed to recognizing self-government as an existing right within section 35 of the

Constitution Act 1982. This resulted in the 1995 Inherent Rights Policy that directs self-government negotiations today (Canada, 1995).

The Tłıchǵ Agreement is one product of the negotiations that were undertaken by the 1995 Inherent Rights Policy. Although discussion about land claims and self-government for the Tłıchǵo began in the early 1970's, with the comprehensive Dene Metis claim, it wasn't until January of 2000 that the Tłıchǵ and Government of Canada accepted an Agreement in Principle (AIP). The federal government withdrew³ approximately 39,400 square kilometers of land and extensive public consultation began.

The Tłıchǵ Agreement became effective on August 4, 2005, transferring ownership and control of 39,000 km² of land and defining the self-government powers of the Tłıchǵ Nation. The Agreement is intended by both parties to provide certainty with respect to Tłıchǵ rights, title and obligations. It allowed for the creation of the Tłıchǵ Government, which has law-making authority over aspects of education, adoption, child and family services, training, income support, social housing, and Tłıchǵ language and culture. In their own words, the purpose of the Tłıchǵ Agreement is to protect and promote Tłıchǵ language, culture and way of life (Zoe 2006, lecture).

As much as constitutional protection of the Tlıcho Agreement was a victory, it came with some sacrifices. One of them was the adoption of the *Canadian Charter of Rights and Freedoms*. The Canadian government's position is that all Canadians, Aboriginal and non-Aboriginal alike, should equally *enjoy* the rights and freedoms

³ A withdrawal of lands is a selected area of lands where development is not allowed until dispute over its ownership and control is settled.

guaranteed by the Charter and thus aboriginal governments are subject to the application of the Charter (AANDC 2010). This is a significant imposition on Tłıcho self-governance as the Charter elevates the rights of the individual over collective rights (Kulchyski 2005, 233). This is in conflict with Tłıcho traditional values that respect the autonomy of the individual yet also emphasize the individual responsibility to the welfare of the collective (Kulchyski 2005, 233).

Another trade off for constitutional protection is certainty. The preamble of the agreement states that the agreement was negotiated “in order to define and provide certainty in respect of rights of the Tłıcho relating to lands, resources and self-government” (Tłıcho Government 2003, 1). This *certainty* can be better described as *exhaustion* (Kulchyski 2005, 100). Under the *General Provisions*, section of the Agreement Section 2.6 outlines what is meant by *certainty*. It states “ the Tłıcho will not exercise or assert any Aboriginal or treaty rights other than (a) any right set out in the Agreement” (Tłıcho Government 2003, 21). It goes on to state

the Tłıcho and the persons who comprise it, prior to or after the effective date, release government and all other persons from all claims, of whatever nature or kind and whether known or unknown, that they now have or may have in the future, arising from any omission that occurred on or after the effective date and that may have affected any right that...is not exercisable or assertable (Tłıcho Government 2003, 22)

Certainty is actually exhaustion as the agreement limits the rights of the Tłıcho to those described in the agreement (Kulchyski 2005, 100). This is far worse than the old model of extinguishment that left the door open for any rights not contemplated at the time of treaty and instead freezes the rights of the Tłıcho to only those considered when the Agreement was negotiated (Kulchyski 2005, 100).

1.3 - Self-Government, Small Acts of Freedom & Self-Determination

The key question that will be addressed in this thesis is: do Canadian self-government agreements represent a step towards the advancement of Indigenous peoples' right to self-determination in Canada? This thesis argues that while self-government agreements on their own do not constitute self-determination, in practice Indigenous people are using these agreements to advance their right to self-determination. While Indigenous people recognize that self-government may be intended to assimilate them and fear it could be used to extinguish their rights, they also acknowledge the serious social, economic and political barriers they are currently facing after more than 100 years of colonial domination. Some Indigenous Nations have determined that the most effective means to address the challenges faced by their communities is to enter into a new relationship with Canada through self-government agreements in an attempt to regain a measure of control over their lives and lands. Aware of its limitations, Indigenous peoples are choosing self-government nonetheless, while continuing to resist colonization and assimilation. By way of this resistance they continue to modify their relationship with Canada and create new opportunities to redefine their political status, while pursuing their own forms of cultural, social and economic development.

This research contributes to the discussion about self-government and its utility as a means towards the realization of the right of Indigenous peoples to self-determination. This is an important area of research as self-government agreements are quickly becoming the model for a renewed relationship between

Canada and Indigenous Nations despite the fact that many critics suggest that self-government does little more than create Indigenous led colonial governments (Alfred 2005, 30). This research challenges this assumption by demonstrating that there is value in self-government as it creates political space where Indigenous peoples can advance their right to self-determination. Using a case study approach, this thesis explores the theory that Indigenous peoples are using this newly created political space to resist assimilation and colonization and through freedom of thought and action they are using self-government to protect, recover, revitalize, adapt and operationalize ways of being that are uniquely Indigenous (Tully 2001, 41). It then links these small acts of freedom to the reestablishment of self-determination.

1.4 - Defining Self-Government & Self-Determination

In order to better understand the differences between self-government and self-determination, it is important to carefully define these terms. Both concepts have been influenced by an ongoing debate between Indigenous peoples and the nation states in which they reside.

1.4.1 - Self Determination

The concept of self-determination first appeared in the United Nations Charter of 1945. The goal of the United Nations, as articulated in the charter was:

to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace (United Nations 1945).

The next step was to put this goal into practice. When the Universal Declaration of Human Rights was passed by the United Nations in 1948, the General Assembly instructed that work continue to prepare a draft covenant of human rights and measures for implementation (Hannum 1996, 20). This eventually led to the adoption of the Covenant on Economic, Social and Cultural Rights (CESCR) and the Covenant on Civil and Political Rights (CPR) in 1966 (Hannum 1996, 20). In both covenants the first article states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (UN General Assembly 1966).

Many colonial states, concerned about territorial and political integrity rejected the application of Article 1 in the case of Indigenous peoples (Anaya 2009, 189). They argued that Indigenous people were not technically *peoples* as understood in International law.

In 1960 the UN passed the Declaration on the Granting of Independence to Colonial Countries and Peoples, commonly referred to as the “Decolonization Declaration”. In this declaration the principle of self-determination articulated in the UN charter evolved from a principle to a right (Hannum 1996, 17). The *Decolonization Declaration*, “[s]olemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations” (United Nations 1960). Although the resolution refers to *colonial* countries, paragraph 2 confirms the right of self-determination to all peoples and paragraph 5 calls for the transfer of all powers to territories which have not attained independence (Hannum 1996, 17).

The question of decolonization was not simple for places like Canada or the United States where the colonizer and the colonized share the same territory. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, herein cited as Declaration on Friendly Relations, passed by the United Nations General Assembly in 1970, reiterates that *all peoples* have the right to self-determination. It reaffirms that self-determination may be achieved through independence, free association or integration as well as through the emergence into any other political status freely determined by the people. The paradox presented by the Declaration on Friendly Relations is that the principle of territorial integrity and political unity take precedent over any right to self-determination (Hannun 1996, 19). In the closing paragraphs the Declaration states

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color (United Nations 1970).

This was interpreted to mean that any state that did not exclude participation in the democratic system to individuals based on race, creed, or color would be considered to be in compliance even though an ethnic majority can control political life (Hannun 1996, 19).

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) reintroduced the concept of self-determination for Indigenous peoples. After nearly two decades of discussion, UNDRIP was adopted by the UN General Assembly on September 13, 2007, with 143 states voting in favor of its adoption,

and 11 abstentions (AANDC 2011). Thirty-five States were absent at the time the declaration was adopted (AANDC 2011). Australia, Canada, New Zealand and the United States voted against the Declaration. An Aboriginal Affairs and Northern Development Canada web site states that Canada's concern with the adoption of the Declaration was with the actual text, not the principles of the Declaration (AANDC 2011).

The areas of greatest concern for the Government of Canada are those provisions dealing with lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and the need to achieve an appropriate balance between the rights and obligations of Indigenous peoples, member States and third parties. (AANDC 2011)

In a speech from the throne on March 3, 2010, Canada changed its position announcing that it would take steps to fully endorse the Declaration followed by a statement of support in November 2010 (AANDC 2011). Australia, New Zealand and the United States have also reversed their positions and now support the Declaration.

The UNDRIP affirms the right of Indigenous peoples to self-determination and a number of individual and collective rights, including rights to lands and resources, that are required for self-determination (Anaya 2009, 2). Although not considered a legally binding document, the Declaration reflects and embodies general principles of international law (Anaya 2009, 185).

1.4.2 – Self-Government

With the repatriation of the Constitution in 1982, Aboriginal peoples won recognition of “existing” Aboriginal rights, but without clear definition. The victory was short lived as three First Ministers Conferences failed to produce a definition, although Indigenous people themselves were invited to participate in the discussions. What these conferences made clear was that the right to self-government only extended to local issues, and on the issue of Constitution, Indigenous people may be consulted, but Constitutional matters were still decided by the federal parliament and provincial legislatures (Dickason & McNab 2009, 398). The key problem is that self-government only allows for control at a local level, and is directed and delegated from the federal level. The federal parliament and provincial legislatures still decide on the highest law in our country, the Constitution. All other legislation and policies, including those passed by federal, provincial and aboriginal government, must be in compliance with the Constitution. Even though the Constitution applies to aboriginal peoples and Aboriginal Governments when Constitutional matters are considered aboriginal people do not have powers over the final decision but are only considered to have an advisory role.

In 1982 a Parliamentary Task Force was created that reinforced the concept of self-government proposed by Indigenous people in the preceding decade. The Parliamentary Task Force on Indian Self-Government, chaired by Ontario MP Keith Penner, was created to define the parameters of self-government and to begin to “partially reverse hundreds of years of oppressive government policies and neglect, and to improve their quality of life” (Belanger & Newhouse 2008, 9). The special

committee was “mandated to review all legal and related institutional factors affecting status, development, and responsibilities of band councils on Indian reserves and to make recommendations with respect to establishing, empowering and funding Indian self-government” (Belanger & Newhouse 2008, 9). To collect testimony, the special committee traveled across Canada to meet face to face with Indigenous people. The findings were released in October 1983 and advised that legislation should be created which recognizes that *Aboriginal* people are allowed to establish their own level of government, distinct from those of the municipality and the Indian Act (Dickason & McNab 2009, 399). These changes would restructure the relationship between Indigenous people and the federal government and give Indigenous people recognition in the Constitution as their own *distinct society* (Belanger & Newhouse 2008, 9; Dickason & McNab 2009, 399).

Today, self-government negotiations are guided by the Inherent Rights policy. When the Liberal government came into power in 1993, one of their election commitments was to recognize the inherent right of self-government within the meaning of section 35 of the Constitution. In keeping with the election promises, the Federal Policy on Aboriginal Self-government, also known as the Inherent Rights policy, was issued in 1995. The policy recognized the inherent right of self-government as relating to “matters that are internal to [Aboriginal] communities, integral to their unique culture, identities, traditions, languages and institutions and with respect to their special relationship to their land and their resources” (INAC 1995, 3). It is under this assumption that the Government of Canada proceeded with self-government negotiations that delegate negotiated authorities and jurisdictions.

Self-government as demonstrated by these definitions is a much more limited concept than self-determination. Importantly, self-determination is governance according to a Nation's goals and objectives. In contrast, self-government is the management of responsibilities delegated by the Canadian government and according to Canadian government goals and objectives. The powers of self-government are restricted to a limited range of delegated authorities and jurisdictions that are secondary to federal laws. This being said, self-government is not without value. Self-government arrangements do return decision-making control and responsibility over internal affairs, however limited, to Indigenous nations. Indigenous nations in turn are implementing decisions and creating internal controls that reflect their cultural values.

1.5 - Two forms of Cultural Resistance: Subversion & Small Acts of Freedom

Theories that recognize the opportunity for Indigenous resurgence within a colonial framework are based on the notion that Indigenous nations are acting within colonial spaces and manipulating imposed colonial instruments to further their own agendas. This is an unintended consequence of these new political spaces as the state's intention was to further its own agenda and remove *difference*. In fact, the opposite is happening.

In *Like the Sound of a Drum*, Kulchyski challenges the orthodox notion by Indigenous resurgence activists that political spaces created within the existing Canadian confederation do little more than to perpetuate the colonization and assimilation of Indigenous peoples (Kulchyski 2006). Countering this argument

Kulchyski offers a concept of *subversion* as a means to resist state domination and the resulting assimilation (Kulchyski 2006, 23). According to Kulchyski, the state attempts to *assimilate* Indigenous nations by imposing the dominant order (Kulchyski 2006, 23-24). As Indigenous nations in Canada do not have the power to directly confront the state, they resist assimilation by subversion. Subversion means to alter what has been created as a mechanism to impose the dominant order and use it to express cultural resistance (Kulchyski 2006, 25). As a result of resistance by way of subversion, the instruments intended to impose the dominant order and assimilate Indigenous peoples are “turned against themselves...so as to achieve an effect that is precisely the opposite of the one aimed for” (Kulchyski 2006, 268).

The concept of subversion is indispensable to understanding how the Dene are using the political space created by self-government to advance their right to self-determination. The state has imposed governing structures and other instruments of colonial law such as formal assemblies, written legislation, policies and a dispute resolution framework. The Dene are using these instruments, which were designed to assimilate their ways of governing, and adapting them to protect ways of governing that are uniquely Dene. Self-government, which is intended to change the way the Dene govern themselves to *fit* with the dominant society is actually supporting the continuance of governing that is markedly Dene.

In his influential article *The Struggle of Indigenous Peoples for and of Freedom*, James Tully advances a similar approach to resistance. He also argues that Indigenous peoples are resisting colonization and assimilation from within imposed

colonial structures (Tully 2001, 41). Tully identifies the problem as resulting from the need to reconcile the establishment and development of western society with the pre-existence and continuing resistance of Indigenous society, within the same territory (Tully 2001, 37). The state attempts to assimilate Indigenous nations and reduce their status to existence as citizens *within* the dominant society so they may achieve/assert exclusive jurisdiction and open lands to settlement and capitalist development (Tully 2001, 41). Tully argues that Indigenous peoples are resisting assimilation by engaging in the system. From within the system they then resist colonization and assimilation by “protecting, recovering, gathering together, keeping, revitalizing, teaching and adapting entire forms of indigenous life that were nearly destroyed” (Tully 2001, 59). Tully offers the continued existence and extensive use of traditional medicine healing, child-rearing practices, justice circles, and Indigenous languages as examples of this resistance (Tully 2001, 59). According to Tully, these “acts of resistance within the system are more important and effective than resisting against imposed and illegitimate state control” (Tully 2001, 58).

The techniques of assimilation employed by the Canadian Government have changed overtime but each share the ultimate goal of eliminating Indigenous teachings, language and practices. Arguably, self-government is the most recent technique of assimilation. Self-government attempts to impose colonial values of governing and structures of governance on Indigenous nations. The Tłıchǵ Agreement is intended to assimilate the Tłıchǵ, however, they are employing a resistance strategy of subversion and using the new political space to further

advance their political development. This is an act of freedom. They are furthering their political development by restoring, revitalizing, protecting and operationalizing Dene values of governance. The act of freedom is not one grand gesture in the face of the state, but several small acts that ultimately challenge the state's goal of assimilation. These small acts of freedom, which make the Dene architects of their political development, are actually an act of self-determination. This thesis argues that through small acts of freedom the Tłıchǫ people of the NWT are resisting colonial structures, restoring Indigenous ways of being and consequently working towards the re-establishment of their right to self-determination.

1.6 - Understanding Cultural Resistance – a Dual Paradigm Approach

Historically, the western scientific model for Indigenous focused research has shaped research methods and methodologies. This has led to Eurocentric research that imposes western values and assumptions over Indigenous experiences and knowledge. While western methods and methodologies bring with them a strength born of being tested, tried and documented they also contain an inherent bias that privileges western methods of discourse, observation and definition. In conducting research that integrates Indigenous and western approaches the researcher appreciates that although western approaches have gained weight in the academic community because of their extensive use, there are other ways, and other means of measurement that are empowering and may have more validity and relevance in certain research. Re-centering research in this way can be a powerful tool for

resistance (Smith 1999, 2). An Indigenous approach to research opens up the possibility of an alternative story, a perspective, knowledge and truth that can benefit other nations. Research that involves Indigenous peoples can only be strengthened when using a mix of western and Indigenous approaches.

The goal of this research is to assess whether or not the Tłıchǫ Agreement represents progress, in terms of the exercise of self-determination as understood by the Tłıchǫ people themselves. Accordingly it is important as a researcher, to shift perspective and seek to understand and to respect the Tłıchǫ standpoint. This provides an alternate way to make sense of the realities of Tłıchǫ self-governance that are sensitive to and reflective of Tłıchǫ culture. To approach this project from an exclusively western methodology would be contrary to the very foundations and purpose of the Tłıchǫ Agreement. A western approach to this research would bring with it the assumptions, motivations and values of European imperialism and colonization. To evaluate the Tłıchǫ Agreement the research must recognize the Tłıchǫ assumptions, motivations and values from which the Agreement was negotiated.

The question remains then, why use Western methods at all? Besides the obvious explanation that has already been addressed, that these methods have developed from years of use, discussion and revision, scholars suggest that if the imperial roots of Western methodology are recognized and accounted for, and carefully and critically considered before being applied, Western methodologies can be used to conduct ethical, community based, culturally sensitized research that meets the needs of Indigenous communities (Smith 1999, 39). Western and

Indigenous cultures and worldviews exist, side by side and it is necessary for them to be able to communicate with each other in a way that each can understand. Using a dual-paradigm allows this research to speak to the needs of the Tłıchǫ community while at the same time addressing the political realities of life within Canada.

1.6.1 - An Indigenous Ontology

The starting point of all research is ontology. Norman Blaikie defines ontology as “claims and assumptions that are made about the nature of social reality, claims about what exists, what it looks like, what units make it up and how these units interact with each other” (Blaikie 2000, 8). Ontological assumptions are concerned with what we believe constitutes social reality (Blaikie 2000, 8). A western approach separates humans from their surroundings positioning them as superior and full of life and spirit while everything around them is spiritless (Kincheloe 2006, 2). Tłıchǫ ontology positions humans in a reciprocal relationship with all living and inanimate objects. It is accepted that all elements of the ecosystem have life and spirit. In *Yamoria – The Lawmaker* George Blondin defines the Dene people as “people of the land” (Blondin 1997, 18). He goes onto say, “we see ourselves as no different than the trees, the caribou, and the raven, except we are more complicated” (Blondin 1997, 18).

1.6.2 - Indigenous Epistemology

Epistemology is concerned with the theory of knowledge, in particular the nature and scope of knowledge or ways of knowing. Blaikie defines epistemology as assumptions about what exists and what can be known to exist (2000, 8). The

foundations for Indigenous ways of knowing are the self, the spirit and the unknown (Ermine 1999, 108). In *Aboriginal Epistemology* Ermine argues that Indigenous people emphasize the importance of the acquisition of knowledge being grounded in the spirit (Ermine 1999, 108). He goes on to say that Indigenous knowledge is only available to those who are receptive and open to receiving knowledge according to Indigenous ways (Ermine 1999, 108).

Tłıchǫ oral history suggests that Tłıchǫ epistemologies are closely linked with the metaphysical. *Nahwit'in* meaning, "I dream" is a place where people go when they need to look outside themselves to gain knowledge or see the solution to a problems that is *goʔaanile* or "a little bit hidden" (Helm 1994, 158). When a person says *Nahwit'in* they mean they have received a special gift of knowledge (Helm 1994, 158).

Another method for acquiring knowledge is through *ik'ōō*. The Tłıchǫ describe *Ik'ōō* as a special kind of knowing. In history there are several examples of people with this kind of knowledge. They are often described as prophets or medicine people. They have a very special gift that allows them to have personal experiences with non-human forms (Helm 1994, 68). The term has been related to fusion⁴ or syzygy possibly referring to an ability to make a connection between the metaphysical world and the physical world.

1.6.3 - Indigenous Methodology

⁴ In a personal communication with John B Zoe, a Tłıchǫ leader on March 24, 2010 he related the meaning of *Ik'oo* to one of fusion, that is the connection of two or more distinct bodies or entities.

Methodology, underpinned by and reflecting ontology and epistemology, is the way in which a researcher goes about acquiring knowledge. Although some of the knowledge for this research can be found in western political theories on liberalism and multiculturalism, most of it will be found in Indigenous political theories. Tłıchǰ political self-understanding and self-reflection is not recorded in textbooks. This knowledge is held by the people in the communities and shared over tea, in a canoe, on hunting trips and during assemblies, meetings and celebrations. Kulchyski relates this methodology to hunting for stories (Kulchyski 2006, 8). He argues that being unencumbered by the rules of western pedagogy allows researchers to be open to finding data and knowledge in unconventional places and ways. In *Like the Sound of the Drum*, Kulchyski relates his research to hunting for evidence in stories and narratives in the same way as a hunter travels on the land in search of prey (Kulchyski 2006, 8). This study has used the same methodology presented by Kulchyski (Kulchyski 2006). My perspective as a non-indigenous academic is tempered by nearly a decade of working exclusively with Indigenous peoples on self-government and related community development projects in the Tłıchǰ region.

1.7 - Assessing Cultural Resistance – Subversion and Small Acts of Freedom as a path to self-determination

This thesis explores issues surrounding the implementation of self-government, as directed by Government of Canada policy, and its utility in facilitating the eventual exercise of self-determination for Indigenous communities in Canada. The research will be based on a case study of the Tłıchǰ Dene and the implementation of

the Tłıchǰ Agreement. The research tests Tully's theory that Indigenous peoples are protecting, recovering, revitalizing, adapting and operationalizing ways of being that are uniquely Indigenous within colonial political spaces. Freedom of thought and action within a colonial political space is a small act of freedom. These small acts of freedom further the re-establishment of their right to self-determination.

The unit of analysis in this case study will be the Tłıchǰ Assembly's actions, decisions and related laws and policies surrounding a leadership dispute among the Tłıchǰ Chiefs in 2007 -2008. A community advisor suggested this example. The leadership dispute was a very public dispute that tested the strength and validity of traditional Tłıchǰ governance. The actions of the leaders throughout the dispute reflected Tłıchǰ values as well as mainstream values, however ultimately Tłıchǰ ways of governing triumphed. This in-turn strengthened the practice of Tłıchǰ ontological assumptions about governance and the results of the dispute continue to influence the young government today. This method of selecting a unit of study is consistent with anti-oppressive research that, unlike a positivist approach, encourages selective sampling. Anti-oppressive methods view research as a political act that must consider the balance of power relationships (Potts & Brown 2005, 269). Ideally, anti-oppressive methods suggest a collaboration of researcher and research subjects in identifying a sample (Potts & Brown 2005, 269). Furthermore, the goal of anti-oppressive research is to empower and gain a better understanding (Potts & Brown 2004, 269).

Self-government agreements are colonial documents that do little to challenge the sovereignty of the state or advance Indigenous self-determination and are

devoid of Indigenous ancestral teachings. In the example of the Tłıchǫ leadership dispute, the Tłıchǫ are operating within a colonial political space created by the Agreement; however, it does not direct them on how to resolve this type of dispute. The Tłıchǫ have an opportunity, through freedom of thought and action, to protect, recover, revitalize, adapt and operationalize Tłıchǫ ways of governing in terms of their internal political decision-making. The leadership dispute is a unique aspect of the implementation of the Tłıchǫ Agreement well suited to testing Tully's theory because it is an example of how Indigenous people are using new political space to exercise their unique ontological assumptions about governance.

Data for the research has been obtained through document analysis. Access and use of this information has been obtained because of the longstanding relationship between the researcher and the Tłıchǫ. Documents such as meeting minutes, laws and sworn affidavits by Tłıchǫ leaders have been reviewed bearing in mind the research problem. Chapter two is a narrative based on these documents that describes the sequence of events that took place with a focus on the decisions, laws and policies of the Tłıchǫ Assembly.

Chapter Three outlines the ontological assumptions about governance taken from the Tłıchǫ Cosmology. This provides a framework for analyzing the data. The Tłıchǫ Cosmology was first researched during self-government negotiations. Lead negotiator, John B Zoe, met with Elders to map the shared experiences of the Tłıchǫ and begin a discussion about what the Cosmology means. The purpose was to apply this knowledge to contemporary organizations such as the Tłıchǫ Government. The Cosmology includes a collection of Tłıchǫ teachings and history divided into a

number of eras. Each era is marked by a significant conflict followed by its resolution and resulting law. The following table outlines the eras and laws of the time period⁵.

Era	Time Period	Laws
Pre-contact	Floating time	Co-existence
Incipient Contact/Proto-Contact ⁶	1715 - 1780	Peace & Respect
Early Contact/Contact Traditional Era	1780 - 1852	Collective
Stabilized Contact	1852 - 1921	Unity
Contact	1921 - 1990	Strong Like Two People
Recognition	1990 - present	

(Helm 1981, 11-13; Gibson 2007, 63-77)

Chapter four discusses the actions taken by the Assembly in an attempt to resolve the leadership dispute and demonstrates that they are using self-government to implement Tłıchǫ ontological assumptions about governance. This is consistent with generalizations about subversion proposed in Kulckyski's *Like the Sound of the Drum* (Kulchyski 2006). Although self-government was meant to impose foreign systems of governance on the Tłıchǫ people, they are using this newly created political space to recover, revitalize adapt and operationalize

⁵ The table is informed by research and documentation of Tłıchǫ history by Helm (1981) and research and documentation of the Tłıchǫ Cosmology by Gibson (2007).

⁶ Incipient or Proto-contact is a time period when non-aboriginal people had not come into Tlıcho territory but their existence is known

ontological assumptions about governing that are unique to their Nation. Kulchyski ,concept of subversion is demonstrated by the innovative way the Tlicho are using self-government. (Kulchyski 2006, 25-26).

The expression of unique Tłıchǫ ontological assumptions about governance in contemporary actions, decisions, laws and policies is a small act of freedom. The contours of small acts of freedom and how they are expressed within the implementation of the Agreement are drawn out largely through Tully's theory on Indigenous struggles of freedom (Tully 2001, 42). Tully argues that while complying with and operating within colonial structures Indigenous people continue to resist through freedom of thought and action (Tully 2001, 42). These thoughts and actions are beyond the influence of colonization, law and assimilation. Tully acknowledges that self-government imposes political and administrative structures that are inherently colonial (Tully 2001, 53). He argues that Indigenous peoples are adapting and responding to these structures and through freedom of thought and action are finding ways to protect, recover, revitalize, adapt and operationalize ways of being that are uniquely Indigenous (Tully 2001, 59). These "small acts of freedom" resist assimilation and strengthen Indigenous cultures, languages and ways of life.

Chapter Five, the concluding chapter, demonstrates how such small acts of freedom are in fact furthering the re-establishment of the Tłıchǫ right to self-determination. Resistance to imposed ways of governing and governance structures and the implementation of small acts of freedom creates new opportunities to redefine the relationship with Canada and re-establish their right to freely

determine their political status and pursue their social, cultural and economic development.

1.8 - A note on Rationale – Cultural resistance in research

The assessment of self-government, in particular the use of cultural resistance to further the Indigenous right to self-determination, is best researched using an in-depth single case study approach. A comparative case study would be unsuitable because the expression of self-determination and cultural resistance are unique to every Nation - context is critical - and thus they define and measure success differently. Furthermore there are very few Nations who have negotiated and are now implementing a joint land-claim and self-government agreement. For those Nations at this stage, such as the Nisga and the Inuit, their political landscapes and the way in which they have decided to exercise their inherent right to self-government are much different than the Tłıchǫ. These inconsistent factors between Nations would put the integrity of the findings into question. There is no universal Indigenous perspective; Indigenous knowledge is unique to each nation and within a specific context (Battiste 2008, 501). This focused case study contributes to the knowledge of the implementation of the Tłıchǫ Agreement, the related organization and Tłıchǫ social, political and other related phenomena. In reconstructing and documenting Tłıchǫ knowledge and experiences, it is important that it is not fragmented by other perspectives. Since Indigenous knowledge has been disjoined by colonization and attempted assimilation it is necessary that research is inclusive so as to renew and describe a specific Indigenous Nations worldview and how these influence their experiences (Battiste 2008, 508).

Indigenous Governance is a relatively new area of research and the data available to researchers is limited and mostly undocumented. Descriptive case studies have utility in their basic data-gathering operation (Lijphart 1971, 691). There is a serious lack of information in academia about Indigenous politics and the practical implementation of self-government. This case study in its descriptive design will contribute information that will begin to fill in these gaps in knowledge.

Theories of Indigenous politics and political-cultural resistance are as limited as the data. Theory confirming case studies are important in emerging disciplines and related research. This case study contributes to general propositions and thus theory building in political science (Lijphart 1971, 691). As Indigenous politics is a relatively new area of research it is important to build upon and support a theoretical foundation for future research.

This research involves a careful and detailed description of contemporary political practices of the Tł̓ch̓q and their traditional ontological assumptions. Through these descriptions a greater understanding of the worldview and experiences of the Tł̓ch̓q is gained. The emphasis is on a description of events surrounding the leadership dispute with a qualitative analysis. A quantitative, positivist approach would be unsuitable for this research, as it does not allow for the subjective experiences. The qualitative nature of this research supports the dual-paradigm interpretation of the events. The ontological assumptions of the Tł̓ch̓q are central to this research. With these ontological assumptions in mind the researcher *hunts* through the data and interprets the expression of traditional ontological values in contemporary events. Positivist research, which would not

allow for the contextual interpretation of the data as it is supposed to be value neutral, would run the risk of supporting the existing social order it is intended to challenge. Critics of anti-oppressive methods may argue that I have pre-selected limited examples that support a pre-determined hypothesis that is politically charged. However, proponents of anti-oppressive research argue that declared or not, all research reflects the position of the researcher (Kirby, 2006, 36). They further argue that this is not something that should be avoided and in fact creates the potential for insightful knowledge (Kirby 37, 2006). All research hypothesis and methods have assumptions, because researchers are influenced by their own experiences. Solid research can be disproven and challenged. The case study research in this study could be replicated by another researcher who may come to a different conclusion for reasons having to do with context. To respond to potential concerns, about my methodology, I have fully described my positionality to ensure transparency.

Chapter 2 – Tłıchǵ Self-Government: Institutions and Practices

Unlike typical forms of nationalism, the Dene have not sought self-determination through the creation of a new state. They seek cultural sovereignty within the Canadian confederation and a political relationship with the colonial state that is based on autonomy and cooperation with the existing governments. Gerald Taiaiake Alfred's theory of Indigenous nationalism present in *Heading the Voices of Our Ancestors: Kanawake Politics and the Rise of Native Nationalism* is consistent with the Dene vision of self-determination. According to Alfred, Indigenous expressions of nationalism are "best viewed as having both a relatively stable core which endures the peripheral elements that are easily adapted or manipulated to accommodate the demands of a particular political environment" (Alfred 1995, 14). The Tłıchǵ vision of self-determination is an expression of the theory described in Alfred's work. The Tłıchǵ are internally resisting by creating a government that is founded on the unique Tłıchǵ worldview and values, yet they are expressing these values and constructing their governing intuitions in a manner that is consistent with the colonial government framework.

2.1 - Visions of Dene Nationalism – The Dene Declaration

One of the first widely known expressions of Dene nationalism occurred in the 1970's. The *Dene Declaration* was an expression of Dene nationalism that is consistent with Alfred's framework. At the second annual Joint General Assembly of the Indian Brotherhood of the NWT and the Métis and Non-Status Association of the

NWT, held at Liidi Koe (Fort Simpson) on July 19, 1975, over 300 Aboriginal delegates unanimously adopted the *Dene Declaration*. The *Dene Declaration* was a statement of rights that denounced colonization, and demanded recognition of the Dene as a self-determining nation:

We the Dene of the NWT insist on the right to be regarded by ourselves and the world as a nation.

Our struggle is for the recognition of the Dene Nation by the Government and people of Canada and the peoples and governments of the world. ...

And while there are realities we are forced to submit to, such as the existence of a country call Canada, we insist on the right to self-determination and the recognition of the Dene Nation...

What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene Nation (Dene Nation 1977, 3)

By “insist[ing] on the right to self-determination and the recognition of the Dene Nation”, the Dene were not seeking the establishment of an independent Nation. What they wanted was for Canada to recognize and accommodate their right to self-determination within the Canadian Confederation.

2.2 - Structures of Contemporary Dene Nationalism – Ṯcẖ Government

Following the Dene Declaration, the Dene Nation began treaty negotiations. The Ṯcẖ were part of these first negotiations along with five other Dene Nations and the Métis. Collectively they were referred to as the Dene Nation. After the Dene/Métis final agreement was rejected by the Dene Nation, largely due to the requirement to extinguish and surrender land rights and the absence of self-government rights, the five Dene Nations and the South Slave Métis began pursuing individual claims as opposed to the original territory wide Dene-Métis Claim

(Parliament of Canada 2005). The Tłıchǵ Nation's negotiations for a land-claim and self-government agreement began in earnest in 1993. The negotiations took nearly ten years resulting in a first draft initialed by the Chief Negotiators in September 2002. Rather than proceeding to the ratification process, they opened the Agreement for public comment and feedback. During the information exchange period that followed, the negotiators met with Indigenous groups, interest groups and the general public. The Tłıchǵ Agreement was revised as a result of overlap agreements and feedback and comments received during the information exchange period. The Chief Negotiators then initialed the revised Tłıchǵ Agreement in March 2003. On August 25, 2003, the Tłıchǵ Agreement was signed in Behchokö, exactly 82 years after Chief Monfwi signed Treaty 11. Prime Minister Jean Chrétien and many other dignitaries were on hand for the official signing. "What we see today is that in spite of the evolution of society, you have kept your culture and pride," said Chrétien. "This is the glory of Canada – we can be what we are and at the same time be part of the greater Canada." This formally started the ratification process.

The Tłıchǵ Nation ratified the Agreement with a Tłıchǵ citizen vote on June 26-27, 2004. 93% of the eligible voters participated and of those 92% voted in favor (Zoe 2005). After a tumultuous start in the House of Commons, that almost saw the Tłıchǵ Agreement defeated, The Tłıchǵ land claims and self-government act, Bill C-14 received royal assent on February 15, 2005. The Tłıchǵ Act, Bill C14, brought into law the Tłıchǵ Agreement.

The Tłıchǵ Agreement is both a land claims and self-government agreement constitutionally protected by section 35 of the *Constitution Act 1982*. It sets out the

terms of the government to government relationship between the Tłıchǫ Government, the Government of the NWT and the Government of Canada; it also sets out the rules under which the Tłıchǫ inherent right of self-government is recognized in its modern form, and it sets out a new order of government in Canada – Tłıchǫ self-government, that is recognized by the GNWT and the Government of Canada. The Agreement also provides for law-making authority over Tłıchǫ Citizens in Tłıchǫ communities and on Tłıchǫ lands. This includes aspects of education, adoption, child and family services, training, income support, social housing, and Tłıchǫ language and culture.

The Tłıchǫ Government is a legal entity, with a written Constitution that sets out its structure and the fundamental principles by which it is governed. The Tłıchǫ Constitution was developed at the same time that negotiations of the Tłıchǫ Agreement were taking place. The Constitution is the result of extensive consultation in Tłıchǫ communities over a five-year period. Tłıchǫ elder advisors oversaw the drafting and consultation. On August 13, 2000 the Constitution was approved by consensus at an annual assembly in Behchoko. The Constitution establishes the contemporary form of the Tłıchǫ inherent right to self-government and gives modern form to traditional governance principles. It also defines the Tłıchǫ Nation as being composed of four communities: Behchoko, Whati, Gameti and Wekweeti, with each community being a culturally unique and valued part of the Tłıchǫ Nation.

The Tłıchǫ Government, as established by the Constitution, is composed of three institutions – The Annual Gathering, the Tłıchǫ Assembly and the Chiefs Executive Council. The Constitution defines the accountability of each level of

government to the Tłıchǵo citizens and states that the various levels are required to act in a consistent manner with the principles prescribed in the Constitution and as required by Tłıchǵo laws. They are also expected to act in fairness and without discrimination or abuse, to have representation from each Tłıchǵo community on important decisions, to strive for consensus making, to allow for the full and free expression and participation of all Tłıchǵo, to protect lands, waters and resources including the conservation and enhancement of all living things and to respect the needs and interests of other Aboriginal peoples, their non-aboriginal neighbors and their governments (Tłıchǵo Government 2003, 2-3).

The highest institution of the Tłıchǵo Government is the Annual Gathering. The Annual Gathering is a meeting of all Tłıchǵo citizens. The gathering is held at least once a year in one of the four Tłıchǵo communities on a rotational basis. The purpose of the Annual Gathering is for all Tłıchǵo citizens to come together to share in the social, political and cultural activities. Matters discussed at the Annual Gathering include: nominations for Grand Chief, annual reports of the Tłıchǵo Government and its institutions, debate, consideration and approval of proposed amendments to the Agreement and Constitution and approval of motions from the Assembly. The Annual Gathering provides a forum for Tłıchǵo Citizens to ask questions, make recommendations and provide broad policy direction to the Tłıchǵo Assembly. The Tłıchǵo Assembly may convene other gatherings of all Tłıchǵo citizens as deemed necessary.

The Tłıchǵo Assembly is composed of thirteen members and is the principle authority for decision-making for the Tłıchǵo. It is formed on the principle of equal

representation from each Tłıchǫ community. Members of the Assembly are the Grand Chief, and the Chief and at least two councilors from each community.⁷ The Chief and assembly members are elected through community government elections and then formally appointed to the Tłıchǫ Assembly. A quorum of the Tłıchǫ Assembly is nine elected members, one of who must be the Grand Chief. It is the responsibility of the Tłıchǫ Assembly to protect and ensure good governance. To achieve such a goal they have the authority to enact Tłıchǫ laws in relation to all matters over which the Tłıchǫ Government has authority. The Assembly can create new offices, entities and institutions, and authorize them to perform particular functions and review their performances (Tłıchǫ Government 2003, 15-19).

The final institution of the Tłıchǫ Government is the Chiefs Executive Council (CEC). The CEC includes four elected members, one from each of the Tłıchǫ communities. The CEC takes direction from the Assembly and arranges for the implementation of Tłıchǫ laws. It oversees the management and administration of the affairs of the Tłıchǫ Assembly and is to take such actions as are necessary to ensure implementation of good government of the Tłıchǫ (Tłıchǫ Government 2003, 20-21). The CEC cannot usurp the powers of the Assembly or remove or replace members of the CEC.

Only the Grand Chief is elected by the full Tłıchǫ Nation. The Grand Chief is considered to be the successor to Monfwi. Since the selection of Monfwi as the leader of the Tłıchǫ Nation all leaders have been selected through a process that was imposed by the Government of Canada to head non-traditional forms of

⁷ The Chief and councillors are elected to the Tłıchǫ Community Government through their local election by-laws

Government. The Grand Chief is the continuation of the line of leaders of the Tłıchǫ Nation. The Grand Chief is responsible to provide overall political leadership, act as a principle spokesperson, promote the fundamental principles of the Tłıchǫ Constitution and encourage the resolution of internal disputes and conflicts (Tłıchǫ Government 2003, 22). Decisions at CEC and Assembly meetings are not possible without the attendance of the Grand Chief.

The Tłıchǫ Government represents a big step towards the vision of Dene nationalism that was sought almost 40 years earlier. The Tłıchǫ Government is a third order of government in Canada, alongside federal and provincial/territorial, and the Tłıchǫ have achieved some measure of independence through their new government. The “relatively stable core” of their government, is rooted in Tłıchǫ values and directed by Tłıchǫ Elders. It is firmly entrenched in the political values of previous generations yet it also accommodates current political realities.

2.3 - Dene Nationalism in Practice – Resolution of the Leadership Dispute

The first elected successor to Monfwi as Grand Chief was George Mackenzie. Grand Chief Mackenzie, a Tłıchǫ citizen born and raised in Behchoko, was elected to office in October 2005. Not long after the Tłıchǫ Government was in the midst of a leadership dispute that would escalate to a Constitutional challenge heard by the Supreme Court of the Northwest Territories. The event strained the young government both financially and politically. It was also an important assessment of Tłıchǫ self-government as it forced the testing of both the principles of the Constitution and the respect of the Crown.

The dispute formally began at a CEC meeting on September 24, 2007 when, during an in-camera session, three Chiefs challenged Grand Chief Mackenzie's leadership.⁸ In an affidavit sworn by Grand Chief Mackenzie, he reported that during the in-camera session, Chief Lafferty of Behchoko, Chief Gon of Gameti and Chief Nitsiza of Whati, demanded his resignation (Mackenzie 2008, 3). Mackenzie refused; it was his position that he was elected by the Tłıchǫ people to represent their interests and he believed he was doing that to the best of his ability. He felt that resigning in the middle of his term he would betray the confidence the Tłıchǫ people who had elected him Grand Chief.

The three dissident Chiefs, still insistent on the resignation, sent two letters to Grand Chief Mackenzie on October 1, 2007. The first letter stated "we have had two in camera meetings with you to discuss your lack of overall leadership for the Tłıchǫ Nation...We are requesting that you voluntarily resign your position as the Grand Chief of the Tłıchǫ Nation" (Lafferty, Nitsiza, Gon and Football 1 Oct. 2007). The second called for a CEC meeting on October 10 in Behchoko to deal with the matter of the request for Mackenzie's resignation.

The three Chiefs made their demand for Mackenzie's resignation public on October 3, 2007 when they made statements on CKLB, a popular Yellowknife radio station that were broadcast locally in all 34 communities in the NWT. Mackenzie responded with his own interview on CKLB on October 8th when he explained his version of the events that had occurred in the preceding weeks.

⁸ In-camera would require that the discussions not be included in the official minutes of the CEC meeting

The three Chiefs attempted to hold a CEC meeting the following day, October 9th in Yellowknife. The Grand Chief responded that he preferred to meet on October 10th in Behchoko as previously agreed. Since the meeting convened by the three Chiefs in Yellowknife did not have a quorum, members of the administration did not attend and take minutes. Chief Lafferty responded to the absence of the administration in an email that stated, "I am sorry he feels he has to do things on his own, which is becoming a problem. The Government cannot move forward like this" (Lafferty 2007). The three Chiefs did not attend the scheduled CEC meeting the following day in Behchoko and therefore the meeting was cancelled. The three Chiefs were not satisfied however, and took further action in the form of a press release trying to force Mackenzie's resignation by refusing to "support future CEC meetings" (Tłıchq Government 9 Oct 07).

On October 10th, the same day as the cancelled Behchoko CEC meeting, Grand Chief Mackenzie responded to the October 1st letter from the three Chiefs in a letter of his own. The letter stated:

I have no intention in resigning from my position as the Grand Chief. I was elected as Grand Chief with a vote of 744 and I intend to fulfill my 4-year term. I have the responsibility to facilitate and encourage the resolution of internal disputes. Therefore I will be contacting the Assembly Members to request an Emergency Assembly Session (Mackenzie 10 October 2007).

He stated in the letter that the Emergency Assembly Session was to deal with the three Chiefs' demand for his resignation and to address their refusal to attend meetings. To that effect, he sent letters to each member of the Tłıchq Assembly, requesting an Emergency Assembly Session to be held in Behchoko on October 22-

26, 2007. All members of the Assembly responded in writing, agreeing to the Emergency Session with the exception of the three dissenting Chiefs, Lafferty, Nitsiza and Gon (Mackenzie 10 October 2007).

In the days leading up to the Emergency Assembly Session, the 3 Chiefs suggested that the Assembly could not or should not meet. They argued that the meeting was not lawful, that it was not called properly; they insinuated that the signatures of Assembly Members were forged; they claimed it was unnecessary and threatened not to attend (Mackenzie 10 October 2007). Despite their objection, the emergency session went ahead as planned. The three Chiefs were in attendance.

At the opening of the Emergency Meeting the Grand Chief welcomed and thanked all the members of the Assembly for attending. He stated that the purpose of the meeting was to resolve their disputes in a good and gentle way with the help of the Creator (Tłıchq Government 25, Oct. 2007, 3). Following his opening comments, a Speaker was appointed to oversee the meeting. Chief Lafferty then began his opposition:

We are not going to sit with you and the people that arrive here for the emergency meeting. ...How can we have a meeting with him since we asked for his resignation? We cannot have him as our Grand Chief. ...The leaders and whoever is in Monfwi's position will hold the people together. He broken (sic) the law and did not live up to the big responsibilities he had in his role. ...They said whoever is the successor to Monfwi will have a powerful voice and represent all the people. ...It doesn't seem that way. ... I will conclude my comment and we will leave after the other two chiefs have spoke (Tłıchq Government 25, Oct. 2007; 3-4-5).

Chief Gon and Chief Nitsiza spoke, echoing Chief Lafferty's dissatisfaction with the Grand Chief. Following their statements, the three Chiefs walked out of the

Emergency Session. At the end of the first day the remaining Assembly Members met informally to discuss ways to get the CEC back on track. On day 2 of the Emergency meeting, the three Chiefs returned but left shortly after the meeting began. The Assembly decided that the Tłıchǵ people should be given an opportunity to speak. Many Tłıchǵ citizens came forward, wanting to know why the three Chiefs had demanded the Grand Chief's resignation. They were very upset by their actions and talked about the need for healing and their desire for Elders to participate in the decision making process. After the Emergency Meeting the Grand Chief continued to hear from upset citizens who were concerned that the three Chiefs had not taken responsibility or apologized for their actions. They all wanted the next Assembly Session to be about how the problem could be fixed so the Tłıchǵ Government could function properly again (Mackenzie 10 October 2007).

The next regularly scheduled session of the Tłıchǵ Assembly was held in Whati on November 7-8, 2007. Prior to this, the three Chiefs attempted to stop the meeting. Their reasoning was: it was too soon after the Emergency Session, Chief Lafferty's health was poor, the expense of having another meeting, and the need for other things to happen prior to another session of the Assembly. The Assembly members did not cancel the meeting as requested by the three Chiefs. They stated it was their desire to resolve the problem so there could be peace among the members (Mackenzie 10 October 2007).

The session went ahead with all Assembly Members in attendance except Chief Lafferty. The comments from each of the members focused on the need for resolving the dispute so they could once again work together and do the important

work of implementing self-government. It was suggested that a law should be put in place to ensure the good working relations of the government. On the second day the Assembly unanimously passed the *Future Chiefs Executive Council Meetings Law*. The discussion and drafting of the law went on over the two days of meetings. The law provided that the Tłıchǵ Assembly would temporarily exercise all powers, authority and responsibility that had been delegated to the CEC. There would be no more meetings of the CEC until further notice. The law also established the Elders Advisory Council and directed the Tłıchǵ Executive Officer (TEO)⁹ to plan a series of workshops to promote healing amongst the leaders (Tłıchǵ Government 8 Nov. 2007, Section 15). The Elders Advisory Council was to travel with and provide advice and guidance to the Assembly. The Assembly decided it was necessary to pass the law because it had become clear that the CEC was no longer functioning and they did not have confidence that the CEC was capable of acting in accordance with Tłıchǵ traditions customs or laws (Tłıchǵ Government 7 Nov 2007, 95).

In a letter dated March 13, 2008, the three Chiefs challenged the validity of the *Future Chiefs Executive Council Meetings Law 2007*. The letter was sent to Ms. Bertha Rabesca Zoe, legal council and laws guardian, for the Tłıchǵ Government. In the letter the three Chiefs stated:

We do not believe the Tłıchǵ Assembly has the power to pass the *Future Chiefs Executive Council Meetings Law* or to suspend the powers of the Chiefs Executive Council. In our view the *Future Chiefs Executive Council Meetings Law* is invalid and should be declared so by the Tłıchǵ Assembly (Lafferty, Nitsiza & Gon 13 March 2008).

⁹ The Tłıchǵ Executive Officer (TEO) is the highest position in the Tłıchǵ Government Administration

The letter went on explaining that the three Chiefs would exhaust all internal processes to ensure the commitment to good governance was fulfilled. They further commented that if their concerns were not addressed internally they would have no choice but to take it to the Canadian judicial system (Lafferty, Nitsiza & Gon 13 March 2008).

The Tłıchǫ Constitution directs how to deal with a challenge to a Tłıchǫ law. Section 14.3 of the Constitution states “in the absence of a Tłıchǫ law providing for a challenge to the validity of a Tłıchǫ law, such a challenge shall be by way of an appeal to the Tłıchǫ Assembly” (Tłıchǫ Government 2003). The Assembly set about the process of developing an appeals process. This marked the first occasion that section 13 of the Constitution had been invoked.

The Tłıchǫ Assembly retained independent legal counsel, Mr. John Donihee, to assist in the development of an appropriate and fair process to hear the appeal. Mr. Donihee took suggestions on the process from the Assembly Members, including the three Chiefs bringing forward the challenge. The process suggested by Mr. Donihee involved the Applicants, (the three Chiefs), and the Respondent, (the Tłıchǫ Government), be permitted to retain legal counsel and file affidavits and written submissions to the Assembly. The Tłıchǫ Assembly unanimously adopted the process recommended by Mr. Donihee

The Assembly scheduled a Special Assembly Session on September 23-25, 2008 in Behchoko to hear the challenge. It was a public process, broadcast on local radio, and was well attended by Tłıchǫ citizens. The first day of the hearing Mr. Donihee made a presentation to the Assembly explaining the process and answering

questions from Assembly members. On the second day of the hearing, legal counsel for the three Chiefs and the Tłıchǵ Government made submission to Assembly members. On the third day the Assembly considered the appeal and made its decision. The decision to uphold the validity of the *Future Chiefs Executive Council Meetings Law 2007* passed by a vote of 10-3 (Zoe 5 March 2009). Pursuant to section 13.4 of the Tłıchǵ Constitution the Assembly's decision was intended to be final and conclusive (Tłıchǵ Government 2003).

The arrangements for this challenge to be heard are unique but they are the result of the Tłıchǵ Constitution. The three Chiefs were not satisfied with the decision of the Assembly and decided to take their challenge to the Supreme Court of the NWT. Justice J.E. Richard heard the case in Behchoko, May 21 – 22, 2009. The court made clear that they were not deciding which side in the 2007 dispute was right or wrong or whether either side was indeed right or wrong (Supreme Court of the Northwest Territories 2009; 8). The court was asked to decide if the *Future Chief's Executive Council Meetings Law 2007* was consistent with the Tłıchǵ Constitution. In bringing forward their challenge, the three Chiefs did not acknowledge the decision of the Assembly in September 2008 on the validity of the law. In the decision the judge stated:

These are the early days of the modern form of Tłıchǵ self-government. It is an order of government in Canada. In the context of: a) the requirement in the Tłıchǵ Agreement of 2003 that the Tłıchǵ people develop and approve a Constitution for their Government and to include therein provisions for the challenging of the validity of Tłıchǵ laws, b) that the Tłıchǵ have indeed done so in section 13 of their Constitution, and c) the first occasion on which the validity of a Tłıchǵ law was challenged involved a very detailed comprehensive process mutually agreed to by the parties

including these Applicants. It is of concern that this Court is being asked to simply disregard the fact that the Tłıchǫ have not only devised a constitutional mechanism for resolving a dispute but have indeed utilized it. (Supreme Court of the Northwest Territories 2009; 13)

The final decision of the judge was that the issue brought forward by the three Chiefs had already been decided upon through a process chosen by the Tłıchǫ and it was not something that the court could ignore or overturn. This decision was a victory not only for the Tłıchǫ Government but also for Indigenous self-government. The Supreme Court confirmed the Tłıchǫ Government's right to decide on its own matters according to its own developed process and refused to interfere.

2.5 - Conclusion – Dene Nationalism – Institutions & practice

The purpose of this chapter has been to illustrate how the Tłıchǫ have organized and formulated their government and to demonstrate by example how their self-government works in practice. As noted at the outset of the chapter, the Dene have sought a political relationship with Canada and the GNWT that is based on autonomy and cooperation with existing institutions. The Crown has respected the autonomy of the Tłıchǫ by respecting their right to develop their own Government and institutions and recognizing it as an order of Government in Canada. The Supreme Court's decision demonstrates that this order of government and its autonomy will be respected. The following Chapter will explain how the Tłıchǫ are also achieving cultural sovereignty through the implementation of their Government by analyzing the practices of the Tłıchǫ Government and demonstrative they are reflective of the *relatively stable core*. In other words the ontological

assumptions about governance in which Tłıchǫ Elders attempted to firmly root the Tłıchǫ Government are being expressed and practiced through their law making authority and the self-government powers.

Chapter 3 – Tłchq History & Ontology

If we replace something [old] with something new we should make sure that what is good from the old is added to the new (John B Zoe, DDBE 1991; 67)

3.1 - Governance and Ontology

Tłchq governance has a powerful presence in the everyday lives of citizens. The Tłchq have stated that the purpose of their government is to protect and promote the language, culture and way of life of the Tłchq (Zoe 2007, 5). Critics of self-government have argued that the political cultures of liberal democratic states and Indigenous nations are not reconcilable (Alfred 2005, 155). This thesis, in part, analyzes the extent to which the Tłchq have used self-government as a tool to protect, recover, revitalize, adapt and operationalize Tłchq ontological assumptions about governance. The following chapter outlines those ontological assumptions using the *Tłchq Cosmology* as the source of values. As discussed in Chapter 1, the *Tłchq Cosmology* includes a collection of teachings and history divided into a number of eras, each with its own unique law. The laws contain ontological assumptions about Tłchq governance.

There are differing ways of looking at the world, interpreting history, responding to change and situating oneself in the world. This study of truth and reality is called ontology. This chapter explores the ontological assumptions of the Tłchq and seeks to locate these assumptions in relation to governance. It does this in an effort to create a basis for evaluating current governance practices.

3.2 - Documenting History: The Art of Story-telling

As is common with oral cultures, the Tłıchǫ have recorded their history in stories shared through the art of story telling. Story telling has been criticized as being fiction; however, for the Tłıchǫ, it is the means in which vital knowledge is passed on to ensure the survival of their history. The knowledge is passed on through these oral narratives and is used to understand personal experiences. Although the particulars of a story may change over time, the values communicated in the story remain constant. The stories are connected to geographic locations making the Tłıchǫ territory a tapestry of stories that constitute Tłıchǫ history (Andrews 1998, 309). They inform the Tłıchǫ understanding of how they came to be, their relationships with others and their development as a people.

The Tłıchǫ began researching and documenting their cosmology while negotiating the Tłıchǫ land claim and self-government agreement. The Tłıchǫ Government website explains that the purpose of the cosmology is to "map" the shared experiences of the Tłıchǫ people, initiate discussion about what it means, and to apply this knowledge to modern organizations.

3.3 - History & Cosmology: The development of laws & values through relationships & agreements

The Tłıchǫ Cosmology is separated into a series of eras. Each of these eras contains a significant relationship marked by conflict, a negotiation of differences and a resolution of difference (Gibson 2008, 53). From each era are identifiable values, principles and rules that are carried forward and engaged and re-engaged in each subsequent era. Each new Agreement is an extension of old agreements

signaling the continuity of cultural practice and values (Zoe 2006; Gibson 2008, 54). The agreements shape the relationship of Tłıchǫ to others.

The hybrid account of political history of the Tłıchǫ presented here is inclusive of the Tłıchǫ Cosmology as described in a lecture by Zoe (2006), anthropological studies of the Dene documented by Helm (2000 & 1994), oral history as authored by Blondin (1997), a research project on Traditional Tłıchǫ Governance conducted by Legat (2000) and the Cosmology as documented by Gibson (2008). The history, as outlined in the following pages constitutes a basis of Tłıchǫ ontological assumptions about governance.

3.3.1 - Pre-contact - Floating Time & the Law of “Co-existence”

The first era in Tłıchǫ cosmology is floating time (Zoe 2006). The floating time period existed before the imposition of Christianity. In this era animals and people were like one. They could change form and shared names, language, stories and dances. The stories from this period contain teachings of how to live well and reflect the culture and strong values of the Tłıchǫ (Blondin 1997).

There came a time when animals became so big and powerful that they were a threat to the humans. People were so afraid that they would not leave their tents and were suffering miserably because they were starving. Yamoozhah¹⁰ was sent by the Creator to resolve the conflict between the people and animals and establish order. He met with the people and animals to listen to the problems they were facing. Using his great medicine power he facilitated the division of animals and

¹⁰ Depending on the Region Yamoozhah may be referred to as Yamoria. Yamoozhah is the name typically used by the Tłıchǫ people.

people. Yamoozhah gave new jobs to the animals. For example, he made the eagle a fisherman so the people could be safe. He instructed the people and animals how to live together so both could survive. The people and animals now understood the reciprocal relationship they had with one another. Yamoozhah's actions brought understanding and peace. The law that was carried forward from this conflict was that of co-existence. (Blondin 1997, 18; Legat 2000, 8; Zoe 2006). As Yamoozhah brought peace between animals and humans, the Dene learned about peacemaking, social relationships, obedience to laws and language and the importance of knowing and respecting history (Gibson 2008, 64). Legat quoting Elder Jean Wetrade, recounts a story that credits Yamoozhah with establishing order by giving the people and animals rules to live by so there would be no conflict and people would know how to act (2007, 67).

This story demonstrates that the law of co-existence is about ensuring peaceful relations between groups by establishing laws to live by that bring order and reduce conflict. Elders refer to this story as an indication that for leaders to do good work, they must work together peacefully (Legat 2000, 30).

3.3.2 - Incipient contact - 1715-1780 & the Law of "Peace & Respect"

The next era in the Tłı̨chǫ Cosmology is incipient or proto contact. Whereas the previous era was beyond temporal reckoning, this era is the beginning of linear time in Tłı̨chǫ history. European historical documents, particularly unpublished HBC documents, confirm the Tłı̨chǫ oral history of this time period and date it approximately 1715 – 1780 (Helm & Gillespie 1981, 9). Although the European fur

traders did not have direct contact with Tłıchǫ people, they were affecting the behavior of other neighboring tribes that in turn affected the Tłıchǫ experience (Helm & Gillespie 1981, 10). The neighboring tribes, unlike the Tłıchǫ, had guns and repeatedly attacked the Tłıchǫ forcing them to retreat from traditional camps on the edge of their territory. The retreat of the Tłıchǫ and their eventual retaliations are the source of the law from this time period

As fur traders expanded north to areas rich with fur bearing animals, they came into contact with the Cree and Chipewyan whose traditional territory was just south of the Tłıchǫ. With the fur trade came new practices of pillaging and scalping. The Tłıchǫ, in jeopardy of extinction once again gathered and moved North of Whatı to an area called Edzoti (Zoe 2006).

The conflict with the Chipewyan and its eventual resolution is the source of the law of peace and respect. Although the Tłıchǫ had found safety north of Whatı, the area could not completely sustain them for extended periods of time therefore the Tłıchǫ were forced to send hunting parties northeast to the barren lands to harvest caribou. The Tłıchǫ needed the caribou not only for food, but they required their hides for clothing and shelter. Hunting parties were careful to not run into Akaitcho and his group, one of the neighboring Chipewyan tribes. On the return of one hunting party lead by Edzo, he decided that the conflict had to end. Edzo and his group had slipped past Akaitcho and his men on their way back to Edzoti but Edzo decided that he could not live like this forever and called a meeting of his hunting group to hear what they thought. Most of Edzo's followers thought it was

crazy to confront Akaitcho, however, Edzo believed confronting Akaitcho and ending the conflict was best for the Tłı̨chǫ as a whole. Edzo informed his followers that those who wanted to return to their camp north of Whati could. Those who headed back to Edzoti were careful to travel only at night so as to avoid detection. Edzo and a few men headed back towards Akaitcho's camp determined to end the conflict. Zoe recounts the events that followed:

When he got to the camp of the enemy, Edzo talked with his sister, who was married to K'atehwhii. Together they made a plan for Edzo to enter the camp. The next day, Edzo and his brothers entered the camp. They used their power to control things such as the enemies' minds and the metal in the camp. It is said that when Edzo spoke of peace, his words were so strong that the trees started to shake and they cracked. Finally, Akaitcho agreed with Edzo and peace was made. The agreement was celebrated with a dance of three days. It is to this day that Tłı̨chǫ people live under the *nàowo*¹¹ of Edzo which is to live peacefully with neighbors (Zoe 2006).

The law of peace and respect that is taken from this time period is an extension of the previous time period. Helm documented the narratives of this event as given by four Tłı̨chǫ informants from 1967-1974.¹² Central to the narratives was Edzo's great power as an orator. It was his speech that brought peace between the two warring tribes. The conclusion of a peace treaty followed by three days of dancing serves as an indicator of reconciliation between the two groups. The dancers left a great circle in the fragile landscape that may still be seen today (Helm & Gillespie 1981, 18). The Agreement of peace that was struck

¹¹ *nàowo* is defined as idea, society, culture, custom, way of life, conduct behaviour, deeds, perspective, law, attitude. (DDBE, 78)

¹² The informants were Johnny Huskey, Pierre Mantla, Joseph Naedzo and Vital Thomas

between Akaitcho and Edzo, like the great circle left by the dancers still exists today. In 2002 the Akaitcho Treaty 8 Government brought forward a court case against the Tłıchǫ and federal government regarding the boundary between the Tłıchǫ and Chipewyan. An agreement was reached whereby the land would be shared without reference to boundaries. This new agreement was an extension of the original peace agreement between Akaitcho and Edzo (Zoe 2002). This suggests that words and verbal agreements are considered sacred and therefore must be followed and respected (Legat 2000, 55).

3.3.3 - Early Contact – 1780 – 1852 and the law of the “Collective”

This early contact period is marked by two significant events: the establishment of the fur trade, and the introduction of Christianity. Tłıchǫ oral history records the first non-Indigenous men arriving on the south shores of Lac La Martre to be approximately 250 years ago (Helm 2000, 247). A few Tłıchǫ men, who were wintering on the north shore and living off fish, since there were no caribou that winter, went to visit the men. Through signing, the fur traders communicated to the men that they would trade goods for furs. They sent the men back to their camp with an ice chisel. The ice chisel was considered an incredible implement at the time, as they typically had to use a horn to chisel through the thick ice to access the fish that were providing their only sustenance. Everyone began trapping marten so they too could have their own ice chisel. European records document Laurent Leroux opening a trading post at Lac La Martre in 1789-1790 (Helm 2000, 246)

Until the 1850's the Dene exposure to Western culture was largely limited as it was the policy of the HBC to only pass along cultural practices that improved their efficiency as a fur providers (Helm 2000, 115). When the Tł̨ch̨q̨ encountered Roman Catholic missionaries, they were weakened, both physically and culturally, by disease and epidemics that devastated population stability (Helm 2000, 115). They did not resist Christianization and were quickly converted (Helm 2000, 115).

The arrival of the fur trade required the establishment of an agreement between traders and trappers to ensure optimal relations. The fur trade shifted the economy of the Tł̨ch̨q̨ from one of subsistence to one characterized by the acquisition of externally produced goods by means of trade. The Tł̨ch̨q̨ leaders knew that if the trappers acted as individuals they would be vulnerable to exploitation by fur traders. A new agreement was established with the fur traders that dictated trade to occur through a *donek'awi*¹³ (Helm 2000,185). Individuals had a choice of which *donek'awi* they would go with. Once they forged these alliances they would hand over all their furs to this individual for trade with the Hudson's Bay Company (Helm 2000, 186). Zoe explains how this occurred:

So then you get into this fur trade era and that was the collective period. Collective means that we do it together, we do it as one. And we not only do it as one but we have a leader that does the same thing. The fur trade brought people together yearly at the forts to trade furs and meet with the *ek'awi* (the Hudson's Bay Trader). The *ek'awi* build their stone chimneys, still seen in the communities, where people would go into meet them. As we approached a fort we would shoot bullets up into the air to announce our arrival. On arrival a dance would always happen

¹³ *donek'awi* is defined as the peoples trader, this was a very high man in Tł̨ch̨q̨ society at the time of the fur trade (Helm, 2000: 185)

and tea would be drunk. This is the start of the tea dance. Through trade, we got good fishnets, bullets and knives. In this period we began to explore the area more and names of the people began to appear on the land (Zoe 2006).

In traditional Ṭḥcḥ governance, decisions are made by leadership through a methodical process of consensus that brings everyone to one mind and one voice. To achieve this consensus, every individual's position is considered and the group works towards a solution that would meet the needs and interest of everyone in the group. Everyone is involved in the decision making to ensure that no one in the group feels oppressed. This maintains the autonomy and equality of all members of the group. Vita Thomas recalled for June Helm how leaders were selected before they started using elections. He describes a process where by all the men would gather and sit with the existing leader. All the men who gathered would then discuss who should be the next leader. The "passing of the mantle...simply reinforced rather than replaced or conflicted with the essential process of consensual male decision by which leaders of any level or duration had traditionally been selected" (Helm 2000, 187). Father Jean Amourous, who accompanied the Dogrib on a fall hunt in 1959 describes how decisions are made: "when a question arose, everybody said what he thought, then the leader made a decision, taking the discussion into account. Once the leader had stated his decision, no one argued, even if not in agreement initially" (Helm 2000, 184). This signifies how the Ṭḥcḥ make decisions as a collective

3.3.4 - Stabilized Contact 1852 – 1921 & the Law of “Unity”

Now that the Dene were seen by Europeans as having been civilized by the missionaries, more and more Europeans wanted to access the north to harvest fur bearing animals and explore for natural resources. When it was discovered that the north was rich with oil, metals and other non-renewable and renewable resources, the Canadian Government quickly signed treaty with the Dene. The closing of this period is marked by the signing of Treaty 11 in 1921 and the end of Tłı̨chǫ governing themselves without interference.

The requirement for an agreement between the new settlers and the Tłı̨chǫ that resulted in the signing of Treaty 11 is the source of the law of Unity in this time period. One individual was chosen to speak on behalf of the Tłı̨chǫ people in treaty negotiations with the Government of Canada. Until this time period there was no single leader for the Nation, decisions that had an effect beyond a hunting group were made by a group of Elders who would meet to discuss the issues and come to a consensus (Gibson 2008, 69). Treaty negotiations marked a shift in the politic of the Tłı̨chǫ, as they had to choose one leader to speak on their behalf. Men who had served as *donek’awi* were chosen to be spokes persons or *Kw’ahtia*¹⁴ and the biggest man of them all Monfwi became the head leader or *kwahti’dee*¹⁵ (Helm 2000, 186). Monfwi was chosen after the various leaders discussed things with and listened to their followers (Legat 2000, 37). The resulting law that came out of this time period is one of unity. Zoe speaks of how Monfwi was chosen as a leader for the Tłı̨chǫ.

¹⁴ Kw’ahtia is Tłı̨chǫ for chief (DDBE, 66)

¹⁵ -dee is a suffix meaning great or big. (DDBE, vii)

Close to 1921, people said, well the treaties are going to be here, we need somebody to talk for us. And so that was the first time they selected Yameeneeko. They said: you talk for us over here, so he took it and said well, I'm a little too old now, I'm not as young as I used to be but there is Monfwi who is a lot younger, he's a lot more outspoken and he knows everything about his history so I'm going to now give it to him. So the collective gave leadership to Monfwi and Monfwi represented us. So now he's going to speak on behalf of everybody. A representative means that he is going to represent the collective (2006).

3.3.5 - Contact – 1921 – 1990 & the law “Strong Like Two People”

The name of the law, “strong like two people” was coined by Elder Elizabeth Mackenzie over twenty years after Chief Jimmy Bruneau made an agreement about education with the Government of Northwest. As a young man, long before he would become chief, a young Bruneau encountered researchers and witnessed the signing of Treaty 11. He saw firsthand the non-aboriginal world and the effect it would have on his people. In 1936, Bruneau became Chief and he witnessed the children being sent away to residential school to learn to read and write in English. He also saw the negative impact suffered by children who were forced to leave and the families they left behind. Chief Bruneau began lobbying the government so that a school could be built in the community. In 1972 at the official school opening Bruneau said,

I have asked for a school to be built on my land and that school will be run by my people and my people will work at that school and children will learn both ways, our and white man's way (Zoe 2007, 19).

In 1989 the GNWT transferred jurisdictional authority of education to the Tłı̨chǫ through the Dogrib Divisional Board of Education. What the Tłı̨chǫ inherited were schools that were modeled after their southern counterparts with transient

teachers. The community wanted significant changes and a process began to redefine the schools to meet the needs of the nation's children and the future generations. In 1991 a number of Elders and youth gathered to validate a mission statement for education. At the meeting the Elders reflected on their past, in particular the vision of Chief Jimmy Bruneau, and discussed how this could influence their future. The Elders repeatedly spoke of the strength of an individual who knew everything about the white culture and who equally knows Tłıchǫ culture. The Elders related it to being two people and felt that there could be no greater and stronger person than one person who has the knowledge of two cultures (DDBE 1991, 41). Elizabeth Mackenzie's words became the philosophy for Tłıchǫ education: "If the children are taught in both cultures equally they will be strong like two people" (DDBE 1991, 43).

The "strong like two people" law was a guiding principle during the negotiations of the Tłıchǫ Agreement. The Elders, who were rooted in their language, culture and way of life, affirmed that they were coming from a place of cultural strength and insisted that anything "new" that was to be introduced, be rooted in this principle that would be recognized as the foundation (Zoe 2008: 2-3). In Zoe's (2008) Convocation address, when he was awarded an honorary PhD, he advised students to "stand in your own historical strength; learn from the rest of the world to converse, so that you become strong like two people" (4).

3.3.5 – Recognition – 1990 to present

In 1992 the Tłıchq̓ entered into negotiations with the Government of Canada and Government on the NWT to settle their land claim and self-government agreement. The resulting agreement, recognized by Canada, the GNWT and other Aboriginal Nations, became effective on August 4, 2005. It is codification of the Tłıchq̓'s inherent right to self-government. It gives the Tłıchq̓ the power to control their governance and their lands. Governance is a key component of the Agreement. The Tłıchq̓ have stressed that the purpose of the Agreement is the protection and promotion of Tłıchq̓ language, culture and way of life (Zoe 2007, 5). By way of the Agreement it is recognized that the Tłıchq̓ have the inherent right to decide on “matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions” (Canada 1995, 3).

3.4 – Implementation of Self-government - Survival through cultural revitalization

One might ask, what is the importance of ontology in self-government or self-determination. Alfred (2009) suggests the survival of Indigenous peoples as a unique society rests on their ability to revitalize their traditional cultures (9). He further argues that the path to indigenous cultural revitalization can be found in the traditional teachings (Alfred 2009, 9). The *Tłıchq̓ Cosmology* is just that, a collection of traditional teachings that reflect the traditional culture of the Tłıchq̓. Much like Alfred's suggests the Tłıchq̓ are not using a strict interpretation of traditional teachings but a true embracing of the values behind them in a way that is flexible in response to their changing political reality (Alfred 2005, 19).

Chapter 4 – Small Acts of Freedom

“I think the Constitution for the Tłıchǵ people has to be who we are. We are Tłıchǵ. We have values. We have a way of life. We have a language. We have a culture as who we are. We do not want to jeopardize who we are for young people in the future” (George Mackenzie 23 September 2008, 40).

4.1 – Small Acts of Freedom

In the essay *The Struggles of Indigenous Peoples for and of Freedom*, James Tully highlights the means through which Indigenous people are resisting assimilation and colonization; through freedom of thought and action, they are protecting, recovering, revitalizing, adapting and operationalizing ways of being that are uniquely Indigenous (Tully 2001, 59). Self-government creates a political space wherein Indigenous people have the right to “govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions” (Canada 1995, 3). The political space created by self-government - and the powers gained - are being used to create Indigenous governments that are rooted in their ontological assumptions about governance. This *cultural resistance* to colonization and assimilation provides an opportunity to re-establish Indigenous ways of governing: reinstating ways of governing that are uniquely Indigenous is a small act of freedom. This chapter illustrates how, through the implementation of the Tłıchǵ Agreement, the Tłıchǵ are restoring their unique ways of governing.

The Tłıchǵ are using cultural resistance to defend against colonization and assimilation; they are engaging in small acts of freedom and reinstating Tłıchǵ

ontological assumptions about governance. While self-government has forced the Tłıchǵ to adopt colonial structures and processes, it has also returned to them a measure of control over their lives and lands. They are using the political space created by the Tłıchǵ Agreement to implement their unique values of governance, adapting their traditional ways of governing to accommodate their current political realities.

4.2 – Cultural Resistance: Implementing self-government rooted in the stable core.

The Tłıchǵ Agreement imposes governing structures, such as the Tłıchǵ Assembly and Chiefs Executive Council that are not strictly reflective of traditional Tłıchǵ Governance. It also mandates the use of foreign instruments of governance such as laws, policies and directives. However, the imposed colonial self-government infrastructure does not prevent the Tłıchǵ from restoring their unique ways of governing. Through freedom of thought and action the Tłıchǵ are able to govern in ways that are rooted in a *relatively stable core* (Alfred 1995, 14). That relatively stable core is rooted in the Tłıchǵ ontological assumptions about governance found in the *Tłıchǵ Cosmology*.

The following sections demonstrate that the Tłıchǵ are adapting their traditional ways of governing to accommodate the processes and structures imposed through self-government, and finding expression of their unique ontological assumptions about governance through their decisions and actions.

4.2.1 – The Law of Co-existence

Chapter 3 highlighted the story of Yamoozhah’s resolution of the conflict between humans and animals, demonstrating that the law of co-existence is rooted in the establishment of peaceful relations through laws that bring order and reduce conflict. This time period is also characterized by the importance of social relationships, obedience to laws and language and the value of knowing and respecting history.

In resolving the leadership dispute, the Assembly demonstrated the principles of the law of co-existence. The Assembly attempted to re-establish peaceful relations by passing the *Future Chiefs Executive Council Meeting Law 2007*. In discussions leading up to adoption of that law, the Assembly Members discussed their intentions at length. They felt that the conflict between the Grand Chief and the 3 dissident Chiefs could be resolved by imposing a good law, involving the elders, and making every effort to “work together in good faith” (Tłıchq Government 7 Nov 07, 11; Tłıchq Government 7 Nov 07, 77). Assembly Member Ernie Smith reflects well the sentiments of the Assembly in saying that the purpose of the law was “to ensure peaceful relations and the good operating of the government” (Tłıchq Government 7 Nov 07, 76). Just as Yamoozhah had done years before, the Assembly created a law governing social relations in an attempt to resolve the conflict and restore order to the government.

The aim of the *Future Chiefs Executive Council Meeting Law 2007* was to govern the social relations among the members of the Chiefs Executive Council. The disagreement among the three dissident Chiefs and the Grand Chief was creating

great unrest (as had the conflict between the humans and animals in the story of Yamoozhah). The affidavits of Grand Chief George Mackenzie & Chief Leon Lafferty reflect a government in crisis; very deep disagreements had resulted in leadership being unwilling or unable to work together (23 Sept 2008, 34). The Assembly Members discussed the importance of a law that would bring the leaders to work together and get back to their important responsibilities under self-government (Tłchq Government, 7 Nov 07, 11 & 77). They believed the law would restore peaceful relations among the leaders (Tłchq Government, 7 Nov 07, 71). The *Future Chiefs Executive Council Meeting Law 2007* aimed to ensure peaceful relations in three ways: firstly by assigning the Tłchq Assembly to carry out the work of the CEC, secondly by ensuring Elders played a pivotal role in the business of the Tłchq Assembly and finally by repairing the broken relationship among the Chiefs.

The Assembly felt that the only mechanism through which the leaders could get back to the work of self-government would be for the Assembly to assume the work of the Chiefs Executive Council. By refusing to attend meetings of the Chiefs Executive Council, the three dissident Chiefs had crippled the Tłchq Government (Tłchq Government 9 Oct 2007). With the Chiefs Executive Council inoperative, and unable to implement Tłchq Laws, the Assembly felt the *good governance* of the Tłchq Government was in jeopardy. Their solution (as outlined in Section 12 & 13 of the law) was for the Assembly to assume the duties and responsibilities of the Chiefs Executive Council. The law reads:

The Tłchq Assembly, pursuant to its responsibility and authority to implement the Tłchq Agreement and to protect and ensure good government of the Tłchq Government and its rights, titles and interests, and in accordance with section 8.5 (q) of the Constitution

hereby declare that there will be no more meetings of the Chiefs Executive Council or its committees and working groups until further notice.

The Tłıchq Assembly shall exercise all powers, authority and responsibility delegated to the Chiefs Executive Council until the Assembly reinstates all delegated powers to the Chiefs Executive Council (Tłıchq Government 8 Nov 07, Section 12 & 13)

Suspension of CEC meetings, with delegation of the powers, authorities and responsibilities of the CEC to the Tłıchq Assembly, was an attempt to re-instate the reciprocal relationship between leaders. Sections 12-13 of the law were seen as bringing the entire assembly into the Chiefs Executive Council. Several Assembly Members discussed *joining* the CEC, including the Grand Chief. He stated that:

The Assembly members want to be involved with the CEC and have everybody attend meetings together. That is what I want too. The CEC will no longer have meetings by themselves that is what I'm thinking (Tłıchq Government 7 Nov 07,74).

The balance of power was thus re-established, and the three dissident Chiefs were prevented from immobilizing the operations of the CEC. The Grand Chief spoke directly to the balancing of power in stating that:

We will no longer have three of them sit together and have one person sit by himself again. It would be good if we all sit as a whole at the meeting. (TG 7 Nov 2007, 74)

The Assembly Members believed that in joining the CEC to work with them until the situation was resolved, a good working relationship would ensue (TG 7 Nov 2007, 64, 69, 75).

The Council of Elders was put in place to ensure that Tłıchq history and laws would be respected and to ensure peaceful relations among the leadership. Tłıchq

history and values are largely undocumented. Thus, the tradition of oral storytelling makes the Tłıchǫ people themselves a living repository of this valuable heritage. By virtue of their age, the elders hold the greatest number of these stories and have the greatest understanding of their meaning.

The *Future Chiefs Executive Council Meetings Law 2007* established a 5 member Elders Advisory Council (Tłıchǫ Government 8 Nov 07, Section 14). The Elders were to act as advisors to the Tłıchǫ Assembly and travel to all the meetings (Tłıchǫ Government 7 Nov 2007, 80 & 75), The Elders were seen as having important wisdom that would reduce conflict between the leaders and thus to ensure that the government was effective and strong (TG 7 Nov 2001, 80, TG 7 Nov 2007, 95-96). Specifically, Assembly Members recognized that Elders had the knowledge of how to work in a good way, knowledge of how the Tłıchǫ have overcome adversity in the past, and knowledge of how to implement a government rooted in *Tłıchǫ* values (TG, 7 Nov 2007, 70-71).

The final piece of the conflict resolution law mandated a series of workshops to “promote healing amongst the leaders and to gain a greater understanding of governance” (Tłıchǫ Government 8 Nov 07, Section 15). Members of the CEC spoke of the difficulty of “facing each other” as a result of the conflict (TG 7 Nov 2007, 11). It was feared that this conflict was diverting the attention of the leadership away from important issues such as resource development, environmental issues and community wellness. Thus, the leaders were not doing the important work they had been elected to do (Tłıchǫ Government 7 Nov 07, 9, 11-12). It was deeply important to many members of the Assembly that the broken relationship be

repaired so that the Government could work effectively (Tłchq Government 7 Nov 07 19, 20). Member Sonny Zoe, speaking about the importance of repairing the damage, shared a personal story of his own struggle with addictions and his reintegration into the community during his recovery:

We are talking about forgiving each other and supporting one another, that's an important step...It's called forgiveness, to forgive people and to work with people. It would be good to think about that. I learned about forgiveness and how to work with other people. I am grateful that they taught me that. Right now I live peacefully among them and I work for them...That is the reason why when we say forgive, it is good concept. It is very important. If we are very serious about it, it should be our first priority (Tłchq Government 7 Nov 07, 18).

Thus, the mandated series of workshops was conceived with the purpose of teaching the duties and responsibilities of self-government and repairing the relationships between the leaders (Tłchq Government 7 Nov 07, 18 & 85).

The *Future Chiefs Executive Council Meetings Law 2007* was intended to establish order by creating new *rules* for the political organization of the government that would ensure peaceful relations. This is consistent with the law that Yamoozhah gave to the humans and animals. The Assembly was clearly motivated and acting upon the law of co-existence, and took steps to implement this principle within the confines of self-government.

4.2.2 – The Law of Peace and Respect

The Law of Peace and Respect is an extension of the law of co-existence, and is demonstrated in the resolved conflict between the Chipewyan and Tłchq. The Tłchq, fearing attack by Akaitcho's Chipewyan who had guns and steel - implements not yet introduced to the Tłchq - moved to an area north of Whati called Edzoti.

Edzo's courage and ability as a powerful orator allowed him to make peace with Akaitcho's tribe. Never again in Tłıchǫ history would the two tribes war. It is from this law that come the principles of respectful interactions and peaceful relations.

The principles of this law governed the interactions among Assembly Members throughout the leadership dispute. This can be seen in the opening remarks of Chiefs and Assembly Members, and in the gentle reminders that were given throughout the meetings. The Grand Chief Mackenzie's opening statement during the Emergency Meeting touches on the importance of speaking in a respectful way:

We have to watch what we say and talk to each other in a gentle way. That way our Creator will help resolve this dispute in a good way...Our elders used to resolve difficult disputes just by talking to each other in their gentle way. We just want to let the children and anyone listening to us know that is the direction we want to follow. (Tłıchǫ Government 25 Oct 2007, 2).

During the 12th Session of the Assembly, before the details of the *Future Chiefs Executive Council Meetings Law 2007* were discussed, Member Ernie Smith spoke about the need for the three dissident Chief to apologize in order for the Assembly to move ahead in a peaceful way

Whoever created the chaos should just say sorry, it was wrong for us to create the chaos. It would be good to work on "forgiving" and make it our first priority. If we talk among ourselves openly and have workshops too, we will progress ahead peacefully (Tłıchǫ Government 7 Nov 07, 19).

As is the case in the story of Edzo and Akaitcho, Member Ernie Smith is suggesting that everyone must treat each other in a respectful way in order for there to be peaceful relations. This principle was reiterated at the Tłıchǫ Assembly Hearing. Members of the Assembly stated that the hearing was convened to talk things out,

so the members could start working together in a peaceful way again (Tłıchq Government 23 Set 08, 8).

The Tłıchq Assembly Hearing exemplified the law of peace and respect as a guiding principle for interactions. Member Eddie Chocolate addressed the Speaker and spoke of his concerns with Chief Henry Gon, the Chief of his community. He accused Chief Gon of not being accountable to the community and not representing the members. When Elder Alphonse Apples had an opportunity to address the speaker he spoke about the importance of a good discussion, treating one another as family and friends so that when the meeting was done they could leave and begin a good working relationship (Tłıchq Government 23 September 08, 63-64). Against that backdrop, Member Eddie Chocolate immediately apologized to the Assembly for his inappropriate comments.

I mention a name and it is not good to mention a name therefore I want to say I'm sorry. It would be good to have a good working relationship, that is what I'm thinking about... We can have a good working relationship if we talk to each other with respect (Tłıchq Government 23, September 2008, 65).

This was the most egregious of comments made by an Assembly Member (other than statements of the three dissident Chiefs). Throughout the entire dispute, Assembly Members were expected to speak to each other in a respectful way with the ultimate goal of reestablishing peaceful relations

4.2.3 – The Law of the Collective

The law of the collective is founded on the principle that the Nation comes together as a whole to make a decision, and the leadership is then expected to carry

out the decision. This law descends from the era of fur-trading and the interactions between the Tł̓ch̓q and the traders. Donek'awi were individuals selected by trappers to represent them in interactions with the fur traders. The trappers would hand over all their furs to the donek'awi for him to trade on their behalf. The principle that emerged is one of the collective, meaning "we do it together...as one" (Zoe 2006)

The first measure taken to attempt to resolve the leadership dispute embodies the law of the collective. The Grand Chief called an emergency meeting, at the urging of many constituents, to try to resolve the dispute which was causing distress in the communities and was proving impossible work out (Mackenzie 27 Aug 08, 6). At the meeting the Grand Chief explained to the Assembly that the three dissident Chiefs were unwilling to meet and had requested his resignation. The Grand Chief further explained to the assembly that he had brought them together to discuss how to resolve the issue and get the government to operate effectively (Tł̓ch̓q Government 25 October 2007, 13). The Assembly Members, with the exception of the three dissident Chiefs who had left after giving their opening statements, unanimously agreed to bring people in from the communities to deal with the issue right away (TG 25 October 2007, 16-17).

Having flown individuals in from each of the communities to attend the emergency meeting, the floor was opened to Tł̓ch̓q citizens to voice their concerns and offer advice on the leadership dispute. Those who spoke each asserted the view that all of the members should work together and that the Grand Chief should remain in his position. They also discussed the need for healing and suggested that

Elders should participate in the decision making process to ensure that Chiefs worked together in a more positive way (Mackenzie 27 Aug 08, 6).

Here the Tłıchǰ Assembly provides an example of the law of the collective. Just as the done'kawi had done in the past, the leaders brought all the people together as one. They sought out their advice and guidance and then, as seen in the *Future Chiefs Executive Council Meeting Law 2007*, proceeded to implement their direction.

4.2.3 – The Law of Unity

The law of unity was a transfer of “leadership” from the done'kwi to Monfwi for the signing of Treaty 11. When the treaty party came to Behchoko to sign the treaty with the Tłıchǰ, the continued unity of the Tłıchǰ Nation was of greatest importance. Instead of dividing the Nation by allowing the done'kwi to represent each sub group, the Tłıchǰ chose one person to speak on their behalf. It was important that they remain united, as one Nation and that they not be divided by the potentially opposing interests of each done'kwi. Today this unity is credited as the source of strength and power of the Tłıchǰ Nation. Its importance is demonstrated by its being protected in the Tłıchǰ Constitution. Section 1.1 reads, “The Tłıchǰ Nation is one united Aboriginal People. The Tłıchǰ Nation is indissoluble. This subsection is not subject to amendment.”

The expression of the law of unity can be seen throughout the Emergency Meeting and in the discussions leading up to the passing of the *Future Chiefs Executive Council Meetings Law 2007* the 12th Session of the Tłıchǰ Assembly. The Assembly was fearful that the dispute was threatening the unity of the Tłıchǰ Nation

and would weaken them. Member Eddie Chocolate articulated this when he addressed the assembly:

We [are] suppose to be like one person a Tłıchǫ Nation. Be like one person to be strong. That is the only way we will be powerful, that is how it is written down. That way it will not be move. That word has to be in place forever and we cannot break the word. We will fall apart without it." (Tłıchǫ Government 23 September 2008, 62).

Prior to public addressing the assembly, the Grand Chief spoke of the need to protect the unity of the Tłıchǫ Nation:

The members are sitting around the table and other people are sitting beside us. Having a feast, dancing, in church in meetings, and wherever we are, as the aboriginal people we have to keep united. That is called sharing. It is the most powerful word. We are not referring to the book, not dealing with the government but sitting together and working together in unity. That is the ideal we want to work towards and that is why we are dealing with this way and you are aware of it (TG October 25, 2007, 10).

As mentioned earlier, the public gave the Assembly the direction to work together. The Assembly, aware that the dispute was not resolved, and worried that the communities were divided, took measures to protect the unity of the Tłıchǫ Nation. Because the CEC could not function, the plan was to repeal all of the very serious CEC responsibilities for the implementation of laws and the administration of the Tłıchǫ Government business. They also endeavored to stop the CEC from meeting because of the harm that the serious fights and disagreements were wreaking upon the Tłıchǫ Government (Tłıchǫ Government 23 Sept 2008, 38). As the supreme governing body, the Assembly strives to make decisions by consensus. Thus, the action of removing the responsibilities from the CEC and bringing them to the Assembly was an attempt to have the government once again speak with one voice.

This action forced the Chiefs and Assembly Members alike to work together toward a mutually agreeable solution rather than allowing the competing interests of the Chiefs divide the nation along political lines. It proved to be a difficult 2-year process as decisions were laborious, and the conflict had not cooled, but it did keep the Nation and its leaders together as one. Although opportunities may have slipped by, and progress toward self-government may have been impeded, it did succeed in the far more important task of keeping the Tł̓ch̓q̓ united and speaking with one voice.

4.3 -The Law of Strong Like Two People: Small Acts of Freedom

The Law of Strong Like Two People is based on the notion of knowing and working within both cultures: Tł̓ch̓q̓ and Western. It has been said that one who is *strong like two people* is endowed with a unique fortitude that accrues through extensive knowledge and grounding in Tł̓ch̓q̓ culture and an ability to understand and learn from the rest of the world (Zoe 2008). This law was born of the wisdom of Chief Jimmy Bruno. When confronted with the inescapable colonizing forces of western education, he found a way to accept this new institution into the Tł̓ch̓q̓ realm while grounding it in Tł̓ch̓q̓ culture, and thereby making it their own. Bruno was responding to the political realities of his time. He knew the Tł̓ch̓q̓ would not live in isolation. They would not be sheltered from the outside world and the influx of settlers. He decided that the only way to prevent the further colonization would be to accept this latest intrusion but to root it in Tł̓ch̓q̓ culture (Zoe 2007).

Bruno's actions provide a concrete embodiment of Tully's theory of the struggles *of* freedom by Indigenous people to resist colonization (2001, 59). Tully argues that through freedom of thought and action, indigenous people are

modifying the system from within (2001, 58). The resistance is not a direct confrontation with the state, but rather a freedom “to think and act differently vis a vis the relations of knowledge and techniques of government that reproduce the system, of working with and against, of complying and adapting while resisting the allure of the co-opted native, male colonial elite, of indigenizing the degree of self-government and land use recovered” (Tully 2001, 58). Indigenous people achieve this, he explains through “quotidian acts of protecting, recovering, gathering tighter, keeping, revitalizing, teaching and adapting entire forms of indigenous life that were nearly destroyed” (Tully 2001, 59).

In this light, the case of the leadership dispute offers insight as to how the expression of unique Tłıchǵ ontological assumptions about governance - as described in the *Cosmology* - is a small act of freedom and a resistance against colonization from within the system. Chief Jimmy Bruno allowed for a school to be built in his community but he demanded that his people run the school. The Tłıchǵ struggled from within the dominant structure of western education by ensuring that the programming and activities included a cultural component. In the short term, they modified the system to make it a unique education experience that was modeled after western pedagogy but was delivered by Tłıchǵ people. In the long term, they transformed education in the Tłıchǵ schools. Today the programming includes Tłıchǵ language and culture programs, Tłıchǵ history, and on-the-land programming, and the future plan of education is Tłıchǵ immersion schools. While the institution remains a western construct, the fabric of that institution is firmly grounded in Tłıchǵ culture.

Tłıchq self-government is an example of being *strong like two people*. Self-government in its current form is constructed around a number of western institutions. The Tłıchq Government resembles a constitutional democracy but the fabric of the government is reflective of the Tłıchq ontological assumptions about governance protected by the *Constitution*. The *Constitution* guides Tłıchq leaders to “act in accordance with traditional standards for leadership”, and directs that the path of the Tłıchq Government must be one that “follow[s] in the footsteps of our ancestors” and affirms the “truth of [Tłıchq] traditional knowledge and oral history (Tłıchq Government 2003, 2-3). Before the Assembly can pass them, amendments to the *Constitution* require approval of at least one Annual Gathering (for minor amendments) or approval at two consecutive Annual Gatherings followed by a ratification vote (for major amendments). The Tłıchq effectively modified the system of self-government in the short term with the cultural protections afforded by the Tłıchq Constitution.

In the long-term, the Tłıchq are transforming self-government into a system that allows the expression of their unique ontological assumptions. The leadership dispute was resolved through recourse to a number of western institutions such as arbitration, laws, hearings and a judicial review. The Government of Canada imposes these methods and structures through self-government agreements. However, the Tłıchq counterbalance the colonizing effect of self-government through the expression of the unique ontological assumptions about governance, as encapsulated in the laws of co-existence, peace and respect, the collective and unity. This is a struggle of freedom as suggested by Tully; they are complying with

obligations imposed by self-government but at the same time adapting self-government so as to be reflective of their unique culture.

The struggle of freedom and the law of strong like two people are complementary. Although the Tłıchǫ made use of structures reflective of Western government and justice, their decisions and actions were firmly rooted in the stable core of Tłıchǫ values and ontological assumptions about governance. The Tłıchǫ Agreement flows from the Tłıchǫ political reality in that they do not live in isolation. Rather they have decided to enter into a dialogue with the Government of Canada and the Government of Northwest Territories to gain recognition of their rights. The Assembly and the Constitution are creations of the Tłıchǫ Agreement. The hearing, with its legal council representing the two sides both filing affidavits, written submissions and presentations, is a facsimile of the western jurisprudence system. However, within the Tłıchǫ variety of the Tłıchǫ legal system, the “judge” is comprised of the Assembly; equal representation of the 4 unique communities and the Grand Chief. Indeed, the Grand Chief position itself is tasked with promoting the fundamental principles of their unique Constitution, which embodies Tłıchǫ culture and values. The governance infrastructure may resemble western practices but principles with which they govern are firmly planted in Tłıchǫ heritage.

As Tully suggests in his argument on the struggles *of* freedom, the Tłıchǫ have protected, recovered, revitalized, adapted, and enacted indigenous ways of governing that were thought to have disappeared after nearly ninety years under the colonizing force of the Indian Act. They have protected the values and principles rooted in the cosmology by codifying them in law, and have set precedents through

actions such as implementing the law of the collective (by bringing the people together to try to resolve disputes). They are recovering Indigenous ways of governing by bringing the elders - the keepers of their living memory, values and way of life - into the governing body (Tłıchq Government 2003, 2). By adapting their traditional teachings to reflect their current reality they are revitalizing their ways of governing. By enacting a system of self-government that is designed to further colonize Indigenous ways of governing, through freedom of thought and action the Tłıchq are reinstating indigenous ontological assumptions about governance and thereby indigenizing self-government. Further more, this approach to governance has been severely tested as described in the case study, and has emerged intact and stronger. This is a small act of freedom.

4.4 - Recognition: The law of Self-determination

Unlike the other eras in the Tłıchq Cosmology, the current time period (labeled “Recognition”) does not yet have a corresponding law. The most significant relationship within this time period is the one between Canada and the Tłıchq Nation. The conflict, evident since the signing of Treaty 11 in 1921, originates with the Tłıchq Nation’s right to govern themselves and their right to self-determination. The Tłıchq Agreement aimed to reconcile the Tłıchq’s right to self-government with Canada’s sovereignty. As such, the Agreement is incomplete - self-government is not self-determination.

Self-government has created a new political space that recognizes Aboriginal peoples “inherent right to decide on matters internal to their communities, integral

to their unique cultures, identities and traditions, language & institutions” (Canada 1995, 3). In the example of the Tłı̨chǫ leadership dispute, the Supreme Court’s decision not to interfere was a victory for self-government; however, self-government is also a tool of totalization. The concept of totalization is described by Kulchyski as the removal of individual difference (2005, 24). In as much as self-government is intended to return local decision-making control, it also imposes systems of governance reflective of colonial models intended to replace Indigenous methods.

The Tłı̨chǫ employed a strategy of cultural resistance within the political space created by self-government. This type of resistance can best be understood using the theory of subversion. Kulchyski describes subversion as the resistance to totalization for those who do not have the power to directly confront the system (Kulchyski 2005, 25). It is a strategy that turns the weapon of totalization, employed by the colonizer, into a device for cultural resistance used by the oppressed. For the Tłı̨chǫ, the weapon is self-government. The culture resistance is the small acts of freedom that indigenized Tłı̨chǫ self-government. Although the modern Tłı̨chǫ government may not *look* like its pre-contact form, as demonstrated in this chapter they are implementing a government that is rooted in a *relatively stable core* of Tłı̨chǫ ontological assumptions about governance.

What remains to be seen is whether subversion will lead to self-determination. What the Tłı̨chǫ have agreed to through the Tłı̨chǫ Agreement is a sharing of jurisdiction with the Government of Canada and the Government of the Northwest Territories. Through small acts of freedom they are protecting,

recovering, revitalizing, adapting and operationalizing ways of being that are uniquely Tłch̓q. Thus, they can maintain their cultural difference in the face of colonization and assimilation. They continue to engage in small acts of freedom; they are freely determining their own political, social and cultural development. In so doing, they further their right to self-determination. What remains to be seen is whether Canada will continue not to interfere in Tłch̓q governments. Will Canada continue to treat the Tłch̓q and other Indigenous Nations as self-governing entities? Will they begin to treat them as equal, co-existing sovereign entities and discontinue the legacy of subordination and extinguishment? If Canada does this, the resolution of difference will have been achieved and the resulting law for this era will be self-determination.

Chapter 5 – Conclusion - From Self-Government to Self-Determination

Self-government, as offered by the Government of Canada has been criticized as having no value in achieving any measure of self-determination for indigenous peoples. It is seen by some as a strategy to transform indigenous people into members of the dominant society (Tully 2001, 41). This analysis is understandable. Self-government agreements purports to replace colonized Indian Act governments, however they continue to favor western governance practices over indigenous governance practices. They are negotiated based on the recognition of rights flowing from the Canadian Constitution. This ignores that indigenous people are autonomous nations whose rights pre-exists the Confederation of Canada. Finally, self-government agreements almost entirely evade the issue that colonial control of Indigenous peoples and lives was and continues to be illegitimate. With all of this negative assessment of self-government, it is no wonder Indigenous people are hesitant and doubtful of its worth.

This thesis is not intended to suggest that self-government is the path that all indigenous people can follow in the pursuit of achieving some measure of self-determination. It is merely intended to demonstrate that for those who have chosen this path have had some success. There is not one path for all nations to follow; there is no one recipe for attaining independence. Canada and the United States have both gained their political independence from Britain, but each in their own distinct way. Indigenous Nations will also likely find different approaches to asserting their independence. It has always been one of the failings of Aboriginal

policy in Canada to treat all indigenous Nations the same. They are not. The pursuit of self-determination is no exception. As varied as their cultural practices, language, traditions and values are, so too, most likely, will be their path to independence.

5.1 – The Relatively Stable Core: Recovering, Revitalizing & Protecting Ontological Assumptions about Governance

After the establishment of the Canadian Government in Yellowknife and the influx of settlers to the north, the nomadic lifestyle and traditional governance practices of the Tłıchǫ started being replaced by *western* practises. For a time, people stopped traveling on the land and practicing their traditional culture and the use of the Tłıchǫ language was in decline. Today, most members of the Tłıchǫ nation spend the majority of their time living in communities, working in the wage economy and receiving their education in classroom-based schools. Recognizing the devastating effect that the loss of Tłıchǫ language, culture and way of life would have on their identity as a nation, the Tłıchǫ took steps to try to recover, revitalize and protect their culture. To this end, a number of programs were undertaken around the same time as the Tłıchǫ Agreement negotiations started. One such program, *Trails of Our Ancestors*, brings together elders and youth for 10-15 days to live off the land and travel traditional trails by canoe (Zoe 2007, 4-5). This is an opportunity for Tłıchǫ youth to connect with the land and their elders and gives them an education on Tłıchǫ history, culture and language. Other projects including the documenting and recording of Tłıchǫ oral history as told by elders and the identification and cataloguing of Tłıchǫ geographic place names contributed to the preservation of Tłıchǫ oral history. These projects and other conversations that

focused on Tłıchǫ history and ontology, informed the *Tłıchǫ Cosmology* which in turn influenced negotiations. Whether intentional or circumstantial, these projects were timely in that they strengthened the *relatively stable core* at a crucial time. Self-government, without this stable core, would not have succeeded in protecting and promoting Tłıchǫ language, culture and way of life.

5.2 – Cultural Resistance – Adapting the stable core for self-government

With the stable core explicitly outlined in the Tłıchǫ cosmology, the Tłıchǫ had a basis to move forward with self-government, however, they now had to find a way to adapt these values to their current political reality. Self-government created a political space where Aboriginal people have a “right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions” (Canada 1995, 3). However, as much as self-government gives Aboriginal people freedom, it also limits aboriginal governments, their institutions and the exercising of self-government to “operate within the framework of the Canadian Constitution...[and] in harmony with jurisdictions that are exercised by other governments” (Canada 1995, 3). In imposing these limitations yet allowing for some independence creates a situation whereby aboriginal people and their governments are forced to operate within western political systems and values. However, through freedom of thought and action and adaptation and implementation of the stable core the Tłıchǫ are employing a strategy of cultural resistance to counter the colonizing effects of self-government.

The Tłıchǫ Agreement creates a type of government that is commonly referred to as a *constitutional democracy*. There are some essential characteristics of a constitutional democracy that are intended to prevent arbitrary rule such as limitations on the powers of government defined by a written constitution. These limitations include checks and balances which allow for appeals on decisions and peaceful and orderly transfer of leadership through elections. These characteristics are now seen in the Tłıchǫ Government. The Tłıchǫ operate under a written constitution, hold judicial hearings to resolve disputes and leadership is chosen through a democratic election.

Today, the constitutional democracy is now seen as the ideal form of governance by both Canada and many Tłıchǫ citizens. For this reason it was necessary for the Tłıchǫ to adopt this type of government. In spite of this change in they way the Tłıchǫ are organizing their government, the values and principles of the relatively stable core are expressed throughout the new institutions of governance. In this way the Tłıchǫ Government, including the constitution, the elected Assembly and the judicial hearing, is a cultural means that the Tłıchǫ are using to protect their identity and then hold on to that identity in the face of state colonization and assimilation.

5.3 – Subversion – Operationalizing the stable core

It is clear that self-government is intended to westernize Indigenous governments. By westernizing Indigenous governments and peoples, it is hoped that culturally, Indigenous people will disappear and there will remain no challenge

to Canada's sovereignty over these lands and its people. Indigenous peoples are employing a strategy of cultural resistance to prevent this and creating Indigenous governments that are built around western structures but are rooted in a relatively stable core of Indigenous values. In order to ensure the relatively stable core is protected and preserved, the Indigenous values must be operationalized. In other words they must find a way to clearly define and measure these values.

The Tłchq are operationalizing their relatively stable core through laws and precedents. The *Future Chiefs Executive Council Law 2007* clearly defined how the law of co-existence would be exercised in their current political reality and created new institutions that continue today, well after the leadership dispute has been settled. The law also defined measures that would be taken to resolve leadership disputes and further defined the powers and authorities of the Assembly, the Chiefs Executive Council and the individual Chief's. The Tłchq have found a way to further define and measure the values of the cosmology and are codifying them in law.

This is an act of self-determination. The Tłchq are freely determining their social, political and cultural development and it is based on a relatively stable core that is inherently Indigenous. To this end the Tłchq have utilized a strategy of subversion to further their right to self-determination. They have changed self-government from something that is intended to further colonize and assimilate them and are using the newly created colonial space to protect ways of governing that are uniquely Tłchq.

5.4 – Small Acts of Freedom: From Self-government to self-determination

So, can Canadian self-government agreements represent a step towards the advancement of Indigenous peoples' right to self-determination? The proceeding chapters have demonstrated that in fact, it can at least in one instance. It may only be seen as small step today, but the impact that these small acts of freedom have on the future of the Tłıchǫ Nation (and perhaps other Indigenous Nations) and the Government may be profound. Through the freedom of thought and action the Tłıchǫ are finding ways to recover, protect and revitalize their most fundamental values found in the *Cosmology*. Through cultural resistance, they are pushing back against the assimilating forces of self-government and adapting their values to reflect their current political reality. Finally, through a strategy of subversion, the Tłıchǫ are using the political space created by self-government to operationalize these values. These small acts of freedom of recovering, protecting, revitalizing, adapting and operationalizing their values allows them to freely determine their political, cultural and social development. At first glance a small act of freedom may seem insignificant but it is far more powerful than it may appear. By changing self-government from something that was intended to assimilate into something that creates space and protection for the free expression of their unique cultural values they have transformed the prevailing social order and its powers and authorities. Furthermore, when you consider that values are what define a nation, the Tłıchǫ, in reestablishing and finding contemporary expression of their unique values are determining their own political and social development and are rebuilding their Nation. This counteracts the effects of colonization and assimilation and

reconstructs the foundation that the Indian Act, residential schools and self-government set out to destroy.

5.5 – A note on the documentation of cultural resistance and small acts of freedom: A contribution to academia and community

Indigenous Governance is a relatively new area of research and the data available to researchers is limited and mostly undocumented. Descriptive case studies, such as this one, have utility in their basic data-gathering operation (Lijphart 1971, 691). There is an appalling lack of information in academia about Indigenous politics and self-government. This case study in its descriptive design contributes to information that will begin to fill these gaps in knowledge.

Theories on Indigenous politics and political resistance are as limited as the data. Theory confirming case studies are important in emerging disciplines and related research. Theory confirming case studies contribute to general propositions and thus theory-building in political science (Lijphart 1971, 691). As Indigenous politics is a relatively new area of research it is important to build upon and support a theoretical foundation for future research.

Perhaps more important than its contribution to theory is its contribution to practice. The Tłıchǵ have achieved a level of self-determination through subversion and small acts of freedom. Documenting this success preserves a model that was successfully applied in the resolution of conflict. This is important for the Tłıchǵ, and perhaps other communities, as they attempt to create governments that protect and promote their unique languages, cultures and way of life.

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