

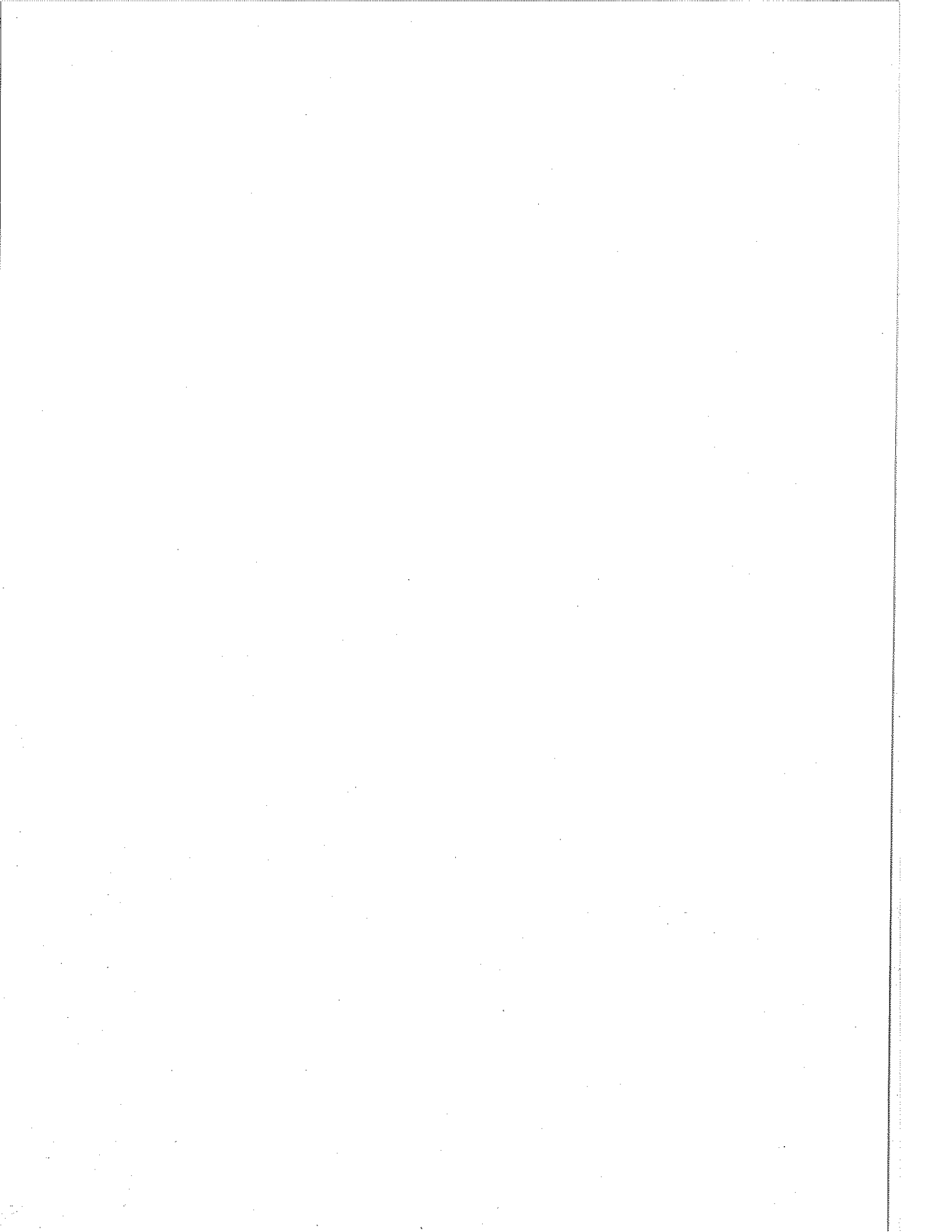
**ABORIGINAL SELF-GOVERNMENT:
Rights of Citizenship and Access
to Governmental Services**

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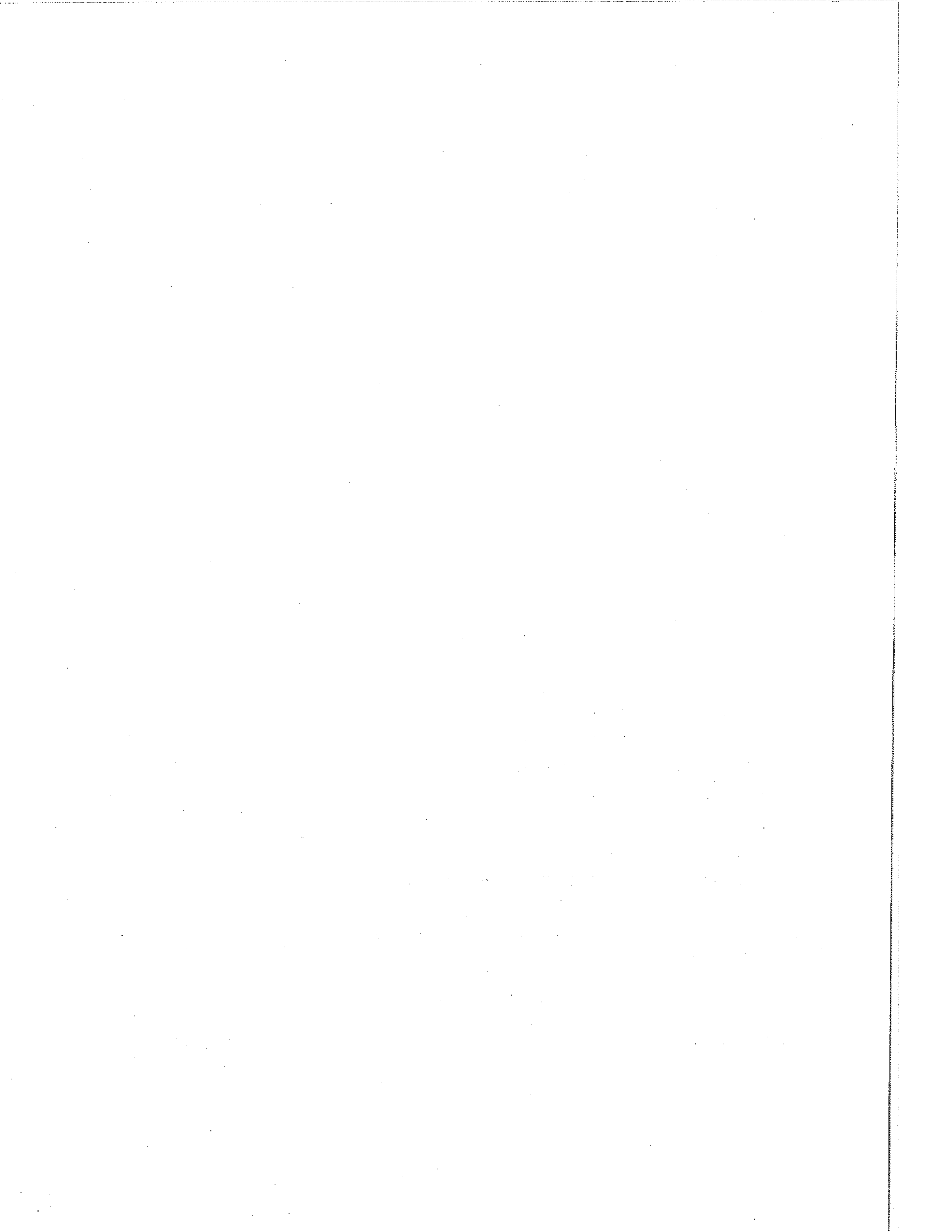
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PREFACE

The constitutional reform process, as it relates to aboriginal peoples, has come to focus on one major agenda item -- aboriginal self-government. At the First Ministers' Conference in March 1984, aboriginal peoples' leaders were calling for self-government, while many federal and provincial ministers were openly questioning "What does it mean?" The aim of Phase One of the Institute's project on Aboriginal Peoples and Constitutional Reform, which is subtitled "Aboriginal Self-Government: What Does It Mean?", is to shed some light on this question, by examining attitudes toward the principle of aboriginal self-government, and by examining alternative concepts and models of aboriginal self-government.

Aboriginal peoples, being no more homogeneous than non-aboriginal Canadians, have no single model in mind. It

would appear, from those models proposed to date, that any formula will have to be flexible enough to accommodate diverse structures and allocations of policy responsibility. The wide variety of views as to what aboriginal self-government means -- ranging from "nationhood" to local school boards -- have yet to be clearly articulated and fully elaborated. This situation has led some observers to express alarm at the yawning gap between the expectations of aboriginal peoples, and the political wills of federal and provincial governments.

Diverse and conceivably conflicting views cannot be accommodated without a clear understanding and shared perceptions of what is at issue. Phase One of the project, including this series of papers, is designed to help take the first step toward developing such an understanding. This useful and important role can only be played by a body which does not have a vested interest in the outcome of the constitutional negotiations, and which is not a party to the debate. The Institute of Intergovernmental Relations, which is at arm's length from all of the parties, is ideally placed to perform the role of clarifying and extending public knowledge of the issues.

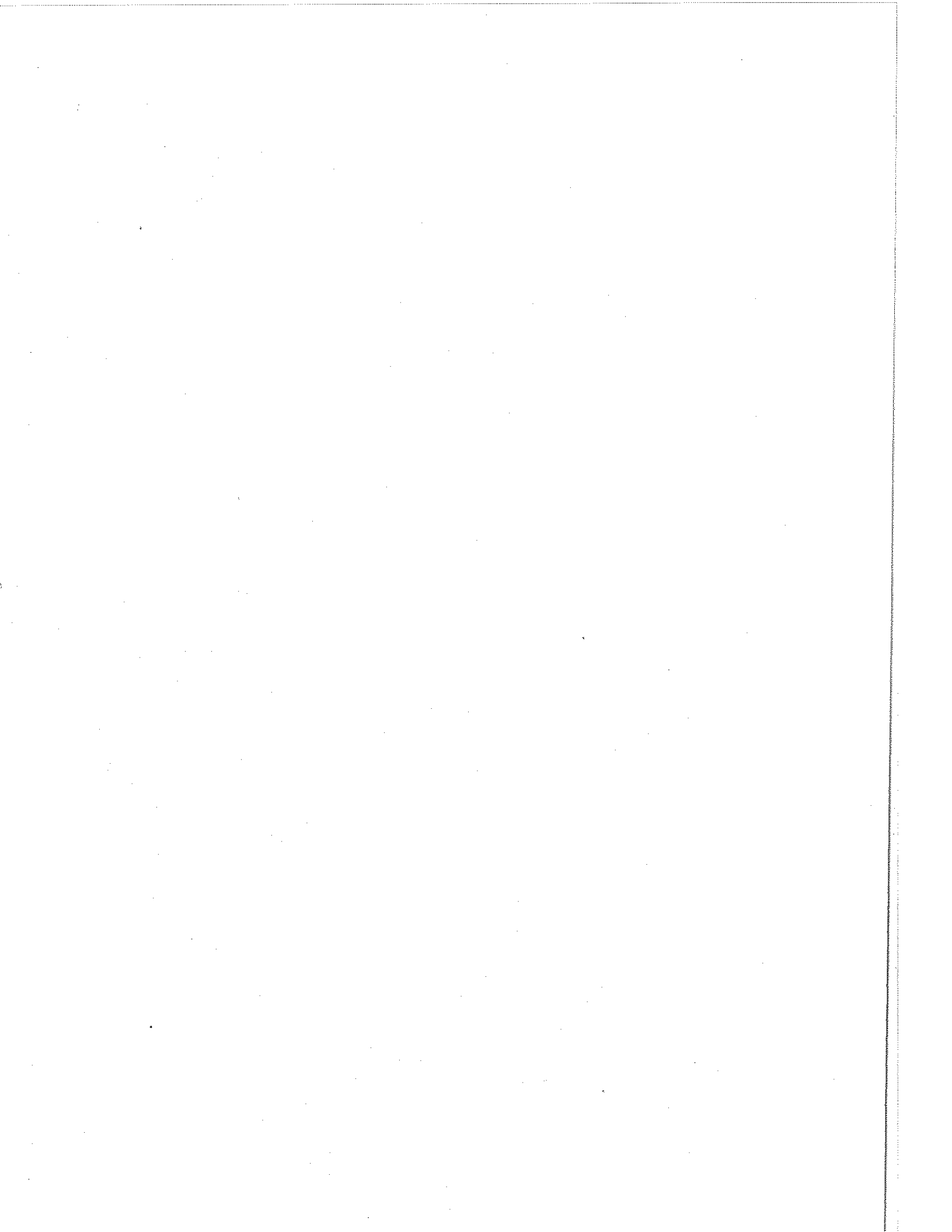
We are not alone in this viewpoint. The Institute has received support, encouragement and full cooperation from all parties to the negotiations -- federal, provincial and territorial governments, and aboriginal peoples organizations. I would also like to acknowledge the

financial support which the Institute has received for the project, in particular the generosity of the Donner Canadian Foundation, the Government of Ontario, the Government of Alberta, the Government of Quebec, the Government of New Brunswick, and the Government of Yukon.

The principal objective is to identify and operationalize alternative models of self-government, drawing upon international experience, and relating that experience to the Canadian context. Noel Lyon's paper on "Aboriginal Self-Government: Rights of Citizenship and Access to Governmental Services" is a useful starting point for examining these questions. Professor Lyon provides a thought-provoking and at times controversial analysis of the citizenship rights of aboriginal peoples, and what rights and government services aboriginal peoples would gain, or relinquish, with the establishment of self-government. He examines relevant U.S. experience, and proposes alternative models or outlines of aboriginal self-government for our consideration.

Professor Noel Lyon is a member of the Faculty of Law at Queen's University, and a long-time student and teacher of native law.

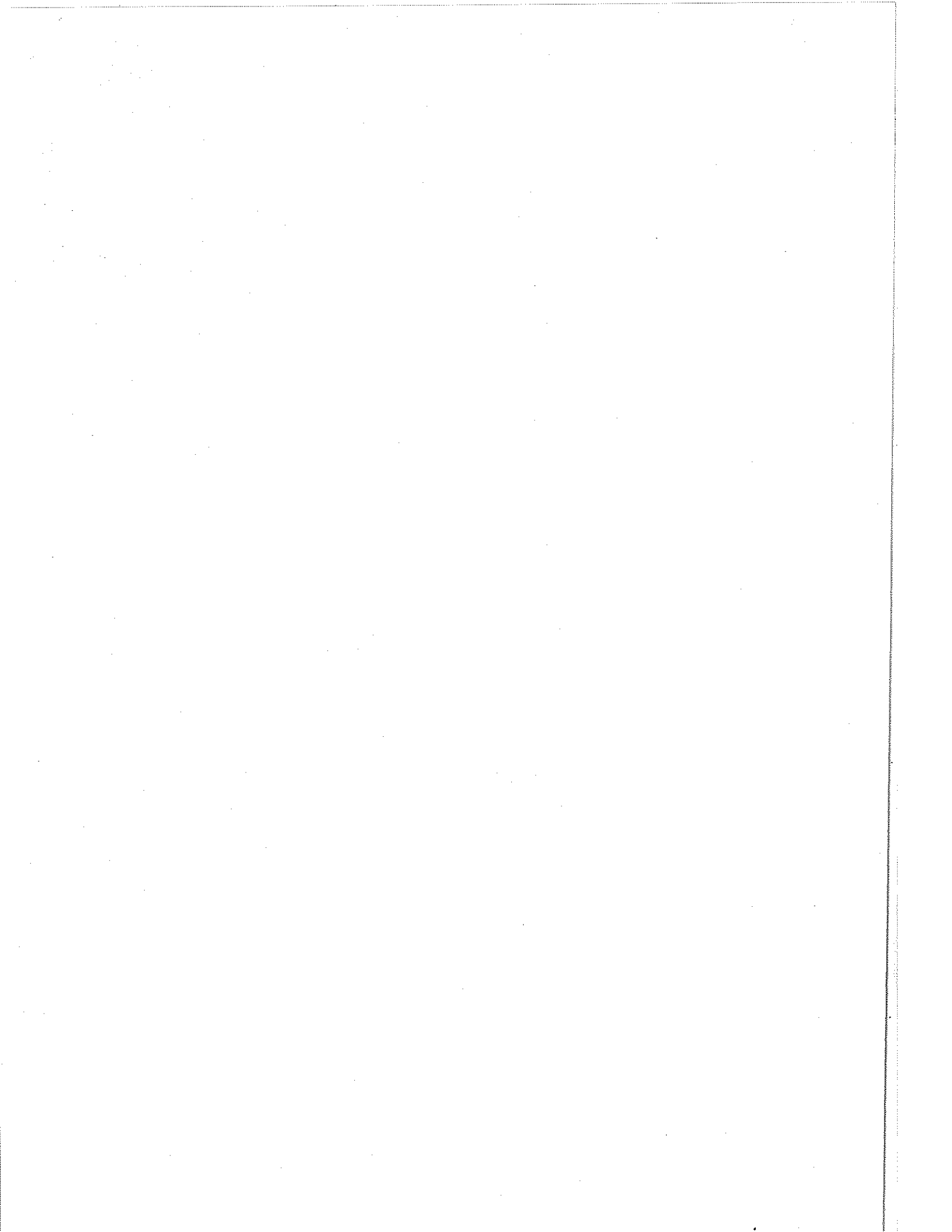
David C. Hawkes
Associate Director
Institute of Intergovernmental Relations
November 1984



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I would like to acknowledge the assistance and support of David Hawkes, Associate Director of the Institute of Intergovernmental Relations who acted as a sounding board and provided encouragement in developing this paper. I have benefitted greatly from my association with Chief Mike Mitchell of the St. Regis band, and other band members, to whom I owe much of my appreciation of native peoples and their ways.

Noel Lyon

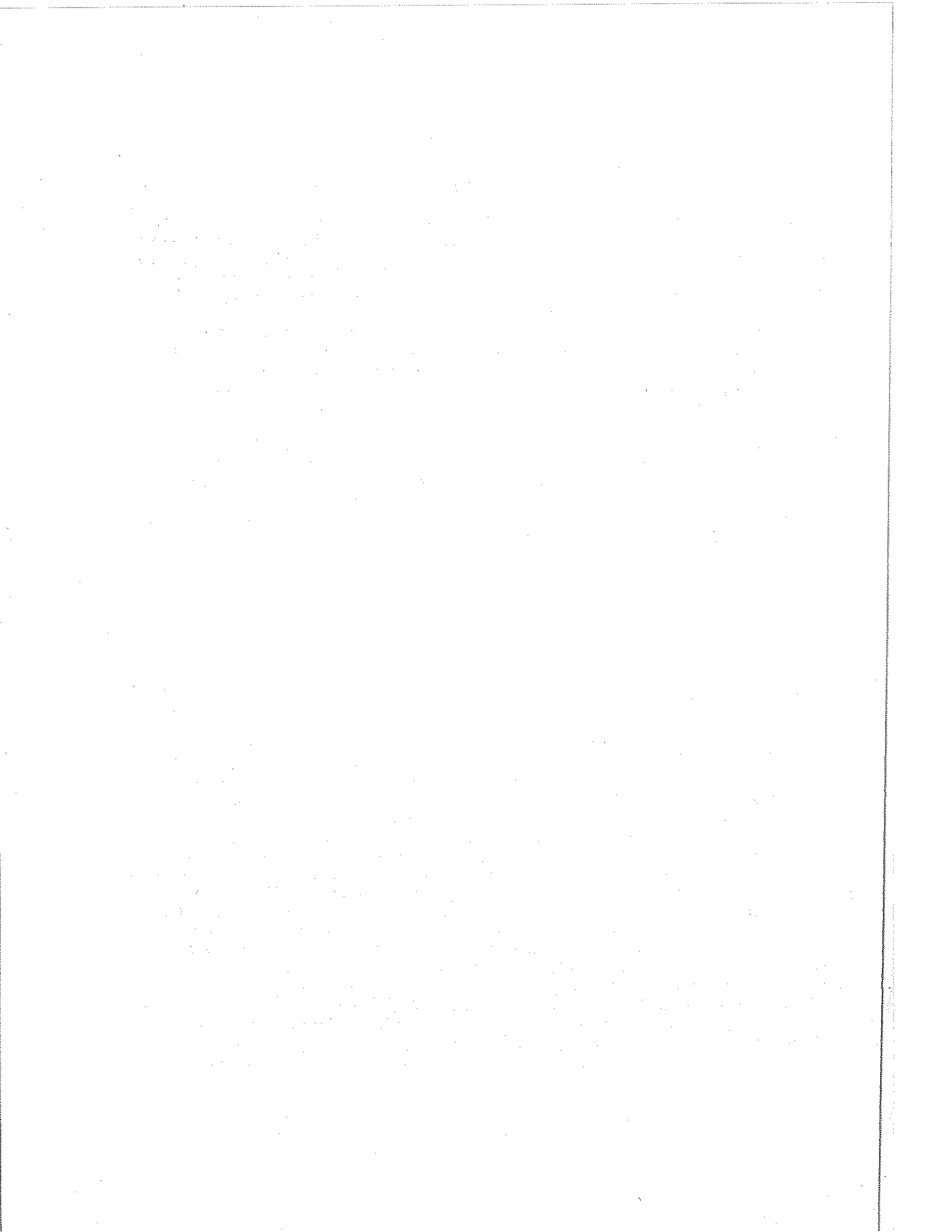


ABSTRACT

Aboriginal peoples' right to self-determination is an inherent right and includes the right to define membership in aboriginal communities. Section 35 of the Constitution Act, 1982 recognizes and affirms these rights; it does not create them. Entitlement to essential public services of reasonable quality, which inheres in Canadian citizenship, comes to aboriginal peoples by virtue of their contribution of the entire land base of Canada. Aboriginal governments will be shaped by the distinct cultural values and traditions of native peoples and will do for them what provincial and municipal governments do for other Canadians. However, no standard model can be applied because of the variety of cultures, sizes, degrees of economic development, locations and other circumstances among native communities. One essential feature is a land base, without which self-government is not viable. There will also need to be a basic level of economic development in each self-governing community and probably a network of regional and national native organizations through which co-operation, collaboration and support can be channelled.

Sommaire

Le droit à l'autodétermination des peuples autochtones est un droit inhérent et comprend le droit de définir l'appartenance à une communauté autochtone. L'article 35 de la Loi constitutionnelle de 1982 reconnaît et confirme ces droits; elle ne les a pas créés. Le droit aux services publics essentiels de qualité acceptable appartient à la citoyenneté canadienne et s'applique aux peuples autochtones en vertu de leur contribution de toutes les terres du Canada. Les gouvernements autochtones devront répondre aux différentes valeurs culturelles et aux traditions de chaque peuple autochtone afin d'accomplir pour eux ce qui pour les autres Canadiens est accompli par les gouvernements provinciaux et municipaux. Aucun modèle formalisé ne peut cependant être appliqué en raison de la disparité de culture, de population, de degré de développement économique, de régions et d'autres circonstances parmi les gouvernements autochtones. Il sera également nécessaire d'assurer un niveau acceptable de développement économique pour chaque communauté et vraisemblablement aussi un réseau régional et pour national d'organisation autochtone pour distribuer les fonds et assurer la collaboration.



INTRODUCTION

Our political system defines rights of citizenship first on a national basis and then in terms of the various sub-units of government of which a Canadian citizen is a member. Residence in a province, territory, county, district, city, town or rural municipality carries rights that are peculiar to that sub-unit. The general hierarchy of rights is thus geographically organized.

Aboriginal peoples do not share this general pattern. For Indians the local sub-unit is the band, usually located in a distinct territory called a reserve, with the **Indian Act** providing the legal framework of local government in the same way that the **Municipal Act** does for other citizens.

Inuit have similar separate communities. Metis tend to be

scattered, although in the Northwest Territories they have joined forces with the Dene to form a territorial community.

The important difference is that the band council system established by the **Indian Act** is not really self-government. Few bands have had the resources necessary to provide the services normally expected of local government. Consequently, much of the real power is exercised by the federal and provincial governments, which provide basic health, housing, educational and other services. The result has been that most of the important decisions affecting aboriginal peoples have been made by alien governments in which they do not really participate. The band council is therefore hardly a form of self-government.

The claim to aboriginal self-government is an attempt to shift the real power of decision and the administration of public services to native communities. If all native communities were located within the same territory we could probably follow the pattern set by the creation of new provinces such as Manitoba out of the North-western Territories and Rupert's Land, but the reality of scattered communities bars such a general approach. What is more likely is that each self-governing aboriginal group will use whatever resources it has to contract for the provision of the public services that it wants and can afford, or else will provide those services itself. In principle, every combination of external sources, both public and private, and internal

sources is possible. A community might, for example, contract with an adjacent municipality for the provision of all services, might use private agencies, might provide all services on its own, or combine all of these.

The one common requirement, if it is to be true self-government and not just a new form of dependency, is that the native community have the necessary resources to provide or contract for the services its members want. Since the level of resources varies from one community to another, each community will have to establish its own priorities and use its resources to do the best it can to meet them.

While there is no bar to the pooling of resources on a regional, provincial or even national level, the decisions must ultimately be made and services delivered at the local community level if there is to be true self-government. A national or regional council of native leaders that is remote from the communities it governs would be little advance on the **status quo**. People must be involved in the running of their communities and must believe that they can influence decisions and have access to basic services if there is to be self-government.

We begin, then, by trying to break down the concept of self-government into some specification of what it involves.

THE VALUES OF SELF-GOVERNMENT

The Report of the Royal Commission on Bilingualism and

Biculturalism² taught us the importance of language and culture as the medium of participation in community and its government. Because both of the "founding groups" in Canada are of European origin, the cultural differences between them are not so great that the problems of minority rights cannot be resolved through the protection of language rights. Even so, it is probably of major importance to this accommodation that the national minority has in Quebec a territorial base with its own provincial government. It would probably be very difficult to assure minority francophone rights without this base.

Not only do aboriginal peoples lack a similar home base, but their culture is in many ways fundamentally different to that of the European-based majority. Indeed, it is misleading to speak of a native culture. The Haidas of British Columbia have a culture quite different to that of the plains Cree, and Inuit culture can hardly be lumped together with that of any Indian group.

This cultural diversity, together with the sharp differences between all native cultures and the majority culture in Canada means that the model of self-government we seek must be fairly comprehensive, capable of responding to each particular community /and to the basic needs of its members. It is up to each community to determine for itself the form of government, the process for establishing it and the priorities and levels of service in basic matters like health,

housing, education, social services and economic opportunity.

RIGHTS OF CITIZENSHIP

While aboriginal peoples will remain Canadian citizens as long as self-government is set within the Canadian constitutional system, it is almost certain that their rights as citizens will be defined differently from those of others. Their primary allegiance will be to native communities and governments. Since neither the federal nor provincial government reflects their communities, they will enjoy special, separate rights in all matters where cultural values count. Education and social services are examples of such matters, while things like defence, postal service and roads do not involve these differences to any great extent. To the extent that they will look to their own governments to make decisions and provide services, aboriginal peoples will have no need to participate in other governments, either by way of voting or running for office.

In matters like defence, postal service and roads, their interest will be a collective one, so that participation through their own governments seems the appropriate approach. The two constitutional conferences of 1983 and 1984, at which aboriginal peoples' representatives met with representatives of all eleven governments of Canada, may provide a model for participation in decisions that are not touched by sharp cultural differences.

At this point the idea of aboriginal self-government begins to look very complex and unwieldy. That is its very nature, given the fragmentation of the peoples involved, the great differences in the circumstances of the many native communities, and the vastness of the territory over which they are distributed. If we are serious about aboriginal self-government, we must face up to what it involves. Only in that way can we know what is required and how to go about it. There is no point in dressing up some new form of wardship as self-government and spending the next two or three decades learning that we have achieved nothing.

The stakes are very high. Historically, we know that self-determination is the path to emancipation for subject peoples. It is worth a high price to succeed, even if the ultimate fate of the aboriginal peoples is to be assimilation, for it would be assimilation by choice, on their own terms, with some hope of preserving their cultural values as other minority ethnic groups have done in Canada. If assimilation comes other than by choice, it is likely to be extremely costly for everyone.

General rights of citizenship can be defined where common cultural values are shared and where political divisions are largely matters of geography. However, where political sub-units are established to satisfy the claims to self-government made by groups with distinct cultures that

differ sharply from that of the majority, rights of citizenship for members of those groups will be defined largely in relation to those sub-units. We can expect a quite different definition of rights of citizenship for those citizens who opt for membership in the aboriginal sub-units.

It is not just a matter of substituting a native community for a municipality and setting it in the same governmental structure. Rather, it is a case of withdrawing native communities from the usual arrangements into a unique set of relationships with other governments, with a wide range of possible variation in the various native communities.

Once we decide how this can be done within the Canadian constitutional system we will be able to define the various rights of citizenship and access to services in relation to this new level of government.

THE LEGAL FRAMEWORK

Before 1982 there was already a distinct level of government for Indians in the form of a band council system. The **Indian Act** provides this sub-system and Parliament's authority to establish it is clearly based in s.91(24) of the **Constitution Act, 1867**.³ So there is nothing new about having a distinct system of governmental sub-units for aboriginal peoples. What is new, however, is the constitutional recognition of aboriginal rights in s.35 of the **Constitution Act, 1982** and the apparent acceptance by the eleven governments

of Canada of the proposition that one of these rights is the right to self-government.

This means that the practice of imposing a common system of aboriginal government by Act of Parliament has been superseded by a constitutional right in each native group to work out its own arrangements for self-government under the Canadian constitution. It is a difficult conceptual threshold to cross because we are so conditioned to the federal hierarchy in which local government exists and functions at the pleasure of a legislature, exercising only delegated powers. The authority for the emerging system of native self-government comes from within from a residual sovereignty, and that system will be legally anchored in s.35 of the **Constitution Act, 1982**. The elaboration of each community's government will be more akin to the framing of the federal constitution than to the framing of municipal legislation.

Perhaps the closest analogy to be found in the present system is that of government under city charter. All cities of any size have their own distinct charters, each tailored to the circumstances of its own particular city. We do not hear claims that it is chaotic to have distinct arrangements for different communities, that all should come under a common legal framework provided by municipal legislation. In fact, the differences on essential matters are seldom great, and that is likely to be the case with native communities that are

similarly situated. Patterns will emerge and the process will be much less chaotic than feared, once the sense of self-determination becomes real among aboriginal peoples.

This right of self-determination goes beyond s.35 of the **Constitution Act, 1982** and the subsequent conduct of governments in two constitutional conferences with representatives of aboriginal peoples. It is founded ultimately in the UN General Assembly's 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.⁴ That document denies the use of inadequacy of preparedness as a pretext for delaying independence and calls on all states to observe the Declaration on the basis of respect for the sovereign rights of all peoples and their territorial integrity.

A THEORY OF ABORIGINAL CITIZENSHIP

We are all captives of our cultural background and tend to reject out of hand the idea of people living apart in exclusive enclaves, enjoying the goods and services of an industrial society without bearing the usual responsibilities of working and paying taxes. We therefore need a theory to justify this sharing of benefits if we are to embark on the undertaking with conviction and with any hope of success.

A theory can be constructed on s.36 of the **Constitution Act, 1982**, which provides as follows:

EQUALIZATION AND REGIONAL
DISPARITIES

36. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

PÉRÉQUATION ET INÉGALITÉS
RÉGIONALES

36. (1) Sous réserve des compétences législatives du Parlement et des législatures et de leur droit de les exercer, le Parlement et les législatures, ainsi que les gouvernements fédéral et provinciaux, s'engagent à :

- a) promouvoir l'égalité des chances de tous les Canadiens dans la recherche de leur bien-être;
- b) favoriser le développement économique pour réduire l'inégalité des chances;
- c) fournir à tous les Canadiens, à un niveau de qualité acceptable, les services publics essentiels.

(2) Le Parlement et le gouvernement du Canada prennent l'engagement de principe de faire des paiements de péréquation propres à donner aux gouvernements provinciaux des revenus suffisants pour les mettre en mesure d'assurer les services publics à un niveau de qualité et de fiscalité sensiblement comparables.

This section conceives of Canada as a commonwealth in which all citizens are to enjoy essential public services of reasonable quality. While it is true that the framers of this provision had in mind the federal division of Canada and the leveling out of great disparities in resources and tax revenues, the aboriginal peoples can assert their right to a share in the common wealth on the basis of having provided the entire land base that supports it. For much of that land base they have never been compensated, and even where they have there are questions of propriety and adequacy to be dealt with.

Collectively or by individual tribes or Inuit communities, the aboriginal peoples have a fair claim to share the goods and services by virtue of a major contribution that has not yet been fully paid for. To put the matter in conventional legal terms, they are asserting claims as landlords, in some cases against squatters and trespassers who have been occupying and exploiting their lands for decades without recognizing their rights or paying rent. And governments may have been the dominant offenders, using the supernatural powers of "The Crown" to give an aura of legitimacy to their occupations of aboriginal lands.

Other Canadians claim their citizenship rights as inherent and their rights to public services by virtue of paying taxes. For the Indian or Inuit, a fair return on land occupied and used by elements of the industrial economy may be the equivalent of taxes or better. It should be emphasized that we are not here concerned with personal wealth, but only with access to the essential services provided by government.

The basic theory, then, is similar to that under which other Canadians enjoy essential services. Provinces own their resources and may tax resource revenues; residents of a province share in that common wealth by enjoying basic services like health care and education. Any aboriginal group with an outstanding claim to land originally theirs and never fairly and adequately compensated for has a distinct claim on the same

principle. There may also be some retroactive claims where the aboriginal peoples' shares have been diverted to the pools of wealth serving the non-native majority.

This way of putting the matter is probably offensive to native peoples, but we must begin with the best available parallels as we try to bridge the gap of misunderstanding. To equate the original territorial rights of the aboriginal peoples of Canada to resource revenues, industrial production and taxation is to imply that land is to them a commodity to be traded and exploited. This is, of course, totally wrong, and goes to the most fundamental difference between native and modern European cultures.

To them, the land and its natural riches are sacred. Much religious ceremony is attached to native peoples' relationship to the natural environment. Aboriginal peoples probably provided the inspiration for the current conservationist saying that "we do not inherit the land from our fathers, we borrow it from our children."

Nevertheless, we know that there is much resistance and some hostility to native claims in the country because of a general belief that aboriginal peoples are trying to have it both ways. It is, therefore, essential to put the native peoples' claim to share in the common wealth in terms that members of an essentially materialist, possessive society can understand. Native peoples never sold or traded their land.

What they did do was recognize the needs of the European newcomers to share their land, and sometimes out of generosity and good will, sometimes under coercion, and nearly always under misapprehension as to the ultimate intentions of the white man, they agreed to share their land with him.

What was done to the Indians and Inuit is seen today as shocking by any standard of civilized conduct and is almost certainly in violation of international law. David Ahenakew of the Assembly speaks often of the ultimate justice of demanding that the Europeans go back to Europe, but this is political rhetoric that serves as a prelude to the process of bargaining. At the practical level he and his people ask only a just settlement of the claims based on those wrongs which constitute the first fact of life for aboriginal peoples today. Those who have yet to acknowledge the justice of the claims of the aboriginal peoples need to understand what a gross distortion it is to assert that native peoples are trying to have it both ways when they claim their basic rights as Canadians to a basic level of essential services while rejecting the industrial way of life in favour of separate communities under traditional forms of government.

Essential services come to aboriginal peoples as a form of rent. Some native groups may have little or no residual land rights on which to base such a claim, while others may have far more than they need. It is for the aboriginal peoples

to decide how far they will pool their rights to ensure that all groups can negotiate for essential services to their people. It is conceivable that some groups may have to choose between sub-standard services and throwing their lot in with the wage economy to provide the wealth needed for adequate services.

This may not be necessary, however, if s.36 of the **Constitution Act, 1982** is given a broad interpretation. Equalization is a practice based on a shared belief that the cost to citizens of living in a less wealthy part of the country should only go so far. The central government, like Robin Hood, takes from the rich and gives to the poor, all with the generous consent of the wealthy. The same approach can be taken to aboriginal groups if their leaders are prepared to accept the principle of equalization in the exchange of land rights for essential services.

All of the above tends to assume native communities with either aboriginal or treaty rights and with a land base. Since that assumption would exclude urban Indians, Metis, non-status Indians and native groups without a land base, something needs to be said about how these persons would fit into the model being developed, if they fit into it at all.

We are discussing real self-government, not just a new illusory pretense of it. The urban Indian, whether status or non-status, is caught in an alien system of government as long

as he or she remains in a city or town. While native associations, neighbourhoods and facilities can be established to help urban Indians preserve their cultural identity and bridge the gap between their heritage and industrial society, it is just unrealistic to contemplate real self-government for native peoples in this situation. The better approach would be to encourage these persons to maintain their ties with their traditional communities or establish such ties where none exist, provided they can find receptive communities.

Urban Indians could in this way have a cultural refuge to go to from time to time, or permanently if they chose, and a source of help in securing public services more tuned to their needs. For example, Indians living and working in a town with no special schooling for native children might send their children to a native community for primary schooling.

Metis are different. Their lack of status and of a land base is not entirely the product of individual choice. To the extent they form communities and wish to become self-governing, they should be helped to obtain a land base or be given control of a territory within which they can develop a system of local government responsive to their distinct way of life. The company town concept comes to mind, and areas of unoccupied Crown land could be set aside for this purpose without the need to convey title to the group if that should become a stumbling block. The existing concept of Indian reserve could be adapted to the purpose.

Non-status Indians are creatures of the white man's legislature. In 1951 the federal government enacted a legislative scheme for determining who is and who is not an Indian.⁵ For example, under that scheme a full-blooded Indian woman who has chosen to adhere to the traditional way of life can as a result of marrying a non-Indian be denied status, while a woman with no Indian blood and no commitment to a traditional way of life can, by marriage, acquire status.

Since we have renounced the right we once claimed to decide for native peoples what is good for them, we should be prepared to recognize the exclusive right of native communities, within certain limits, to decide who are members of those communities. Those who are excluded will necessarily be outside the scheme of aboriginal self-government. Those included will have a right to live within that scheme and participate in it, but may choose not to, in which case their hierarchy of communities will be the same as for non-native Canadians.

The absence of some kind of land base, or territory, seems to me to be fatal to any prospect of real self-government. Undisturbed occupation of crown land, even as squatters, should suffice as a land base but it is just unrealistic to believe that Indian or Inuit families and individuals who are dispersed through a region or located in a city or town could form a network that would be anything more than a cultural association

and a support organization. To confer real powers of self-government on such networks would undermine the local governments for the areas and lead either to governmental chaos or a fraudulent facade of self-government.

We ought not to waste time on illusory ventures. Rather, we should concentrate our efforts on helping native peoples in this kind of situation to establish the best possible cultural associations and support networks.

The various models to be developed later will all assume some kind of territory over which the native community in question will have powers of local government. In the case of Metis and of Indian or Inuit groups with no land base, the first step toward self-government will therefore be the acquisition of a territory. The second step, which will be the first act of self-government, will be a decision as to what persons are members of the community.

We now have a theoretical framework within which to develop a model of aboriginal citizenship with rights and access to services related primarily to autonomous native communities. We need to particularize those rights and services, consider the American experience in developing similar arrangements, then describe a few alternative models for Canadian aboriginal communities.

RIGHTS OF CANADIAN CITIZENSHIP

The common interests of all the provinces and their

residents, which the federal system commits to the central government, must to some extent be common also to aboriginal communities and their members.

External affairs, defence, postal service, national systems of transport and communication and the monetary system are not the kinds of matters from which native communities are likely to opt out. These are national matters, which can be adjusted to meet the special needs of aboriginal communities in the same way as they are adjusted to provinces' varying needs. Ferry services to Prince Edward Island and Newfoundland and the great railway undertakings of the 19th century are examples of the latter. The cultural differences that matter so much in education and social services do not have the same significance for these national services.

It seems likely, therefore, that aboriginal peoples will continue to be full Canadian citizens, with the attendant rights to vote or run for office in federal elections and to enjoy the many services provided by the federal government. However, because of their dispersal it may be appropriate to establish a number of aboriginal seats in the Parliament of Canada to ensure that their distinct interests will have direct representation, as do provinces and constituencies with special interests.

Mobility rights create a problem. As long as native communities are closed to non-natives there is likely to be a

general feeling that the reciprocity needed to justify mobility rights is missing.

This may become one of the critical issues of aboriginal self-government. One solution would be for aboriginal communities to remove all barriers to access for non-natives, on the condition that those entering their communities inquire into local custom and respect it. This might be a good thing, educational for both groups. Much of today's ignorance and misunderstanding results from the fact that non-natives have no right of access to reserves and are generally not welcome there.

In the United States the right to exclude non-Indians from tribal lands is inherent in the sovereignty over those lands.⁶ This right may be enforced where lands are small or relations with adjacent communities are not good, but in larger Indian territories like those in Arizona the traveller is simply notified that he is travelling on Indian land.

In the past we have tended to see the central government as the federal umbrella under which the provinces are united for certain common purposes but left autonomous in those areas that touch most closely its region and people. So wedded are we to this conception that our two northern territories are treated as provinces for legal purposes even though each has its charter of government in an Act of Parliament.⁷ Since aboriginal communities will not fit this model we will need a

broader conception of the central government as the meeting place of all the sub-units of government that derive their existence directly from the constitution.

Thus, while other Canadians will define themselves in terms of their national, provincial and local ties, aboriginal peoples will have national and tribal allegiance. The degree of sovereignty, not the size, of aboriginal communities is what will make them the Indian and Inuit equivalent of provinces for the purpose of defining rights of citizenship and access to services.

RIGHTS TO TRIBAL CITIZENSHIP

While Inuit communities do not describe themselves as tribes, it is useful to have this single term to describe the aboriginal equivalent to provincial allegiance. Since most Inuit live in the territories there is not in their case the same difficulty in adding the new level of government to the present system. The realities of geography and culture have meant that the Arctic aborigines have always been Canadians and Inuit. Their integration into territorial government has been recent and not very successful. They remain largely communities apart, which look almost exclusively to the federal government when they look beyond their own groups.

Assuming, then, that an aboriginal community within a province opts for separate, tribal self-government rather than

just plugging into the municipal legislation of the province, what rights will be lost or gained?

Having withdrawn from provincial citizenship in favour of tribal allegiance, members of these communities will no longer have the right to vote in provincial elections or run for provincial office. By the same token, theirs will be the exclusive right to vote and run for office in their own local government. Their situation will be akin to residents of one province who go into another province. Apart from reciprocal arrangements, they will have no right to social services such as health care and social assistance, but will otherwise be free to move around and use public facilities like roads and parks.

Thus the aboriginal community will become to its members what the province is to other citizens. This is necessarily the case because the essential services provided by a province are shaped so much by the cultural values of the community that nothing short of separate services can accommodate the demand for self-government. That does not preclude aboriginal communities from drawing directly on provincial services, either wholly or partially, if that satisfies their members, but at some point that ceases to be self-government.

As with the central government, it might be useful to provide for some representation of aboriginal communities in the provincial legislatures. This would recognize the fact

that, although autonomous, these communities and their members would be directly affected by the laws and policies of the province with which they negotiate for the provision of services they cannot themselves provide. Also, their members will be governed by provincial laws when they move out of their tribal lands and probably to some extent while on those lands. For example, the Musqueam and Capilano Reserves, both located within Greater Vancouver, would be virtually impossible to disengage from the provincial and urban communities. Also, travel between aboriginal communities will usually involve moving through the provincial community.

If we examine the various services provided to provincial residents and the structures through which they are delivered, we will be in a position to design alternate models for delivery within a variety of aboriginal communities, large and small, remote and close to cities and towns.

ESSENTIAL SERVICES

The Administration of Justice

In principle, access to all the courts in the land is a right of Canadian citizenship. The degree of local access to justice and the applicability of separate laws are the issues for aboriginal self-government.

Most provinces have developed or are developing regionalized courts of civil, family and criminal jurisdiction,

with a judge of each division resident in each region. We have long had municipal courts for the administration of local by-laws. There seems no reason why we could not locate a judge and the attendant court staff in each aboriginal community.

The training and experience needed to prepare local people to serve as judges and court staff would depend on the extent to which tribal law is to be restored as the rule for decision. But even allowing for extensive application of federal or provincial laws such as the **Criminal Code** and provincial highway laws, there are various ways to structure a court so as to accommodate local laws with general laws, running from the English magistracy with its legally-trained clerks to a system of limited powers for local judges that reserves certain matters to a visiting judge of the provincial or federal court.

Local administration of justice within aboriginal communities is therefore a realistic objective. The main questions to be considered are the extent of jurisdiction to be exercised by the tribal court or courts of each aboriginal community and the extent to which traditional tribal law is to be in force, as a kind of aboriginal equivalent to the common law. The two questions are obviously related.

So far as funding is concerned, the fact that tribal courts will be doing a job that would otherwise fall to the province suggests that this activity should be supported by the

provincial governments, through grants, training or supply of personnel and provision of buildings and other facilities. Since tribal courts are likely to some extent to come under the supervisory authority of provincial courts, and since access to provincial courts will be wanted for matters that do not come within the jurisdiction of tribal courts, some general arrangements will be needed to integrate tribal courts into the national judicial system. Some provinces have already begun to move in this direction, for example, Ontario and Saskatchewan. Native court workers have been operating in British Columbia for a decade.

This element of self-government can therefore be developed through co-operative action that builds on experience to date.

Health Care

Our national commitment to health care services of reasonable quality for all Canadians is especially strong. Costs and funding have become the big questions, not whether universal medicare is to continue.

The questions for autonomous native communities, of whatever size, will therefore be the methods of funding, organization and delivery of health care services. To the extent that funding for health services in the provinces comes from provincial resource wealth, any aboriginal rights to rental on land can be converted into claims to funding of health care services. Shortfalls can be made up either from

national aboriginal pools of wealth or from the general revenue, on the principle of equalization recognized in s.36 of the **Constitution Act, 1982.**

Questions about facilities and personnel will be important. Small communities can seldom provide more than rudimentary health services - a local doctor and nurse if they are lucky. Treatment of serious illness or injury requires transfer to larger communities, often over great distances. But this is true of all small communities, whether aboriginal or not, so that the elaborate system of regional hospitals, flying doctors and ambulances, remote diagnosis and all the rest that we have developed and will no doubt steadily improve will be available to aboriginal peoples.

The funding for this large and expensive network will involve all three levels of government - national, provincial and aboriginal - and is likely to be seen as an essential national service, available to all Canadians who need it. Production of a health services identification card will open the door of any public facility and satisfy the cost of all ordinary health services provided to individuals.

In time aboriginal groups will no doubt provide many more of the doctors, nurses and other health care professionals and workers than they do today. For now it should be sufficient justification for their access to a modern health care system that it is clearly in the interest of every Canadian that

aboriginal peoples enjoy that level and quality of health care that will enable each of them to develop as healthy, happy and productive individuals.

The development of local health facilities run by native peoples themselves will be more difficult. The problem is related to culture, remoteness and education. As long as native communities remain apart and live according to old ways, local health clinics are likely to be brought to them from the outside. Native culture and modern medicine could hardly be farther apart on the spectrum of social organization.

Nevertheless, it makes a difference whether a health clinic is established through decisions made in Ottawa or through negotiation between a tribal council and medical people. And if the terms agreed on include provision for training of local people and transfer of control to qualified local people as they become available, there will be some incentive to provide the educational base needed to allow interested aboriginal children to pursue science and train as doctors, nurses and other health professionals. In a world where the hunting-fishing-gathering way of life is becoming less viable and less attractive to young people who are increasingly aware of the alternatives, these opportunities cannot come too soon.

The experience in the United States, which will be summarized later, has been that Indians can move into all kinds

of careers without losing their cultural identity. The challenge, therefore, will be to find ways to see several generations of aboriginal children through the inevitable transition without losing their cultural identity.

It is their land base, coupled with recognition of their right to self-determination, that makes this possible.

Employment

Employment opportunities are tied to economic development, which is a product of resources and development. Each aboriginal community has its own economic structure ranging from remote hunting-fishing-gathering communities to those that have developed their land or used their oil and other resources to modernize rapidly.

Except in a few fortunate communities, local economic development is unlikely to provide enough employment to satisfy the needs of the community. Opportunities will have to be found beyond the reserve or other tribal lands. If self-government is to be a reality, this requires something more than locating a manpower office in the community. The local government, in addition to encouraging and providing training and education that will allow young people to move into jobs beyond the local community, can pursue various kinds of agreements for on-the-job training, for use of local people, and can even serve as a supplier of manpower to contractors and others with projects in their areas.

This is not an area where a high degree of autonomy is feasible for most native communities, but local government can take on a range of information, counselling, training and contracting functions that can make a great deal of difference to the level of employment achieved by the community.

Related to economic development and employment is the matter of taxation. If aboriginal communities want to go beyond the minimum essential services to develop into more prosperous communities, they may have to levy taxes on their members. This implies the setting of priorities and the planning of economic development within each community, a responsibility that has long been denied aboriginal peoples under the trust and estates administration mandated by the **Indian Act**. This may become the most important function of tribal councils, for self-government is unlikely to be realized by any community that lacks the economic strength to take an independent stand. Dependency seems an inevitable by-product of lack of an economic base. That has been the experience in the United States as well as in Canada.

Social Assistance

Income support, welfare or whatever else it is called is regarded equally with health care as one of the essential public services recognized by s.36 of the **Constitution Act, 1982**. Under the Canada Assistance Plan, federal funds are channelled to provincial social assistance under conditions set

by the governing federal legislation.

Disputes between Ottawa and Quebec over control of social programs, particularly Quebec's rejection of the Victoria Charter, suggest that cultural values play an important part in the design of these programs. That importance is likely to be even greater with aboriginal peoples, whose priorities and approaches differ more from ours than Quebeckers' differ from English Canadians'.

The arrangements for designing social programs and delivering services will therefore need to be made through consultation between the federal government and native communities. If the demand for accountability is not to result in federal government control of these programs, there may need to be a requirement for **some** contribution by the local community, even if it is not the usual fifty percent required under the Canada Assistance Plan. If local communities contribute a substantial part of the cost of social assistance programs, whether through local taxes or through revenue from tribal land or resources, there will exist the same motivation for proper local controls as exists in the provinces under the present scheme.

Once again, then, some kind of economic base seems likely to be an essential condition of real self-government. Aboriginal communities that mean to take charge of their own affairs will likely give high priority to establishing a board

of management to take responsibility for economic development, employment and social assistance. Unless that is done, the art of grantsmanship is likely to dominate and to attract the wrong kinds of leaders to tribal councils.

Housing and Related Services

The provision of basic shelter is simply a matter of money. Aboriginal governments could assume a role similar to that of city governments, which is to provide public housing for those unable to provide their own even with the kinds of help that federal and provincial governments give.

On the other hand, native organizations could concern themselves with the quality of native housing in terms of traditional styles of building and the peculiar needs and preferences of various native groups. The pursuit of adequate, suitable housing for all aboriginal peoples could become a national objective of native groups, giving them a common enterprise through which they can engage in the important institutional activities of formulating goals and working together to achieve them.

If art and architecture reflect the values of a culture, then this may become an important area of activity for revitalizing aboriginal culture. Without some such revitalization, the movement to self-government may itself lack the vitality needed to make it serve the basic needs of native peoples.

The question of housing is closely related to economic development and employment. A bit of ingenuity and enterprise on the part of native organizations could turn housing problems into a collective asset. The result might even be an enterprise going beyond the provision of native housing to provide some of the economic base that self-government on any scale is going to require.

Related to housing are such things as water and sewer systems, hydro, domestic gas and a wide range of fixtures and appliances. There seems no reason why each community should depend on the general market and pay a high price for things that may not suit their needs all that well. The cooperative approach, whether national or regional, could produce aboriginal crews trained in installing and maintaining the various domestic services. Local people could be trained in routine maintenance.

Education

The experience of minorities in the United States is that separate schools are inferior.⁸ At the same time, only the aboriginal peoples themselves can provide an education that responds to the needs of their own children.

We need to know how much of a child's education needs to be culturally responsive and at what point the personality is formed sufficiently for immersion in education or training as a dominantly intellectual activity. Up to that point, local

schools run by aboriginal communities should be available to all native children. Once the more expensive level is reached, especially post-secondary education and training, limited resources will mean lower quality if separate facilities are attempted.

Realistically, native communities cannot expect to provide more than elementary and secondary schooling for their own children. Even there, collective action among neighbouring communities or pooling of resources with non-native communities may be preferable.

Close cooperation with provincial governments and their education authorities will be essential. Aboriginal communities will in many cases be providing the first two levels of education, after which their children need the facilities of universities and technical schools run by the provinces. Then the question becomes one of funding, and the present arrangements for native students will probably be continued for as long as they are needed to give able students the opportunity to progress. Education is an essential public service, and funds from the federal equalization pool are appropriate to support this activity.

Much of the ground work has already been done in this area, but the important change will be the vesting of control over local education in a local school board, where this has not already occurred. The process of deciding what the

community wants for its children and of hiring school administrators and teachers will involve the community in the future of its members.

Native teachers and administrators will generally be preferred, and the teacher certification system ought not to bar competent native teachers. There are probably enough qualified aboriginal people available to staff bodies that can rule on the qualifications of aspiring teachers in aboriginal communities. They can receive advice on standards of qualification but ultimately they will be the best judges of the weight to be given to the various qualities required for effective teaching in separate aboriginal schools.

The truth is that education for native peoples has been given high priority for some time, leading to a dramatic increase in the number of Indian and Inuit students who complete high school and go on to a university or technical college. The move to self-government need not interfere with this trend, and increased local control of elementary and secondary schooling should result in an even higher success rate at those levels as education ceases to be perceived as an alien requirement imposed from outside.

The growing sense of autonomy that will accompany self-government will make the early education of native children increasingly a study of their own lives and communities rather than a study of "them." The basics of

reading, writing, arithmetic, and later on history, civics and science will be seen as relevant to their own communities.

Cultural Activities

The ceremonies, rituals and festivals of a culture need no formal recognition or support. They have a life of their own. But to the extent that these cultural activities have been suppressed or buried under layers of alien culture they need to be nurtured.

The preservation of these activities has become an important and pervasive feature of aboriginal community life. Demands for the return of the sacred objects now lodged in museums and the elaborate observance of peace pipe and other ceremonies at the constitutional conferences of 1983 and 1984 attest to the awareness among aboriginal peoples of the importance of these activities.

Self-government will help in the preservation of these cultural activities. No longer, for example, need the Mohawk people divide their collective lives between the longhouse and the band council hall. Traditionally their government and religion are common activities that take place in the longhouse. Tribal councils are free now to restore the traditional way of carrying on the collective life of the community.

Traditional cultural activities, then, can once again become the medium of social intercourse, including

self-government, and be pervasive in the lives of those who choose the aboriginal community as their basic social unit after family and clan. This is something that happens largely spontaneously and has already gone a long way during the past two decades, as aboriginal groups have rediscovered their past and asserted the right of self-determination that was ultimately recognized constitutionally.

Aboriginal communities can expect to receive a fair share of the public funds given to support a variety of cultural activities. Public libraries, cultural centres, and other facilities can be supported locally on the same scale as in non-native communities of comparable size and location. The Travelling Indian College that operates out of the St. Regis Reserve is a good example of the way Indian cultural activities can be supported.

The above discussion of rights of citizenship and access to public services under aboriginal self-government has been directed at people residing in separate aboriginal communities. When members of these communities go out into the larger community their position is comparable to that of a resident of one province going into another province. Comparable, that is, but not identical. The same reciprocities do not exist, and Indians and Inuit look ultimately to the central government, which is charged with responsibility for them under s.91(24) of the Constitution Act, 1867.

It is different, however, when an aboriginal person leaves the reserve or other native community to take up residence in a province. While that person continues to enjoy the federal status that flows from s.91(24), he or she is no longer a member of the aboriginal community unless the change in residence is only temporary in order to attend school or take a training program. His home community may admit him back at any time and may continue to provide services to him, but a permanent change of residence will bring him under provincial (or territorial) jurisdiction. His government is no longer the aboriginal government of his home community, although his special relationship to the federal government does continue.

The various employment, social and other services provided to the "urban Indian" may or may not be adequate, but there is no reason why aboriginal groups cannot provide some of these services to their own members who have moved out of their home communities if they have the will and the resources to do so. That is not self-government, however, but simply an extension of some of the benefits of self-government to aboriginal people who live outside it.

THE U.S. EXPERIENCE

In 1961 the United States government abandoned the policy of forced assimilation through termination of Indian tribes, a policy it had pursued since 1943. The new policy was to be

self-determination, based on the longstanding legal doctrine of sovereignty of Indian tribes. In the two decades that followed, there have been many initiatives and a major Congressional review of Indian policy. That experience may be useful to us, especially since we have adopted the same view of the aboriginal peoples' right of self-determination.

The usual warnings about the hazards of drawing comparisons to experience elsewhere are in order here. The melting pot tradition is strong in the United States and the use of force against Indians and their lands was more ruthless than in Canada. Also, apart from Alaska, whose population is nearly one-fifth aboriginal, there are no large territories blessed from the native point of view with unfitness for settlement by Europeans.

While American judicial doctrine was much more favourable to Indian sovereignty and treaty rights than British and Canadian have been, the legacy of bitterness resulting from injustice seems greater in the United States than in Canada. A sense of the difference in attitude and treatment can be acquired from Frederick Turner's book, **Across the Medicine Line**, an account of the treatment of the Sioux under Sitting Bull during their brief, vain attempt to find sanctuary in the Canadian West.

The distribution of Indians and Indian lands in the United States is also revealing. The five states of Oklahoma,

Arizona, California, New Mexico and Alaska have between them almost half of the nearly one million Indians and Inuit in the United States. Only thirteen other states have Indian populations of ten thousand or more. Canadian Indians are much more evenly distributed.

Large Indian territories exist in some of the States, notably Arizona, South Dakota, New Mexico, Montana and Washington. Northeast Arizona is a large Navajo-Hopi territory that is under Indian administration. Indian lands in the eastern U.S. are much smaller, on the scale of Canadian reserves. The only Indian or Inuit territories in Canada that compare in size to that of the Navajo-Hopi are those under claim north of the sixtieth parallel, such as the Dene, the Committee for Original Peoples' Entitlement (COPE) and the Inuit Tapirisat claim areas.

It is therefore fair to assert that, apart from Alaska and the handful of large Indian territories, Indian communities in the United States are close to if not surrounded by industrial society. In Canada this is the case only for those reserves located within the narrow industrial belt that runs along the border with the United States. It may be that the sovereignty enjoyed by Indian tribes in the U.S. has been largely offset by the proximity of industrial society and the attendant social and environmental damage and land abuses.

Nevertheless, the self-determination policy adopted in 1961 seems to have signalled a genuine attempt to right the

wrongs of the past and a final acceptance of the fact that the only hope for Indians lies in self-determination. There must be some valuable lessons for us in the resulting experience.

One revealing fact is that the **Indian Civil Rights Act** of 1968 directed the Secretary of the Interior to revise Felix Cohen's treatise, **Federal Indian Law**. Originally published in 1942, Cohen's handbook was revised in 1958 by the Department of the Interior (in which Cohen had been departmental solicitor) to bring it into harmony with the then-current policy of termination. The subsequent revision ordered by Congress was intended to restore the balance of Cohen's scholarship, and the lesson of this experience is the importance of perceptions and special interests in shaping government policy and public opinion.

There has also been a persistent record of paternalism and unscrupulous politics in relation to Indians in the United States, all of which confirms the wisdom of the aggressive, distrustful approach of Canada's Assembly of First Nations. Everything in the U.S. experience suggests that as long as aboriginal peoples are dependent on the integrity of the political system, their interests and even their legal rights will be ignored or invaded.

Bearing in mind the nature and distribution of Indian communities in the U.S. and the fact that many of the smaller ones may be far down the road to dependency, it is more

useful to look for significant themes and facts than to engage in a detailed, indiscriminate study of tribal government in the U.S. General clues to the reasons for successes or failures may be the most useful lessons to draw from their experience.

The first theme to emerge is the importance of having decisions made in each native community. Complexity militates against decisions about the provision of services being made in government departments. Confusion and duplication result where centralized decision-making is tried. Presumably this will be true with the aboriginal organizations too. Cooperation is desirable, but each community must decide what services are to be provided, by whom and in what manner. There is too much diversity among the many native communities to permit effective centralized decision-making even if the individual units were prepared to surrender this power to a new trustee.

This conclusion corresponds to one of the basic requirements of self-government, which is the need for consensus on the goals of the community. Each community must go through its own process of establishing priorities and setting realistic goals. Then come the processes of planning and budgeting for the achievement of those goals, out of which will emerge the necessary structures and processes of a government with a clear and attainable set of objectives. All that we know about good government should have told us that this is the essential starting point, but paternalism runs so

deep in matters affecting aboriginal peoples that it seems a revolutionary idea when applied to them.

Concerning the reality of community goals, U.S. experience suggests that economic development is crucial to the success of self-government. Without an economic base there will be continued dependence on grants and a ward mentality that is the antithesis of self-determination. However, we should avoid defining economic development too narrowly in terms of the practices of industrial capitalism. Many communities may be able to establish a claim to rental for tribal lands occupied but never paid for, including a retroactive claim for uncompensated past use. If available, this need not be the only economic base on which self-government is built, but it could be the base on which other economic activities could develop without native peoples trading their land heritage for industrial purchasing power.

Historically, land has always proved to be one of the best, if not the best, investment. Native communities would be ill-advised to accept mere investing power, or money, in return for a sure source of wealth in perpetuity.

Indian education in the United States is generally seen as a failure, while the introduction of the Indian Health Service in 1955 led to a dramatic improvement in health among American Indians. This should not surprise us, since health is universal while education is heavily culturally oriented. This

suggests that aboriginal communities in Canada should move quickly to take control of education but can take a more gradual approach to the control of health services.

In the field of employment, the relocation of Indians in cities as a way of getting them into jobs is regarded as a failure. This confirms the importance of emphasizing the aboriginal communities as the locus of self-government and regarding those who move out of those communities to cities and towns as no longer entitled to the separate benefits they previously enjoyed. Not that they will be abandoned or denied all help and support, but if native communities are to develop fully as self-governing units, they cannot be responsible for matters beyond their control.

Americans are quicker than we are to use laws in dealing with social problems. We tend to prefer the political arena, with its greater flexibility. Nevertheless, good laws can facilitate solutions to problems, and some of the American attempts to use laws in working out Indian self-determination are of interest to us.

The American Indian Policy Review Commission's Task Force on Law Consolidation, Revision and Codification came up with the idea of a general construction statute which would direct courts in the interpretation of treaties, laws and other documents affecting Indians. The proposed statute would contain six rules of construction, each of which is of interest

to us for the principle it embodies. It is conceivable that Canadian courts, in searching for alternatives to precedents based on discredited beliefs about Indians and their rights, might find those principles persuasive.

Rule One requires explicit abrogation of Indian rights in any document before it can be construed as having that effect. Three judges of our Supreme Court ruled in the *Calder* case⁹ that the mere enactment of legislation asserting Crown title to land was sufficient to extinguish aboriginal title even though no reference was made to such title and no evidence was produced to show that the Nishga Tribe had been consulted and had agreed to such extinguishment. Rule 1 corresponds to the view of the three judges for whom Mr. Justice Hall spoke when he asserted that the legislature cannot be taken to have intended to extinguish aboriginal title without some clear and express evidence of that intention in the enactment.

Rule Two is a rule for interpreting the nature and extent of rights reserved or granted to Indians or tribes by treaty, agreement, statute or executive order. The most remarkable feature of this rule is that such documents are to be construed as the tribal signatories would have understood them. This seems a fair rule in view of what we know about the fate of many solemn treaties made with the Indians. It is also nothing more than what would happen if these documents were submitted to aboriginal courts for interpretation. Indians in court have

faced a stacked deck because the courts are simply the judicial arm of the political authority against which Indian claims are usually made. However unscrupulous the actions of government, courts are contained by the sovereignty of the governments that established them, although Mr. Justice Hall always maintained a presumption against governmental fraud and duplicity on the ground that such conduct is unworthy of the Crown and is therefore not to be presumed by Her Majesty's judges.¹⁰

Rule Three requires that Indian tribes and tribal governments be recognized as independent units of government for purposes of eligibility under federal domestic assistance programs. In other words, tribes are to take their place along with states and cities as sub-units of government within the federal system. This seems axiomatic once the principle of aboriginal self-government is accepted. This proposed rule confirms the soundness of treating aboriginal communities as new political units, independent of both provincial and municipal government.

Rule Four governs the applicability of federal regulatory statutes to Indian tribal governments and Indian property. For example, it is important to know the extent of application of environmental laws to Indian lands. The U.S. Congress enacts federal enclave laws that presumably apply in places like military reserves and national parks. Rule 4 says that Indian country is **not** a federal enclave. The kind of law we would be concerned with here is the **Migratory Birds Convention Act**,¹¹

which may constitute a breach of treaty obligation if enforced on Indian lands. We will have to face this general question in Canada, and the courts would be greatly assisted by some legislative direction on the applicability of federal regulatory statutes to tribal governments and lands.

Rule Five recognizes the continuance for jurisdictional purposes of original boundaries of reservations in the absence of express Congressional intent to dissolve or diminish them. This rule is similar to Rule 1 requiring that any abrogation of rights be explicit and serves the same purpose of removing Indians, their lands and tribal governments from the generality of federal laws. The fact that a federal law is capable of being applied to Indians, or of being so construed, would no longer be enough under this rule. There would have to be express intention shown if this rule were adopted.

Rule Six reaffirms the judicial doctrine that Indian tribes possess all inherent attributes of internal sovereignty except as explicitly terminated or modified by federal treaties or laws. Although laid down very early by the United States Supreme Court, this doctrine has not been consistently observed. This rule of construction, bearing Congressional authority, would give the doctrine a status close to that of constitutional entrenchment.

The enactment of a general construction statute of this

kind is an interesting approach to securing aboriginal rights without constitutional amendment. Whether the proposal is acted on by Congress and whether the approach is as relevant in Canada as in the U.S. is not important here. Rather, the proposed rules are useful in defining the legal conditions of aboriginal self-determination in a federal system whose experience with its Indians is close enough to our own to be applicable.

The rules' primary function is to filter out all laws that are incompatible with the policy of self-determination. They will obviously be important to actors in the political and administrative arenas if litigation is to be avoided. As rules of universal application to a self-governing cultural group within a larger, dominant political system they can be persuasive in both judicial interpretation and political negotiations. They are therefore worth having in front of us as aboriginal groups work out the arrangements for effective self-government.

One further proposal of the U.S. Commission that is worth mentioning is that of requiring an Indian impact statement when federal regulation or agency action is being considered. Normally we rely on the representative nature of our system of government to ensure that all interests are represented. This has never really been an accurate view with respect to aboriginal interests. Others made laws for them, and as the

Calder case shows, often without any awareness of their interests, let alone consultation.

As aboriginal peoples align themselves with their own forms of government, this exclusion from effective participation in the national government is likely to increase. Ottawa has never listened to their views or wanted their advice, they believe, and that is not likely to change. One way to ensure that their interests are at least known and taken into account before federal rules are formulated or action taken is to require a report in the nature of an Indian impact statement.

This proposal is really just a form of the fairness doctrine now firmly established in Canadian law. Requirement of an impact statement might be the most effective way to observe the principle.

The U.S. Commission's Task Force on Law Consolidation, Revision and Codification prepared a Congressional Declaration of Policy, paragraph 2 of which is worth reproducing because it indicates a commitment to a set of arrangements that run counter to so much of what the U.S political system has stood for since its inception:

The Congress of the United States hereby declares that Indian tribes and tribal governments are now and forever will be a permanent part of the American political fabric and it hereby dedicates itself to the development of an institutional framework which will give full support and expression to the legitimate aspirations of the Indian people for political recognition and participation in the American governmental processes.¹²

The most comprehensive source of information on Indian matters in the United States is the **Final Report** of the American Indian Policy Review Commission, submitted to Congress on May 17th, 1977. The Commission also received reports from a number of task forces, the most relevant being the Task Force on Tribal Government and the Task Force on Law Consolidation, Revision and Codification. The Commission's **Final Report** contains a lengthy Summary of Recommendations which could serve as a check list of particular matters to be considered in working out the details of aboriginal self-determination. A copy of that Summary is appended to this paper. Funding of tribal government, of essential services and of economic development is a pervasive issue, as it will be in Canada.

THE ABORIGINAL COMMUNITIES OF CANADA

No single model of aboriginal self-government could begin to respond to the variety of communities. They vary in size of territory, population, in proximity to industrial and agricultural areas, and in prosperity and degree of acculturation to white society, to mention only the most obvious points of difference.

There are in Canada nearly 600 Indian bands and Inuit communities with some 300,000 members. There are more than 2,000 reserves. The southern reserves on which Indian bands live are generally small and may have little unoccupied Crown land nearby on which to enjoy any rights of hunting and fishing

they might have under treaty. More northerly reserves in the provinces usually have extensive areas of unoccupied Crown land close by. In the territories, the land claims of the Council of Yukon Indians, the Committee for Original Peoples' Entitlement (COPE), the Dene and N.W.T. Metis, and of the Inuit Tapirisat are vast. Each of them covers thousands of square miles. The Labrador Inuit Association claim covers more than half of Labrador along with the Naskapi Indian claim, and in Northern British Columbia very large territories are claimed by the Tahltans, the Gitksan-Carriers, the Nishgas and the Kitimat.

The vast territory claimed by the James Bay Cree and Northern Quebec Inuit has been brought under a complex and comprehensive agreement similar to the Alaska Native Claims Settlement. The James Bay and Northern Quebec Agreement deals with every feature of community life - government, health, education and the rest. Therein may lie its weakness, for it is in the traditional pattern of dealings with aboriginal peoples - lots of promises that are not necessarily matched by results. It was the best the James Bay people could do. They were faced with a project they could not stop once the Quebec Court of Appeal suspended the interlocutory injunction in the **Kanatewat** ¹³ case, and which was designed to wipe out the systems of waterways that largely defined their territory as they knew it and used it. They were thus denied the alternative of evolving into a self-governing territory in

their own way. The result may not be the best model to follow elsewhere, but the northern groups with large claims may be forced to follow it for the same reasons: to salvage what they can of their land rights before it is too late. The alternative is to go to court, where the deck has always been heavily stacked in favour of the Crown.

Comprehensive settlement agreements seem to be in store for the northern claimants, providing the frameworks within which distinctive northern forms of aboriginal self-government will be developed.

For the purpose of outlining alternate models, aboriginal communities can be usefully grouped in the following four categories.

- Reserves and other small communities located in or near cities and towns.
- Reserves and other small communities located in the settled belt of southern Canada but not close to cities and towns.
- Reserves and other small communities located in remote areas.
- Large Indian or Inuit territories such as that claimed by the Dene and NWT Metis.

For reasons given in the earlier section developing a theoretical model, these four categories all assume a territory, however small, over which the native community has

powers of local government. Metis and other groups with no land base are treated here as having the prospect of real self-government only if they can acquire some kind of territory. Under that assumption, such groups fit into one of these categories according to their circumstances.

ALTERNATE MODELS

There are some basic facts about the present situation of Canada's aboriginal peoples that need to be set out before we begin to outline a few basic models. A persistent response to the idea of aboriginal self-government is that it is a form of apartheid and will balkanize the country into a large number of small communities as far as native peoples are concerned. Those who raise this objection must believe that aboriginal communities have been integrated with the larger society up to now. If so, they are mistaken. We have practised our own form of apartheid since the Royal Proclamation of 1763 and it is unlikely that much of native culture would have survived without these separate, forgotten communities on reserves and Crown land.

The problem from the aboriginal point of view has not been that they live apart from white society but rather that the band council system has been a facade of self-government. Band councils have lacked both the legal powers and the funds to govern effectively. Band council government has been

effectively carried on in Ottawa, with the Indian Agent serving as the vehicle of central control.

Since the 1960s aboriginal peoples have been asking for is real self-government in place of the colonial rule they have been living under. To those who assert that assimilation is irresistible in this age of jet transportation and satellite communications, their reply is that Indians and Inuit themselves, either individually or in groups, will decide whether, when and to what extent they will assimilate into the larger society. If this is a fair claim, which we seem to have accepted it is, then self-government follows naturally, for without it there is no freedom to choose. Wardship is not an alternative in a society committed to freedom and self-determination.

What follows is a series of outlines, not blueprints. Each community will develop its own process of evolution towards self-government, and personalities will be a factor. Nevertheless, it may be useful to put together what we know of the problems to provide a general picture of what might be.

Reserves and Other Small Communities Located in or Near Cities and Towns

Typical examples of this category are the Musqueam Reserve located within the City of Vancouver and the Caughnawaga Reserve on the outskirts of the City of Montreal. Along with the special advantage of being able to contract with cities and

towns for services and having access to many facilities, these communities come under strong assimilative pressures. Unless they intend to keep their young people away from cities and towns, and can succeed, these communities might well consider the experience of the Chinese, Japanese, Portuguese, Italian and other ethnic communities in Canadian cities. They preserve their cultural identity, including their language, but not at the cost of having their children fail to achieve the best possible lives in the inevitable assimilation. The old way of life is not viable in these situations and self-deception on that score exacts a toll on the young in terms of lost opportunity.

Inevitably the young people in these communities will seek employment in the wage economy, even if they remain resident on the reserve. They should be able to develop their potential and get the best they can. Education and training are especially important and resources should be used wisely. Those resources might best be used to provide good on-reserve elementary schooling that will develop a sense of cultural identity while preparing children for secondary schooling in the larger community. Few native communities, if any, will have the resources for good, separate secondary schools.

The ideal arrangement would probably be one under which the reserve is included in a school district. Native students would then not be outsiders and their parents could participate

in school board and other activities. Much of this is in place, in one form or another. The difference will be that the aboriginal communities themselves, not the federal government, will decide what arrangements are best and work them out with neighbouring communities.

In each of the essential services there will be the same balancing of the benefits of sharing the superior facilities of a larger community against the benefits of independence, all within the limits of resources needed to buy in to those facilities. Perhaps the best analogy is a suburban borough with limited resources. It will want at least its own local traffic and by-law court, if not a resident provincial court judge of civil, criminal and family jurisdiction, a local health clinic, but access to hospitals and other more advanced facilities in the larger community.

In short, it makes little sense to try to duplicate facilities made possible by resources and economies of scale in cities and towns. However, total assimilation or dependence means a return to the old regime, a denial of self-determination. The question becomes one of finding the essential conditions of cultural integrity so that resources can be concentrated on them. Elementary education, control of social assistance, housing and related domestic services, control of economic development on the reserve and related employment opportunities, and a vibrant cultural centre seem obvious elements.

U.S. experience suggests that the matter should not be seen as a choice between aboriginal culture and the culture of the larger community, but rather a judgment as to how to preserve the essentials of aboriginal culture while undergoing the inevitable assimilation to one degree or another. Not simple surrender to the inevitable, but exploiting it to one's advantage. For this, native culture must be seen by those who share it as an asset rather than a liability.

The analogy already offered is that of ethnic groups which congregate in cities and enjoy an informal community life of their own without any formal legal recognition or powers of self-government. Vancouver's Chinatown is a good example. The strength of cultural ties provides the coherence that makes it a community within a community. Urban reserves might do well to exploit those informal processes that give coherence, working towards a kind of ethnic borough status whose differences from the larger community are more cultural than economic.

Gradual, controlled integration into the larger community while preserving a local substructure that will preserve the essentials of aboriginal culture seems the best future for urban reserves. Each reserve will move in response to its own sense of coherence, its resources and the preferences of its members.

Reserves and Other Small Communities Located in the Settled Belt of Southern Canada But Not Close to Cities and Towns

When we move to similar communities that are not close to cities and towns but are not remote either, the analogy that comes to mind is that of the Hutterite colonies. Self-sufficiency is possible in these situations if the will to have it is strong enough, and the Hutterite experience suggests that it need not come at the expense of prosperity.

The communities can develop in the same way as do non-native towns, using contracts to tap provincial, county or municipal services and facilities that cannot be provided internally. Revenues from land and resources, taxes from income-earning members, and grants for equalization and land rights compensation can be allocated according to local priorities. A distinct native lifestyle is more likely than in urban reserves because the relative economic cost of self-sufficiency will be far less than with urban reserves. Comparable non-native communities must settle for a lower standard of essential services than cities provide. Native communities can take advantage of this reality by shifting priorities to align them more with their own cultural values. They need not pay the cost of kinds of services that do not suit their culture. They can shop around in the larger community, consider what things they can do better for

themselves, then choose a range and level of community services that is realistic and appropriate.

The basic pattern of local schools, local courts and local health clinics will not differ that much from that of urban reserves. Contracting for access to hospitals and high schools will be governed by available resources. Some communities may simply lack the resources for even a basic level of self-sufficiency. For them there may be other native communities with which to join forces. If this is not feasible, they may have to throw their lot in with a willing non-native community and make the best of it.

The principle of self-determination does not by itself guarantee success in achieving self-sufficiency. Some kind of collective action, reorganization and relocation may be the price of self-determination for smaller, less prosperous communities. This is now a matter for native organizations, with the support and technical assistance of the federal government and of any willing provincial governments. Grassy Narrows was a disaster not because a community was relocated, but because the decisions were made for the community by people who did not understand the needs of the community and failed to consult those affected in order to fill that gap in their understanding.

If a native community decides for itself that it must join with another native community to be viable, the necessary

planning and relocation will be done by native people and will almost certainly succeed. Hunting and fishing communities have always been able to relocate, share resources and respect the rights of other communities.

Except for the more prosperous communities of this kind, the future may hold considerable consolidation of groups and pooling of resources as the price of self-sufficiency. A realistic early assessment of each group's prospect of succeeding by itself could result in a plan of consolidation of aboriginal communities worked out by the people affected.

Relocation is hard on any group, but it is preferable to the heartbreak of failure and eventual disintegration of a community. Land vacated by a relocating group could become a crucial source of revenue for the consolidated community.

Reservations and Other Small Communities Located in Remote Areas

These are the communities in which traditional ways are most viable. Self-government in the old way, as a hunting-fishing-gathering community, has probably never ceased in some of these groups, but the kinds and level of government services are likely to be altogether different from those in groups having close contact with industrial society. This is unlikely to satisfy members of these groups for long. They naturally want to enjoy the obvious benefits of industrial society - health care, housing, education and the rest - and

will want their children to have opportunities and a choice of futures.

The fact that many of these communities survive today suggests that some will elect to continue as traditional communities. Some, like the James Bay and Northern Quebec Cree before the invasion of their lands by the James Bay Development Corporation, will have sufficient territory and integrity to be fully independent. Others, whose lands have been taken or occupied and way of life disrupted by encroaching industrial society, will need support. This should come from the central government as a form of equalization and to compensate for the disruption of their communities.

To the extent these groups choose for a traditional way of life as communities, the choice of services, the priorities and the control of delivery should be theirs. It will be up to them to decide how to use their share of the common wealth to strengthen and supplement their own local economy.

Once a remote native community decides to remain traditional, there is no need for concern about how to plug into provincial or municipal networks and facilities or how to bring adaptations of them to the local communities. These are alien to traditional ways of life. Health and sanitation are universal matters, obviously, and ensuring minimum standards will be a matter of continuing past arrangements through negotiations between the local government and the central government.

Some remote communities may prefer to move towards the more complex and expensive arrangements that will bring them the full range of benefits of industrial society and opportunities for their children to get a full education or training and a place in the larger community if they want it. For these there are likely to be hard choices and dislocations as the price of bringing these opportunities within reach of their children. Cooperation, collective action and support from other native groups will probably be necessary. Residential schools provided by the white man's churches and governments were destructive of native community values. Similar schools set up and run by the native peoples themselves would probably be successful and may be the only way to provide a good education or training for children from remote communities who have the will and the capacity for it.

Other kinds of collective action, with some judicious support, should enable these communities to provide themselves with some of the facilities and services that are not part of their traditional way of life and which would create an environment conducive to economic development and education. For example, government offices, public libraries and local elementary schools are basic building blocks in the transition to participation in the larger Canadian society.

Past attempts to plug remote aboriginal communities into the service systems of an alien society have been largely destructive. Gradual self-development at a pace that native peoples can manage themselves should now be recognized as the only real alternative. Standard packages that are designed by people with no real sense of the values and priorities of an aboriginal community and its members will not work. If help is to come from outside, as it probably must in the case of those bands with the worst social and economic conditions, it must come from other native groups. Perhaps this will be one of the greatest challenges to native organizations like the Assembly of First Nations and their constituent groups: to salvage those bands that need help and start them on the path of self-determination.

It is possible that the Assembly of First Nations will to some extent become the Indian equivalent of provincial government and that the national organizations of other native groups will perform the same function for those groups. There might even develop an umbrella organization that embraces all aboriginal peoples and their organizations, providing the structures and processes through which resources are gathered, organized and channeled into public services. If this happens, there will be vehicles through which to pursue a system of minimum standards of health care, education, housing and the rest. There will be a vehicle which will be accepted by

aboriginal peoples and which will therefore be able to work in harmony with aboriginal governments.

Thus, there would develop national agencies for public health, education, housing, employment, and so on, all staffed by native peoples representing the various groups and organizations. It would be a network rather than a governmental structure, with cultural identity rather than territory providing the common thread. The compositions of these agencies would respond to cultural groupings rather than geographic regions.

While it is the small, remote communities that have the greatest need for some kind of national system of agencies to support their local efforts, the development and operation of such a system by the large native organizations might provide the next stage in aboriginal political development for aboriginal peoples generally. Concrete objectives and a sense of common purpose could give some real content to the general concept of "the aboriginal peoples of Canada."

If no such national network develops, it is likely that the smaller, remote communities will die off as their young people are inevitably attracted to the industrial society with all its apparent material advantages. In the age of satellite television and jet transportation, remoteness no longer ensures cultural integrity. Canada is a prosperous, exciting

country. Villages are not the last refuge of community and cultural integrity, as they are in so much of the third world.

It is an auspicious time for a national network of services for aboriginal communities to start forming. The **Toronto Globe and Mail** of September 1st, 1984, reported on page one that the federal government had just agreed to compensate the White Bear Band of Saskatchewan for land stolen from them during the last few decades of the last century. The Band will receive cash and some new land.

This is probably just the beginning of a large pattern of claim settlements, some large, some small, which will put native groups in a strong position for self-determination. Those groups which are not economically viable may choose to pool their resources in a variety of ways. Amalgamation of bands on new land is one alternative. Another might be choosing new land in locations that could serve to give native peoples access to education, training and jobs while remaining within a native community. The possibilities are numerous once a decision is made to work together.

The existence of small, remote bands may prove to be a crucial factor in the survival of aboriginal culture as real power gradually shifts to native communities. It provides a reason for doing more than just adapting, borrowing and plugging into the various provincial systems of government services.

Large Territories Under Aboriginal Government

The James Bay and Northern Quebec Agreement may be the last example of how not to achieve aboriginal self-determination. There the native peoples were simply moved aside to make room for resource development by the province of Quebec. It is true they were compensated in cash and land, but theirs is a peripheral role in the government of the territory that was once theirs. If they are wise and lucky they will succeed in preparing the young for the industrial structure that seems likely to grow up around them, before that structure washes over them like a cultural tidal wave.

In the territories north of the provinces, the better course seems to be full partnership with the federal or territorial government in a balanced blend of social and economic development that gives adequate priority to the securing of native culture. Resource development decisions such as the siting of towns, the routing of roads and pipelines, and the rate of development and exploitation of resources have direct effects on native culture. If native communities have no control over these decisions it is likely to be just a question of time before their people are forced into a wage economy in which they will get the lowest paid and least secure jobs.

One way to ensure this control is to create Indian and Inuit territories in the north that are exclusively under

native self-government and sufficiently large that no resource development plan can proceed without their full participation. The James Bay pattern of pushing native peoples out of the development area and relegating them to control of the hunting and fishing economy will have to be avoided. Only by controlling part of the essential northern resource base can aboriginal peoples hope to ensure a manner and rate of development compatible with the survival of native culture.

In large Indian and Inuit territories of this kind there will develop distinctive systems of government dominantly shaped by the values of aboriginal cultures. Given their remoteness from industrial Canada and their viability as self-sufficient communities, these territories will develop from within. It is neither possible nor desirable for someone outside those northern cultures to speculate on the form and speed of development of self-government. The need to adapt to or accommodate the larger, industrial society does not exist there as it does in the southern parts of Canada.

BILL C-52, AN ACT RELATING TO SELF-GOVERNMENT FOR INDIANS

In June, 1984 the Minister of Indian Affairs and Northern Development introduced Bill C-52 in the House of Commons. This Act, if passed, would provide the legal framework within which aboriginal self-government would be developed.

The Act requires recognition as an Indian nation by a panel of seven persons appointed by the Governor in Council,

three of whom must be Indians. Elaborate conditions for recognition are set by the Act and include a written constitution providing for financial accountability, the publication of laws, and removal of an Indian government for abuse of power. The Act then proceeds to set out the objects and powers of Indian nation governments.

This is not a good start for the process of self-government for a group whose main difficulty for some years has lain in conveying to alien governments the fact that their right to self-government is inherent. Once again we propose to dictate to Indians how to organize and run their communities, requiring written constitutions and written laws of peoples who for centuries governed themselves with no written tradition at all.

It is probably inevitable that federal government lawyers will believe that aboriginal self-government is impossible without an Act of Parliament. Once again the aboriginal peoples are to enjoy their fundamental rights at our sufferance.

Legislation, if any is needed, belongs at the end of the process, not the beginning, and should serve to give any needed legality to the arrangements worked out by native peoples and to facilitate the effective working of those arrangements.

To begin by requiring a written constitution and publication of laws is to deny the viability of native cultures

which not only governed themselves for centuries without a written tradition, but also created the world's first federal system, the Six Nations' Confederacy of the Iroquois.

Perhaps we could for the moment suspend our disbelief in aboriginal peoples' capacity to restore their tribal systems of government without our telling them what they must do, and just respond to any requests they make for facilitating legislation.

SUMMARY

This study has ranged over a wide territory. It may be helpful to the reader to conclude with a series of concise propositions about aboriginal self-government which contain the essence of the theoretical model around which the study is built.

- The aboriginal peoples' right of self-government is inherent, being one of the aboriginal rights recognized and affirmed in s. 35 of the **Constitution Act, 1982**.
- The right of self-determination includes the right to determine who is a member of the community.
- Aboriginal governments will take the place in native peoples' lives that provincial and municipal governments take in the lives of other Canadians.
- No single model of aboriginal government is possible, given the great variety in culture, size, location and other circumstances among native communities.
- The right of native peoples as Canadians to essential public services of reasonable quality results from their having contributed the entire land base to the Canadian nation. Major land claims settlements like the James Bay and Northern Quebec Agreement recognize this right and make permanent, structured provision for it.

- Self-government for aboriginal peoples with no defined territory or land base would be illusory and should not be contemplated. Instead, cultural associations and support systems should be encouraged for urban Indians.
- Self-government is likely to fail unless there is enough economic development to provide the needed resources. Pooling of resources and consolidation of communities may be the price of success for some groups.
- Given the dispersal and small size of most native communities, successful self-determination will probably require strong, active regional and national native organizations for cooperation and collaboration.
- Illusory self-government would be worse than overt dependence. Governments, especially Ottawa, will have to restrain the impulse to control everything of importance.

NOTES

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1. RSC 1970 c. I-6.
 2. Canada, 1967 (Co-Chairmen A. Davidson Dunton and Andre Laurendeau).
 3. **Constitution Act, 1982**, s. 52(2) and Schedule Item 1.
 4. United Nations General Assembly Resolution 1514 (XV), December 14, 1960.
 5. S.C. 1951 c. 29 ss. 5-17.
 6. Felix S. Cohen's **Handbook of Federal Indian Law**, 1982 Edition, p. 252.
 7. **Interpretation Act** RSC 1970 C. I-29, s. 28 defines "province" to include the Yukon Territory and the Northwest Territories. The territorial constitutions are set out in the **Yukon Act** RSC 1970 C. Y-2 and the **Northwest Territories Act** RSC 1970 C. N-22 respectively.
 8. **Brown v. Board of Education** 347 U.S. 483 (1954) is the best known decision of the U.S. Supreme Court on this question. Chief Justice Warren, speaking for the full court, made clear and explicit his conclusion, on the evidence before the Court, that separate schools established for Blacks are inherently inferior.
 9. **Calder v. A-G BC** (1973) 34 DLR (3d) 145 (Sup. Ct. Can.).
 10. Two examples of the Hall approach to native claims are **Daniels v. The Queen** (1969) 2 DLR (3d) 1 at 17, 21 and **Calder v. A-G BC** (1973) 34 DLR (3d) 145 at 202-3.
 11. RSC 1970 C. M-12.
 12. American Indian Policy Review Commission, Final Report of Task Force No. 9 - Law Consolidation, Revision, and Codification (Washington, D.C. 1976) p. 28.
 13. **Kanatewat v. James Bay Development Corporation** [1975] CA 166 (leave to appeal to the Supreme Court of Canada refused: (1974) 41 DLR (3d) 1).

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Jesse A. Rieber, **The U.S. Federal Government-Indian Relationship: Trusteeship and Local Government** (Department of Indian Affairs and Northern Development, Canada, 1977).

SUMMARY OF RECOMMENDATIONS

Two hundred six specific recommendations are set forth below and numbered consecutively beginning with chapter one and concluding in chapter thirteen.

CHAPTER ONE.—CAPTIVES WITHIN A FREE SOCIETY

No recommendations.

CHAPTER TWO.—CONTEMPORARY CONDITIONS

The Commission recommends that:

1. Congress require the Assistant Secretary of Indian Affairs to provide a comprehensive annual report on Indian matters which will contain reliable, current, and accurate data.

The Secretary of Interior be directed to gather and maintain material for this report from all Government agencies serving Indians.

The report be organized to present facts relating to Indian treaties, agreements, and Executive orders; current land, population, tribal government, economic, health, welfare, education, and housing statistics in Indian communities; material relating to the use of natural resources on Indian land; and information on administration of all Indian programs. A sample format for this proposed report can be found in appendix C.

CHAPTER THREE.—DISTINCTIVE DOCTRINES OF AMERICAN INDIAN LAW

No recommendations.

CHAPTER FOUR.—TRUST RESPONSIBILITY

The Commission recommends that:

2. Congress reaffirm and direct all executive agencies to administer the trust responsibility consistent with the following principles and procedures. The rationale for each proposal follows the Commission's statements. In carrying out its trust obligations to American Indians (including Alaskan Natives), it shall be the policy of the United States to recognize and act consistent with these principles of law:

The trust responsibility to American Indians is an established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government and to provide economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.

In matters involving trust resources, the United States be held to the highest standards of care and good faith consistent with the prin-

ciples of common law trust. Legal and equitable remedies be available in Federal courts for breach of standards.

Although the trust responsibility is a legally binding duty required of all United States agencies and instrumentalities, and although Congress has the ultimate responsibility for insuring that the duty is met, there be in the executive branch one independent prime agent charged with the principal responsibility for faithfully administering the trust.

The trust responsibility extends through the tribe to the Indian member, whether on or off the reservation. His or her rights pursuant to this United States obligation are not affected by services which he/she may be eligible to receive on the same basis as other United States citizens or which the tribe may be eligible to receive on the same basis as any other governmental unit.

The United States holds legal title to Indian trust property, but full equitable title rests with the Indian owners.

3. Before any agency takes action which may abrogate or in any way infringe any Indian treaty rights, or nontreaty rights protected by the trust responsibility, it prepare and submit to the appropriate committee in both Houses of Congress an Indian trust rights impact statement, to include, but not be limited to, the following information:

Nature of the proposed action.

Nature of the Indian rights which may be abrogated or in any way infringed by the proposed action.

Whether consent of the affected Indians has been sought and obtained. If such consent has not been obtained, then an explanation be given of the extraordinary circumstances where a compelling national interest requires such action without Indian consent.

If the proposed action involves taking or otherwise infringing Indian trust lands, there must be notification whether or not lieu lands have been offered to the affected Indian or Indians.

4. When considering legislation which may have an adverse impact upon treaty or nontreaty rights of Indians, the Congress adhere to the following principles.

The United States not abrogate or in any way infringe any treaty rights, or nontreaty rights that are protected by the trust responsibility, without first seeking to obtain the consent of the affected Indian or Indians. Such rights not be abrogated or infringed without such consent except under extraordinary circumstances where a compelling national interest requires otherwise. With or without Indian consent, such rights not be abrogated or infringed in any way except pursuant to a congressional act which identifies the specific affected Indian rights and which states that it is the intent of Congress to abrogate or infringe such rights.

5. To diminish the conflict of interest prevalent when the Department of Justice and the Department of the Interior provide legal services to Indians, to provide for more efficient rendering of legal services to Indians, and to otherwise improve the representation which Indians receive for protection and enforcement of their trust rights, Congress enact the following legislation:

There be established within a newly created Department of Indian Affairs (see recommendations in chapter VI) an Office of Trust Rights

Protection. Its duties shall include, but not be limited to, cataloging and assisting in the management of Indian trust property, advising Indians and Indian tribes in legal matters and representing them in all litigation and administrative proceedings involving Indian trust rights. In appropriate field offices of the Department of Indian Affairs, there be a legal and professional staff under the supervision of the Office of Trust Rights Protection.

The Office of Trust Rights Protection be authorized to render all appropriate legal services which now are rendered by the Department of Justice and the Department of the Interior, provided that the Indian client agrees to accept representation and services.

The Office of Trust Rights Protection have the primary responsibility of the Federal Government for protecting, enforcing, and enhancing Indian trust rights, but this shall not relieve any Federal agency from the duty to recognize and act consistent with the Federal trust responsibility for Indians.

The Office of Trust Rights Protection act in the name of the United States as trustee for Indians in all legal matters and proceedings, except those which it refers to the Department of Justice for litigation. It have the discretion to so refer those matters for which it does not have the staff, resources or expertise to handle. The Office also have the discretion and authority to engage private legal counsel to represent Indians, tribes or groups in trust matters. In such cases, the United States Government may pay all fees and costs and the wishes of the Indian clients shall be complied with, as much as possible, in the selection of counsel. Where there is conflict of interest between an individual Indian and a tribe involving trust issues, the Office represent the tribe and have the discretion to engage private counsel to represent the individual at Government expense.

The United States waive sovereign immunity for all actions involving Indian trust matters brought by the Office of Trust Rights Protection or private counsel engaged by it to represent Indians.

The Office be authorized to obtain whatever information, services, and other assistance deemed necessary from other Federal agencies, and such agencies be obligated to comply with such requests.

6. Federal courts be authorized to award attorneys' fees and expenses and all reasonable costs incident to litigation, including but not limited to, expert witness fees, in cases in which an Indian or Indian tribe or group engages private attorneys and is successful in protecting or enforcing treaty, trust, or other rights protected by Federal statute. Federal courts be given the discretion to order that all such fees and costs be paid by the losing party or by the United States Government.

CHAPTER FIVE.—TRIBAL GOVERNMENT

The Commission recommends that:

7. The long term objective of Federal-Indian policy be the development of tribal governments into fully operational governments exercising the same powers and shouldering the same responsibilities as other local governments. This objective should be pursued in a flexible manner which will respect and accommodate the unique cultural and social attributes of the individual Indian tribes.

8. No legislative action be undertaken by Congress in relation to tribal jurisdiction over non-Indians at this time.

9. Congress appropriate significant additional moneys for the maintenance and development of tribal judicial systems:

Funding be direct to tribes.

Funding be specifically provided to enable tribal courts to become courts of record.

10. Congress provide for the development of tribal appellate court systems.

Appellate court systems will vary from tribe to tribe and region to region.

The development of tribal court systems will require tribal experimentation and time.

Congress statutorily recognize such appellate systems as court systems separate from State and Federal systems.

When tribal court systems are firmly operative, Federal court review of their decisions be limited exclusively to writs of habeas corpus.

11. Congress provide by appropriate legislation that lands held in trust for an Indian tribe and assigned to an individual Indian be exempt from Federal taxation and that the income from such lands also be exempt, in the same way that restricted and allotted lands are presently exempt.

12. Congress provide by appropriate legislation that the benefits received from those programs designed to aid in the economic development of Indians shall not be subject to Federal taxation.

13. Congress amend the Internal Revenue Code to provide that provisions of the Code which apply to non-Indian governments are to be applied in a like manner and to the same extent to Indian tribal governments. This would include the same benefits enjoyed by individuals in their relations to tribal governments.

14. Congress amend or repeal, as appropriate, those statutes which authorize State taxation which are in conflict with Federal-Indian policy to foster economic development of reservation Indians and enhance tribal self-government. Specifically, State taxation of mineral production on leased Indian lands be repealed or amended.

15. Congress provide by appropriate legislation that State taxation within reservations be invalidated as applied to non-Indians when the burden of such taxation falls directly or indirectly upon the Indian.

16. Congress enact legislation which provides that where an Indian tribal government enacts a tax in furtherance of Federal-Indian policy, designed to enhance the tribes' self-governing capacity or to protect or foster tribal economic development of Indian people or the tribe, such tax will have the effect of preempting any competing State tax which would be applicable to the same person or activity.

17. The Department of the Interior aid Indian tribes in the development of comprehensive management plans for fish and wildlife resources. Indian people must be involved in the management of their own trust resources.

18. The executive branch undertake action to stimulate the tribes and States to enter into cooperative agreements in the management, allocation, and enforcement of off-reservation fishing activities by both Indians and non-Indians. Such cooperative agreements must

recognize the rights of the Indians in the fish resource and their responsibility in the management and allocation of that resource.

19. Congress appropriate funds necessary to aid individual tribes and intertribal organizations in the development and management of fishery programs.

20. Congress enact legislation authorizing the Department of the Interior (Parks and Wildlife Division) with standby authority to allocate fish resources and enforce such allocations as to Indians or non-Indians or both, whenever the States or the tribes fail to regulate those persons under their respective jurisdiction.

21. Section 18 of the Indian Reorganization Act (25 U.S.C. § 478), which provides that no part of that Act shall apply to any reservation wherein a majority of the adult Indians vote against its application, be repealed. In its place, Congress enact a savings clause to provide that the rights of any tribe which has organized under the terms of section 16 of the Act or formed a corporation under section 17 of the Act will not be adversely affected.

To accomplish this result, the Commission recommends the following specific legislative actions:

Repeal section 18 of the IRA which reads as follows:

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days notice.

Insert in place of this section the following language:

The rights of any Indian tribe which has chosen to organize under sections 16 and 17 of the Indian Reorganization Act shall not be affected by this repeal.

22. Section 16 of the Indian Reorganization Act (25 U.S.C. § 476) which authorizes tribes to organize under the provisions of that Act be amended:

(1) to specifically reflect the fact that tribes have an inherent right to form their own political organizations in the form which they desire; and (2) to provide that notwithstanding any provisions in existing tribal constitutions which vest the Secretary with authority to review and disapprove ordinances enacted by the tribal government shall only extend to those matters directly related to the trust responsibility over the use and disposition of trust assets. However, those tribes who wish to retain such authority on an interim basis shall be authorized to do so.

To accomplish this result, the Commission recommends amendment of section 16 of the IRA along the following lines:

The right to choose their natural form of government is the inherent right of any Indian tribe. Amendments to tribal constitutions and by-laws adopted pursuant to the Indian Reorganization Act shall be ratified and approved by the Secretary to protect the trust assets and resources of the tribes.

In addition to all powers vested in any Indian tribe or tribal council by existing law, said Indian tribe shall also be recognized to have the following rights and powers: To employ legal counsel,

to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the tribe; and negotiate with the Federal, State and local governments. The Secretary of the Interior shall advise all Indian tribes and/or their tribal councils of all appropriation estimates of Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

Notwithstanding the provisions of any existing tribal constitution or similar document which vests authority in the Secretary to review and approve or disapprove proposed actions of said Indian tribes, the Secretary's authority over Indian tribes will only extend or be directly related to the trust responsibility over the use and disposition of trust assets. However, any Indian tribe which may desire a continuation of their presently existing delegation of authority to the Secretary is hereby authorized to do so.

23. Section 2 of title 25 U.S.C., be amended to provide that the authority of the Secretary of the Interior over tribes shall only extend to actions relating to protection of tribal trust assets. Within these limits, whenever the Secretary finds it necessary to disapprove a proposed tribal initiative, he must file a written statement with the tribe notifying them of the reason for his disapproval of their proposed action and afford them an opportunity for a hearing.

24. Section 81 of title 25 U.S.C., be amended to accomplish a result similar to that proposed above, i.e., that whenever the Secretary disapproves any proposed contract dealing with trust assets, he provide the affected tribe or person with a written statement of his reasons for disapproval and provide them with an opportunity for a hearing.

To accomplish these results, the Commission recommends amendatory language along the following lines:

That 25 U.S.C. § 2 be amended to include the following language:

The authority of the Secretary of Interior over Indian tribes shall only extend to these actions deemed necessary to protect tribal trust assets and resources. In any action which the Secretary finds it necessary to disapprove a proposed tribal government initiative, the Secretary shall take such action within 60 days of having been officially notified of the proposed tribal action by the Indian tribal government and any disapproval of the proposed tribal action shall be accompanied by an opportunity for a hearing on the part of the tribe, and the Secretary's decision shall be based on written findings of fact which shall specify the reasons for his disapproval.

That 25 U.S.C. § 81 be amended in the following manner: The third paragraph beginning "second * * *" shall read:

It shall bear the approval of the Secretary of the Interior and Commissioner of Indian Affairs endorsed upon it. The Secretary of the Interior and the Commissioner of Indian Affairs shall disapprove any such proposed contract only after finding that the proposed contract shall endanger the trust assets or resources of the tribe or individual Indian. Such findings shall be submitted to the proposed tribe and/or Indian in written form specifying the exact reason for disapproval.

25. Additional legislation be enacted to authorize tribes to override Secretarial disapproval of their proposed use of trust assets. Such an override must be coupled with a waiver of liability on the part of the United States to the limited extent that the override may result in loss.

Legislation be enacted establishing that if the Secretary disapproves a tribal government initiative, contract, or other tribal action involving the use or disposition of a trust asset, the tribe shall be entitled to override such Secretarial disapproval using the following procedures:

a. The Secretary shall supply the tribe with a detailed statement of the reasons for his disapproval of their proposed use or disposition of the trust asset, specifically setting forth the loss he believes may result from such tribal proposal.

b. After due consultation between the representatives of the tribe and the Secretary or his representative, the tribal council may, by formal resolution, elect to override the disapproval of the Secretary. Such resolution must contain a specific waiver of liability on the part of the United States for losses which may result as a direct result of the tribal override.

c. In the consultation process, the Secretary shall be held to the highest standards of care and good faith consistent with the principles of common law trust in advising the tribes of the potential consequences of the proposed tribal decision.

d. A tribal override of a Secretarial disapproval shall not diminish the trust character of the asset in question. The trust responsibility of the United States to aid the tribe in the implementation of their decision and to protect the future well-being of the asset shall continue undiminished.

e. In any case in which the Secretary has reasonable cause to believe that the decision of the tribal government may not reflect the will of the majority of the members of a tribe he shall (may) require a referendum of the tribal members, the expense of which shall be borne by the United States and not the tribe.

f. In the event the Secretary determines that a tribal resolution should be put to a referendum, he must notify the tribal council within thirty (30) days of the passage of their resolution, and he must call for such referendum vote not more than forty-five (45) days after tendering such notification.

26. The Department of Justice issue regulations or orders directing U.S. attorneys to accept criminal referrals from qualified tribal and/or BIA police or investigators.

Congress hold oversight hearings to see that this recommendation is accomplished or receive an explanation why it should not be done.

27. Congress hold oversight hearings with representatives of the Department of Justice, BIA, and tribal authorities, particularly police and judges to inquire into the jurisdiction relationship of the tribal and Federal courts and ascertain what legislation, if any, is needed as a consequence of this decision.

28. Congress hold oversight hearings with representatives of the Department of Justice and Interior and with Indian tribal authorities to ascertain the scope of this problem.

29. Corrective legislation, if any is needed, must be premised on the continued protection of tribal self-government. The scope of the appli-

cation of the Assimilative Crimes Act must be strictly limited. It must be recognized and accepted that the laws of the tribes will not always conform to the laws of States in which their reservation lies. This is the meaning of self-government.

30. Legislation be passed providing for retrocession adhering to the following principles:

Retrocession be at tribal option with a plan.

A flexible period of time for partial or total assumption of jurisdiction, either immediate or long term, be provided.

There be a significant preparation period available for those tribes desiring such, with a firm commitment of financial resources for planning and transition.

There be direct financial assistance to tribes or tribally designated organizations.

LEAA be amended to provide for funding prior to retrocession for planning preparation, or concurrent jurisdiction operations.

Provisions be made for Federal, corporate, or charter status for intertribal organizations (permissive, not mandatory).

There be tribal consultation with State and county governments concerning transition activities (no veto role, however).

The Secretary of the Interior:

(a) Act within 60 days on a plan or it is automatically accepted;

(b) Base nonacceptance only on an inadequate plan;

(c) Delineate specific reasons for any nonacceptance;

(d) Within sixty (60) days after passage of the Act, the Secretary of the Interior draft detailed standards for determining the adequacy or inadequacy of a tribal plan. Such standards be submitted to Congress who shall have sixty (60) days to approve or disapprove such standards.

Any nonacceptance of retrocession by the Secretary of the Interior be directly appealable to a three-judge district court in the District of Columbia; and

The Department of the Interior be obligated to pay all reasonable attorney fees as determined by the Federal court, except where such appeal is deemed by the court to be frivolous.

Once partial or complete retrocession is accomplished, the Federal Government be under a mandatory obligation to defend tribal jurisdiction assertions whenever any reasonable argument can be made in support of them.

31. Title II of the 1968 Indian Civil Rights Act be amended so that it is crystal clear that this Act was not intended as a general waiver of sovereign immunity of the tribes. The holding in *Loucas v. Leekity*, 334 F. Supp. 370 (D., N.M., 1971) authorizing a money judgment against the tribes be specifically rejected by Congress. While the courts must have authority to enforce substantive aspects of the Act (as limited by the recommendation above), Indian tribes like any other governments, must have sovereign immunity and some protection for their officers if they are to be able to govern fairly. Equitable actions such as mandamus against tribal officials may be permissible, but they should be immune from money judgment when they work within their scope of duty. In this respect, they should

be in the same position as State and Federal officials; i.e., protected when acting within the scope of duty but personally liable when acting beyond or outside their defined scope of duty.

32. The jurisdictional provisions of the 1968 Indian Civil Rights Act be reexamined. Habeas corpus review is the only jurisdictional provision now included in this Act, yet the courts have assumed jurisdiction over a broad range of actions which do not involve detention. As the situation stands, the jurisdictional reach of Federal courts and the remedial orders which they feel free to enter is virtually unlimited. This is in complete contrast to all other Federal civil rights legislation.

33. The part of the 1968 Indian Civil Rights Act providing for a right to trial by jury be amended to specify that the right guaranteed by this subsection only be applicable to offenses which if charged in a Federal court would be subject to a right to trial by jury. As section 202(10) presently reads the rights to trial by jury would theoretically apply to almost every offense a person might be charged with, no matter how slight the penalty.

34. The provisions of the 1968 Indian Civil Rights Act limiting the penal authority of a tribe to fines of \$500 or six (6) months imprisonment, or both, should be amended to increase these figures to fines of \$1,000 or one (1) year imprisonment, or both.

35. Section 1738 of title 28 U.S.C. be amended to specifically include Indian tribes among those governments to whom full faith and credit be given. The purpose of this amendment would be to clarify and reinforce the rulings of the majority of courts to the effect that Indian tribes are on the same footing as States and territories with respect to the application of full faith and credit principles.

36. Congress amend title II of the 1968 Indian Civil Rights Act to provide a mechanism for limited appeals to United States district courts after exhaustion of all available tribal remedies. The need for such a provision is directly related to: (1) the Commission recommendation for according full faith and credit to tribal laws and court judgments; and (2) to the expanding role of tribes in civil and criminal matters involving non-Indians. This legislation should adhere to the following principles:

Existing Federal law permits Federal courts to review the judgments of State courts for matters involving questions arising under the U.S. Constitution or Federal statutes.

The limited right of appeal proposed in this part would authorize Federal court review of tribal court decisions in both civil and criminal matters in extraordinary circumstances involving a prima facie showing of a denial of due process (fundamental fairness) or denial of equal protection, and/or when the amount in controversy exceeds a specified amount (\$10,000).

Section 203 of title II of the Civil Rights Act (25 U.S.C. § 1303) which extends the privilege of the writ of habeas corpus to test the legality of detentions by order of Indian tribes be amended to provide a limited right of appeal from final orders or judgments of the highest court system of the respective tribe in both civil and criminal matters.

Appeal to the Federal court not be allowed until the petitioner has exhausted all available tribal remedies. This "exhaustion" requirement include all tribal appellate remedies including appeals to regional intertribal courts of appeal should the tribes elect to enter into such intertribal compacts. The requirement for exhaustion be rigidly enforced by the courts.

The review not turn on procedural requirements but rather be premised on fundamental fairness based on the entire record. This amendment follow the rule laid down in cases that this Act did not "blanket in" the entire body of Federal case law but provides for interpretation in a manner consistent with the needs and customs of tribal institutions.

37. Congress enact legislation guaranteeing the permanency of tribal governments within the Federal domestic assistance program delivery system.

38. Congress enact legislation to resolve the inconsistencies of Federal domestic assistance legislative and administrative procedures as they define the status of tribal governments within the Federal domestic assistance program delivery system. The implementation of principles which would resolve such inconsistencies establish a clear definition of tribal government eligibility for each Federal domestic assistance program and guarantee the jurisdictional independence of tribal governments as permanent political entities within the Federal domestic assistance program delivery system.

39. Congress authorize the waiver of administrative regulations of Federal domestic assistance programs which condition eligibility on population formulas. Allocation of funds, however, should employ some population criteria such as that utilized by BIA under P.L. 93-638 to provide adequate funding to tribes with smaller population bases.

40. Congress establish Federal policy recognizing the sovereign right of a tribal government to form its own government. In accordance with Federal policy, eligibility criteria of Federal domestic assistance programs not force tribal governments to form consortiums or intertribal affiliations in order to become eligible for Federal domestic assistance.

41. Congress amend the Intergovernmental Cooperation Act of 1968 (40 U.S.C. § 535 and 42 U.S.C. § 1401) to include tribal governments in the scope of intergovernmental activities and access to Federal program information provided for under the Act.

42. Congress amend the Law Enforcement Assistance Act (42 U.S.C. § 3711, et seq.) to remove State jurisdiction over tribal governments in the service delivery system of Law Enforcement Assistance Administration programs, thereby allowing programs and moneys to flow directly to the tribal government.

43. Congressional recognition of the legal status of tribal governments include the recognition that tribal governments must have the financial resources necessary to support the basic operations of tribal government, so that tribes may effectively exercise their inherent sovereign powers.

44. Congress direct the Bureau of Indian Affairs to undertake a needs assessment of each tribal government to determine tribal capability to finance the basic operations of tribal government.

45. Congress authorize the evaluation of the administrative regulations of self-determination grants program, and require the revision of regulations where such regulations narrow the scope of congressional intent articulated in the Indian Self-Determination and Education Assistance Act.

46. Congress assure that in both administrative and judicial proceedings, Indians will be assured competent, independent counsel.

CHAPTER SIX.—FEDERAL ADMINISTRATION

The Commission recommends that:

47. Congress enact affirmative legislation to reaffirm and guarantee the permanence and viability of tribal governments within the Federal system.

48. Congress clarify the eligibility of tribal governments as prime sponsors for Federal domestic assistance programs and other programs delegated to State and local governments.

49. Congress enact legislation establishing tribal governments as equal to State governments in Federal domestic assistance programs. This includes amendment of all enabling legislation, program acts, and administrative regulations which require tribal governments to come under State jurisdiction.

50. Congress amend the Intergovernmental Cooperation Act to include tribal governments, and enact the Federal Program Information Act (S. 3281) to include Indian tribes.

51. Congress appropriate such funds as are necessary to allow the preparation of operations and procedure manuals to be used by tribal governments in their administration of tribal government affairs. These manuals would include operation models presenting alternative systems of financial management, accounting, personnel policies and procedures, management information and organization structure.

52. Congress enact Senate Bill S. 2175—Public Participation in Government Proceedings Act of 1976.

53. The executive branch establish an Indian Career Service consistent with statutory provisions and be charged with the responsibility of developing the employment standards as required by section 12 of the Indian Reorganization Act of 1934.¹

54. The executive branch propose a plan to implement the provisions of section 12 of the Indian Reorganization Act of 1934 by establishing standards for the hiring of Indians apart from the requirements of civil service laws in the Bureau of Indian Affairs and the Indian Health Service.

55. Congress amend section 12 of the Indian Reorganization Act of 1934 to make the Indian preference applicable to all Federal agencies administering programs specifically directed to Indian affairs.

¹ A complete legal analysis with findings related to Indian preference laws is contained in the Task Force No. 9 final report, vol. I, pp. 106-120.

56. The executive branch coordinate efforts to provide for the direct administration of contract funds by the Indian people.

57. The executive branch direct the implementation of section 7(b)² of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e(b) supp. 1976) to direct its applicability to all Federal agencies; further to direct the General Services Administration to amend Federal procurement regulations to:

Clarify the scope and intent of section 7(b).

Emphasize that a contradicting order cannot modify a congressional Act.

Clarify that title VII, section 703(i) of the 1964 Civil Rights Act provides for permissible preferences.

Provide standard Indian preference language be included.

58. The executive branch direct that the Office of Federal Contract Compliance within OMB offer a statement in support of the amended Federal procurement regulations.

59. The Bureau of Indian Affairs compile and maintain a permanent list of qualified Indian contractors; such a list to be maintained; standards being maintained; such lists to be available to all Federal agencies.

60. The executive branch coordinate and consolidate all technical assistance efforts into a single agency.

61. The executive branch establish a national professional and technical Indian skills bank administered by Indians.

62. The executive branch direct and coordinate all agencies to establish a model National Indian Technical Assistance Center—consolidating personnel with technical assistance grants and contracts. Such consolidation to run parallel to existing BIA service units to test the feasibility of an independent agency service center.

63. The President submit to Congress a reorganization plan creating a Department of Indian Affairs or independent agency to be comprised of appropriate functions now mainly administered by the Bureau of Indian Affairs, Indian Health Service, and agencies within the Interior and Justice Departments. Rights protection be consolidated as set forth in chapter four of this report.³

64. The plan for a transfer of appropriate programs and functions to the new agency include a review of those programs identified in this chapter. In the interim, the President establish a temporary special action office within the White House which would be charged with responsibility for preparing a plan for the President.

65. The President designate the Secretary of the Interior and the Secretary of Health, Education, and Welfare to implement and coordinate efforts to evaluate and plan the transfer of various agencies in the event of the establishment of a department or of an independent agency.

66. Congress authorize a management study of the Indian Health Service to be conducted utilizing experts from the public and private sector and representatives from the Indian community.

² A legal analysis of the mandates of Indian contracting under 7(b) is contained in the final report of Task Force No. 9 in vol. I, pp. 221-230.

³ The authority of the President to reorganize the executive branch (see Chapter IX, Title 5, U.S.C.) does not include the creation of a new cabinet or executive department, the President needs to submit to Congress a reorganization plan.

67. The President submit to Congress an appropriate plan for the removal of all Indian education programs from the Office of Education, in the Department of Health, Education, and Welfare and the Bureau of Indian Affairs, to a consolidated independent Indian agency. Such Executive action would establish:

Stronger lines of communication between tribes and the source of educational funding;

An administrative structure that would support the development of tribal control;

Direct targeting of moneys and services to tribal communities;

A reliable data base, such that effectiveness of fund utilization can be monitored;

Programs that permit individualization of services to meet the unique needs of each project; and

Direct rather than coincidental aid for educational problems.

68. The Secretary of the Interior implement an action plan for the modernization of the Bureau of Indian Affairs in order to change it from a management to a service agency. Such a plan give maximum consideration to the Commission's "BIA Management Study" proposals. Generally, these are:

A new organizational structure be established to transfer authority and responsibility to the local level. Particularly, the present area offices be divested of their line authority and be established as service centers.

The establishment of a planning and budget system which will stimulate Indian tribal participation and place more emphasis on tribal project priorities in the congressional appropriation process. Tribes should participate in the budget process directly with the Commissioner or Assistant Secretary of Indian Affairs and Congress to the greatest degree possible.

The establishment of a program to improve the communications and management information system throughout the BIA and contract for access to an automatic data processing system which will also be made available to tribal computer terminals.

The reorganization of the personnel system to improve BIA effectiveness while continuing to train, hire, and upgrade Indians.

69. The executive branch direct the Secretary of the Interior to compile an appropriate manual of operations which will define and publish minimum and standard threshold trust protection in management, procedures, accounting, monitoring, evaluation, and reporting which should be provided as a standard for all Departments and their field offices as well as for Indian tribes.

70. The Secretary of Interior, under existing authority, undertake the amendment of the rules of procedure of the Department of Interior (42 CFR, subtitle (a), 1975) pursuant to sec. 4(d) of the Administrative Procedures Act (5 U.S.C. § 553(e) and 43 CFR § 14.1) to provide compensation for certain participants in the rulemaking and adjudicatory proceedings conducted by the Department of Interior, including public informal hearings conducted in rulemaking procedures.

71. The Secretary of the Interior direct that the Commissioner of Indian Affairs be given Assistant Secretary status. This can be accomplished administratively, but may require other supporting legislation.

72. The Secretary of the Interior remove the Associate Solicitor's Office of Indian Affairs from the Interior Solicitor's Office and create an Office of the General Counsel in the Bureau of Indian Affairs.

73. The Secretary of the Interior establish a separate Office of Indian Program Development and Budget, as well as a separate Office of Policy Analysis for Indian Affairs under the Assistant Secretary, Program Development and Budget.

74. The Deputy Under Secretary for Indian Affairs become an integral part of an implementation team and direct Secretarial inhouse administrative action.

75. The Secretary of the Interior direct the Bureau of Indian Affairs to establish a duly elected board of regents to be recognized as a unit representing tribes and tribal opinion to contract for and administer postsecondary schools.

76. The Secretary of the Interior direct the Bureau of Indian Affairs to establish that a duly elected Board of Regents representing each tribe be recognized as a unit representing tribes and tribal opinions to contract for and administer those multitribal elementary and secondary schools.

77. Congress establish permanent standing or special select committees for Indian affairs in each House or place all jurisdiction, oversight, and legislative authority in one joint select committee.

CHAPTER SEVEN.—ECONOMIC DEVELOPMENT

The Commission recommends that:

78. Congress appropriate funds and provide technical assistance to insure the preservation, consolidation, and acquisition of Indian lands upon which to build tribal future. This includes assisting tribes in devising comprehensive land consolidation plans, and assisting landless tribes in establishing a land base. Congress, therefore, provide legislation which would:

(1) Increase the funds in the Revolving Loan Fund (Indian Financing Act) administered by the Bureau of Indian Affairs, and create a setaside specifically for tribal land acquisition. These loans should carry lower interest rates and longer terms than now exist for other enterprises receiving loans under the Fund. Present requirements should remain which stipulate that there be a reasonable prospect of repayment and that the applicants must have exhausted other avenues of reasonable financing, but there should be less rigid requirements relating to the profitability of the land.

(2) Mandate that the Revolving Loan Fund have standby line of credit for tribes to use when immediate access to funds is necessary to purchase key tracts of land which are for sale and are essential to the tribe's acquisition or consolidation plans but would probably otherwise be lost to the tribe during the loan application process.

(3) Permit tribes to have a "first right of purchase" option when individually held trust land or non-Indian land within a reservation is offered for sale.

(4) Amend section 5 of the Indian Reorganization Act to provide for an increased appropriation of funds for land acquisition, particularly for those tribes which are presently landless.

(5) Amend sections 1465 and 1495 of title 25 of the U.S. Code to delete the provisions of Indian Financing Act funds which restricts the use of purchase of lands outside the exterior boundaries of Indian country unless the purchaser was the owner of trust or restricted interests in the land prior to purchase.

(6) Amend the "excess property" provisions of the Federal Property and Administrative Services Act, 40 U.S.C. § 471, *et seq.*, to specifically provide for transfers of excess property, whether located within or without the exterior boundaries of tribal lands, to the Bureau of Indian Affairs for use by Indian tribes.

(7) Mandate that the Secretary of the Interior establish and make public specific criteria for accepting Indian lands in trust. Such criteria should include a presumption that lands owned in fee by a tribe or to be acquired in fee shall be accepted in trust unless the Secretary sets forth in writing sufficient reasons for refusal.

(8) Mandate that the Executive examine and report to the Congress on the feasibility of consolidating the Indian land acquisition loan program administered by the Department of Agriculture and the BIA loan programs into one Federal-Indian loan program designed exclusively for providing funds for tribal land consolidation plans. Land should also not be required as collateral for such loans.

79. To provide solutions for the debilitating problems presented by the fractionated ownership of heirship lands, Congress enact legislation which would:

(1) Amend the U.S. Code to enable tribal governments to adopt comprehensive plans for resolving fractionated heirship land problems. Such plans could include the following procedures:

(a) Guaranteeing that tribes have first right of purchase when heirship lands are sold.

(b) Authorizing the holders of a majority of the ownership interests in a trust, or restricted allotment, to determine sale of land.

(c) Enactment of tribal laws governing descent and distribution of fractionated heirship lands to allow purchase, at the time of probate of estates, undivided interest in allotments in heirship status which have reached an unreasonably small fraction; restriction of inheritance of trusts or restricted allotments to members of the tribe; or restriction of inheritance to a life estate with a remainder in the tribe, but only upon payment of fair market value compensation to the prospective heir.

(d) Condemnation with fair compensation by the tribe of lands in heirship status which have reached unreasonable small fractions.

(2) Repeal statutes which are obstacles to exchanges and/or sales between owners of allotment interests.

(3) Reform partitioning laws to facilitate partitioning of allotment interests held by heirs, if partitioning is in the best interest of their heirs and the tribe.

(4) Transfer the probate authority over trust property now held by the Secretary of the Interior of the tribe.

(5) Amend the special laws regarding the Five Civilized Tribes and the Osage to merge them with the general laws governing the other tribes, at least with respect to jurisdiction over small estates (\$5,000 or less) and with respect to their capacity to write laws governing the descent and distribution of property.

80. Tribes be encouraged to develop comprehensive plans for long term economic development premised on maximum Indian utilization of Indian owned resources. Recommendations for appropriation of grant moneys to tribes for planning purposes appears in chapters 5 and 6 of this report.

81. Congress enact legislation which will facilitate tribes in acquiring consolidated land areas sufficient to support efficient farm and cattle industries. Specifically, Congress:

(a) Amend existing Federal laws relating to leasing of individual trust allotments to provide that tribes should have a "first right of refusal" on leasing of such lands.

(b) Elsewhere in this chapter it is recommended that Congress establish a special fund for the purpose of aiding tribes in programs of land acquisition and consolidation. In addition to use of these funds for outright acquisition of ownership, tribes be authorized to draw from this fund in order to acquire leasehold rights in individual allotments. Such authorization must be designed to accommodate the special credit needs of individual allottees which cause them to annually renegotiate what purport to be long term leases.

82. The Bureau of Indian Affairs revise its policies regarding leasing of agricultural lands in the following respects:

(a) Rental terms correspond to general lease terms of comparable grade lands held by non-Indians in the surrounding area. Where practicable rentals should be premised on percentage of crop values rather than fixed rates per acre.

(b) Leases contain strong conservation requirements with penalty provisions adequate to assure compliance by lessees.

(c) Leased properties be inspected as frequently as necessary to insure compliance with lease terms.

(d) Tribes be encouraged to contract with the BIA to perform inspection and enforcement duties.

83. The BIA and the tribes develop long-term range management plans to realize the potential benefits of a renewed, high producing grazing range. These plans provide for: (1) range and soil inventories to determine current range capacity; (2) timetables for adjusting herd size to capacity; (3) grazing permit systems; (4) development and prudent use of range improvements to raise the carrying capacity; and (5) education programs to promote good range management practices.

In addition, these plans evaluate the short term economic impact which diminishment of herds will cause to individual Indians during the period necessary to regenerate such rangelands. A program similar to the past "Soil Bank" program should be instituted to provide incentive to individuals to reduce their livestock holdings.

84. The Bureau of Indian Affairs implement programs necessary to provide technical assistance and training to tribal people to aid them

in adopting modern farming and range management. Specifically, the BIA:

a. Review its funding requests for support of State extension services and seek additional funds for this purpose as appear necessary.

b. Develop vocational education programs to be offered at the reservation level to train adults and students at the secondary educational level in techniques in agriculture, range management, and other subjects relevant to natural resource development.

85. Congress hold oversight hearings to ascertain the adequacy of the current funding level of the revolving loan fund for purposes of agricultural and livestock development.

86. In order to clarify the legal authority for Indian tribes to regulate, manage, and sell their own tribal resources. Congress amend: 25 U.S.C. § 406—Sale of Timber on Lands Held in Trust; and 25 U.S.C. § 407—Sale of Timber on Unallotted Lands.

25 U.S.C. § 406 Sale of Timber on Lands Held Under Trust.

Amend § 406(a) by inserting a period after Interior in line 3 and striking the remainder of the sentence and the following sentence.

Amend § 406 by adding a new paragraph at the end of the section as follows:

(g) Bonds for performance and reclamation pursuant to contracts under this section may be required by the Secretary or the owner of the timber in accordance with provisions under § 407.

25 U.S.C. § 407 Sale of Timber on Unallotted Lands.

Amend § 407 by designating the present section as paragraph (a). In line one after "sold" insert "by authority of the tribal council with approval of the Secretary of Interior". In line four, insert a period after Interior and delete the remainder of the paragraph. At the end of the paragraph insert a new sentence: "Regulation of timber sales under this section and § 406 may be superseded by regulation pursuant to tribal constitution, charter, or ordinance, provided that such regulation is not inconsistent with the provisions of this section."

Amend § 407 by adding a new paragraph (c) to read as follows:

(c) Nothing in this section shall prevent the adoption by the tribal council of regulations for the management of natural resources within the reservation, and after such regulations have been approved by the Secretary of the Interior they shall be controlling and regulations by the Secretary of the Interior under this section which may be inconsistent therewith shall no longer be applicable.

87. To resolve the difficult problems in management in the continuing waste of Indian timber resources occurring because of the fractionated heirship pattern of ownership of forested allotments, Congress amend existing Federal law relating to:

(1) Sale of timber on trust allotments to provide a first option to the tribes.

(2) Authority to the tribe to acquire existing powers of attorneys now held by the BIA upon a showing that the affected allotted lands have been included in a comprehensive tribal forest management plan.

88. The BIA make a study of its existing forest management practices and regulations.

A special task force be formed comprised of experts in the areas of forest management to evaluate the present BIA forest management program and develop a modernized comprehensive forest management program for the future use of the Bureau and the tribes. The members of this task force be drawn from the the public and private sectors of the forestry industry and include timber managers of Indian tribes and the BIA.

89. In order to provide for reforestation and regeneration of the millions of acres of Indian forest which have been clearcut by private companies under sales contracts approved by the BIA, the Congress appropriate funds to enable those tribes affected to undertake the necessary regeneration and reforestation programs.

90. Congress enact legislation to permit tribes to contract with private enterprises or Forest Service for timber management.

91. The Secretary of Interior allow the tribes having legal rights over water to develop their own water codes designed to regulate all forms of water usage.

92. Congress enact legislation to provide for an Indian trust impact statement (as outlined in trust section of his report) any time Federal or State projects affect Indian water resources.

93. The Secretary and the Bureau of Indian Affairs take the following actions or provide tribes with the financial capability to:

1. Inventory all tribal water resources.
2. Complete land use surveys particularly to determine lands which are irrigable or which can use water for other beneficial uses.
3. Conduct adequate engineering studies of the Indian water resources necessary for litigation.
4. Make available to the tribes funds to conduct legal and engineering research regarding particular water resources and to proceed with litigation where necessary.

94. Congress investigate litigation in the San Juan River Basin, the Rio Grande Basin, and the Colorado River Basin, and it likewise investigate the *Walton* cases, the *Bel Bay* case, and the *Big Horn* case to ascertain the scope of Federal conflicts of interest.

95. Congress amend 42 U.S.C. § 666 known as the McCarran amendment to specifically exclude Indian water rights from its provisions.

96. The Secretary of the Interior direct the BIA to work with Indian tribes and the Bureau of Reclamation to (1) identify those Indian lands served by BIA irrigation projects which would most benefit from IMS; and (2) plan and provide guidance to implement IMS on those lands.

97. Congress provide the United States Geological Service and the Bureau of Mines with the funds necessary to compile mineral inventories of all tribal lands. These inventories be field geological surveys using Indian people as trainees. The results be confidential to the tribes.

98. Congress provide the Division of Tribal Resource Development, Bureau of Indian Affairs, with funds to train a minerals negotiating team composed of known international and national experts approved by the affected tribes. These experts would be at the disposal of Indian tribes to aid and advise during negotiations.

99. The Bureau of Indian Affairs discontinue outdated royalty agreements, lengthy lease periods, no readjustment clauses, vague employment and environment clauses, and waivers from tribal taxation. Title 25, §§ 171 and 177 of the Code of Federal Regulations, should make clear that alternatives exist to the outdated lease agreement presently in use.

100. Congress provide funds to the Department of Interior to effectively monitor Indian mineral agreements and insure that production is accurately reported, royalties, and other fees promptly paid, employment and environmental provisions honored. Monetary penalties be imposed for noncompliance.

101. Congress provide funds to set up a low interest loan fund to aid those tribes who wish to engage in joint ventures.

102. Congress provide legislation to prohibit any State taxation of non-Indian mineral developers in their transactions with Indians within the tribal lands.

103. If the tribes decide to enter joint ventures, agreements with developers, ownership and control of minerals and processing be kept in Indian hands. Contracts for work on technology purchases would be examples of such agreements. Funds be made available for tribes to employ legal counsel and geological experts to aid them in their mineral contract decisions whenever possible.

104. The U.S. Government make available technical assistance and teaching personnel in geological fields so that Indians can learn to be surveyors for their own tribes.

105. The present laws be amended to insure tribal control of the development of Indian-owned natural resources including water, coal, oil, uranium, gravel, and clay, and all other minerals. The laws, once amended, be flexible enough to allow the tribes to determine for themselves the best form of organization which will enable them to control development and realize the maximum financial returns from the development of their natural resources.

106. Title 25, §§ 171 and 177 of the Code of Federal Regulations, make clear alternatives exist to the outdated lease agreement (contracts), most immediately with regard to the development of coal. Reclamation regulations also be clarified.

107. Congress amend the Freedom of Information Act to exempt tribal proprietary rights from its application.

108. The United States Bureau of Labor Statistics collect accurate, uniform, and consistent statistics on an annual basis on the Indian labor force on every Federal and State reservation. The Bureau also collect statistics on jobs available on each reservation, by type of economic activity, and should indicate if the job is held by an Indian or non-Indian.

109. The executive branch require the Bureau of Indian Affairs and the Department of Labor to keep accurate and detailed statistics on every participant in federally funded manpower programs. Participant's subsequent job status be monitored for at least 5 years.

110. The executive branch require that the Bureau of Indian Affairs and the Department of Labor coordinate their manpower programs with tribal development programs and Economic Development Administration. EDA specify for the BIA and DOL the manpower requirements for their projects including the setting up as well as the operation. BIA and DOL institute the necessary training programs in advance of the EDA projects.

111. Education of Indians be relevant to the needs of the communities and that emphasis be placed on education and training in hard sciences, business, and administrative management disciplines.

112. The Office of Management and Budget take the necessary action to insure that:

An approach is developed which will coordinate Federal efforts at the reservation level;

Continuous evaluations are conducted of the effect that Federal programs have on the standard of living at Indian reservations including developing information systems to support such evaluations; and

Annual reports are submitted to the Congress on progress made in improving the standard of living of reservation Indians and on any needed changes in legislation to improve the effectiveness of Federal programs.

If early action is not taken, we recommend that the Congress enact appropriate legislation.

113. The executive branch direct the development of physical infrastructure programs through the joint efforts of the tribes, the Department of the Interior, the Federal Aid to Highways System, the Commerce Department, and the Department of Transportation. Such a program be part of a special economic stimulus effort for tribes. It could also include significant increases in the amount of capital to be made available through grants and loans.

114. Congress appropriate sufficient funds to upgrade the existing transportation facilities in the Indian communities and provide for a maintenance program that would not allow a deterioration of existing facilities.

115. Congress enact legislation designed to amend 25 U.S.C. § 1522 to increase the \$50,000 limitation on nonreimbursable grants to Indian-owned economic enterprises.

116. Congress enact legislation to insure that funds and technical assistance available through SBA's "(8(a) Program" (25 C.F.R. § 124.8 *et seq.*) and "7(a) Program" (25 C.F.R. § 122 *et seq.*) are extended to businesses which are chartered or operated by tribal governments.

117. Congress enact legislation to insure that the technical and management assistance available through OMBE is extended to Indian business enterprises on the same basis and with the same priority as it is extended to other minority business enterprises.

118. Congress enact legislation to provide that the tribal government may waive its immunity from suit.

119. Congress hold oversight hearings to determine the feasibility of the establishment of an Indian development bank to provide for the demand for capital in Indian country and at the same time recog-

nize and compensate for the unique requirements of lending in Indian country necessitated by the United States trust responsibility. A carefully considered development bank project may go a long way in reversing the existing dependency structure in Indian country thereby reducing Federal transfers over the long run.

120. Congress hold oversight hearings regarding investment of trust funds to determine what legislation is necessary to assure that trust funds draw full interest at prevailing commercial rates.

121. Congress hold oversight hearings with Economic Development Administration, Small Business Administration, Office of Minority Business Enterprise, Department of Labor, Bureau of Indian Affairs, and Department of Transportation to determine what the obstacles are to successful business development in and near Indian communities.

CHAPTER EIGHT.—COMMUNITY SERVICES

The Commission recommends that:

122. Indian Health Service (IHS) establish a formalized mechanism through which IHS officials can work closely with Indian people toward the successful implementation of Public Law 94-437.

123. Congress appropriate sufficient funds for the continuance of present Indian centers in urban areas which assist Indians in obtaining medical and other social services; and should encourage, with funds and guidance, the establishment of additional such centers in all urban areas where Indians live.

124. Congress create in the Office of Civil Rights (OCR) a monitoring and enforcing division targeted at discriminatory urban health providers.

125. IHS receive supplemental fundings for providing outreach medical care to isolated, rural Indians.

126. Congress hold oversight hearings regarding the implementation by IHS of the Indian Self-Determination and Education Assistance Act (Public Law 93-638).

127. Congress hold oversight hearings to determine Indian needs in the areas of health care facilities, construction, and maintenance, and appropriate sufficient funds to meet those needs.

128. Congress hold oversight hearings to ascertain the success of mobile health vans at the Navajo and Rosebud Reservations and on TV satellite formerly used in Alaska; and determine whether these programs should be expanded to isolated, inaccessible areas.

129. Congress hold oversight hearings to ascertain the problems regarding the high turnover in personnel at IHS and act to remedy these problems.

130. Congress create a medical para-professional corps to be used on Indian reservations, particularly in the areas of alcoholism and mental health.

131. IHS be funded to allow the expansion of present training programs so that they are located in individual service units and geared to specific staff shortages in those units.

132. Congress appropriate funds for ongoing orientation programs to educate IHS employees in Indian culture, and to provide for Indian interpreters in all service units.

133. Congress request the General Accounting Office to conduct a management study of the Indian Health Service and periodically to audit all IHS services.

134. The executive branch direct all Federal agencies to report to Congress on problems regarding the coordination of budget cycles and, if necessary, request legislative reform.

135. Congress reorganize the Indian housing program and give one agency the primary responsibility for coordinating and administering the program. Upon establishment of a new independent consolidated Indian agency, as recommended in chapter VI of this report, all Indian housing programs should be transferred to that agency.

136. Congress direct IHS to report on tribal needs for fully equipped ambulances and other vehicles to transport nonemergency patients on reservations and should then appropriate necessary funds to provide such services.

137. The Department of Agriculture review and revamp its food supply system to insure consistent delivery of nutritious, health-giving goods to the Indian people, with particular emphasis on high-risk groups such as infants, children, pregnant women, the elderly, and the handicapped; and, to insure the simultaneous use of both food stamps and donated foods for those tribes desiring it.

138. BIA replace the monopolistic trading post, with its high prices and inferior stock, with as many efficiently managed food stores as are needed for accessibility by Indian people wherever they live on the reservation. These stores be under Indian management.

139. The executive branch upgrade tribal programs for education in the areas of hygiene and nutrition.

140. IHS upgrade the demonstration projects heretofore administered by National Institute on Alcoholism and Alcohol Abuse.

141. Congress enact legislation for the transfer of all Federal education programs from their present agencies to the consolidated Indian agency recommended elsewhere in this report.

142. Congress enact legislation that would aid tribal governments in assuming the responsibility for control of education in accordance with their desires. Such legislation to include:

(a) Amendments to Public Law 81-874 and 81-815 such that: (1) the dollars directed to aid schools educating Indian students would be funneled through a tribal monitoring system, then to the school; (2) a set-aside provision is made to cover costs of tribal administration.

(b) Amendments to Public Law 93-638 such that: (1) a duly elected board of regents may be recognized as a unit representing tribes and tribal opinion to contract for and administer post-secondary schools with a multitribal population; (2) in the case of multitribal elementary and secondary schools, a duly elected board of regents, including at least one representative from each tribe, be recognized as a unit representing tribes and tribal opinions to contract for and administer those schools.

(c) Amendments to Public Law 93-638 and Johnson-O'Malley such that: (1) Any dollars contracted for the education of Indian children through Public Law 93-638 and Johnson-O'Malley would pass through a tribal monitoring system; (2) in utilizing this contract or monitoring power with Public Law 93-638 or

Johnson-O'Malley a tribe may decide the extent to which it wishes to control the educational system affecting its children. This decision runs the gamut from total tribal ownership and control to utilization of the tribal government only as a monitoring system for Indian education moneys; (3) if the tribe opts to set up an organizational unit to monitor funds, a set-aside provision should be made available to cover the costs of tribal administration.

(d) Amendments to all Indian education legislation such that: (1) the State or local government not in compliance with agreements and contracts for Indian education programs can be sued by the tribe in a U.S. district court or in a State court of general jurisdiction; (2) the court may grant to the plaintiff a temporary restraining order, preliminary or permanent injunction or other order including the suspension, termination, or repayment of funds, or placing any further payments in escrow pending the outcome of the litigation.

NOTE.—The language of the above two recommendations is taken from H.R. 13367—Revenue Sharing.

143. Congress appropriate funds to accomplish the following objectives:

(a) To establish standards for Indian education and develop an accreditation system for Indian schools.

(b) To train non-Indians who teach and work with Indian children as an interim measure until there are enough Indian educators.

(c) To educate and prepare tribes who wish to organize and operate their own educational systems.

(d) To subsidize a long-range effort to train and certify Indian educators for Indian schools.

(e) To subsidize curriculum development and library development for Indian schools.

(f) To provide an educational clearinghouse for information on teacher availability, new curricula, and special resources flowing between schools and tribes.

(g) To give professional Indian educators the opportunity for regular input on new educational methods and resources to the tribes.

144. Congress provide for the improvement of off-reservation boarding schools by enacting legislation to accomplish the following:

(a) Define the goals and objectives for each school and create an academic emphasis to fit its goals.

(b) Assure that juvenile corrections are the responsibility of the tribe and not the off-reservation boarding school.

(c) Organize an admittance and transfer policy for students.

(d) Provide for sufficient diagnostic staff and development specialists for each school.

(e) Provide a curriculum that is responsive to the students' psychological and academic needs.

(f) Assure that teaching and guidance staff are chosen for their ability rather than civil service rank.

(g) Give parents and communities the opportunity to contribute ideas and participate in school procedure.

(h) Give the school advisory boards real decisionmaking power, as indicated by the Indian Reorganization Act, and organize an elective process for advisory boards and boards of regents for all BIA schools.

(i) Set up funding structures to separate off-reservation boarding schools from other BIA-funded schools.

(j) Provide adequate financing and standardize accounting procedures and fiscal reports of all schools.

(k) Remove postsecondary schools run by BIA from off-reservation boarding school status so the tribes have the option to control staff, budget, programs, enrollment levels, and student body.

145. Congress provide funding through Indian organizations and tribes for scholarships in three academic areas: vocational education, traditional liberal arts education, and graduate level education.

146. Each Indian student who meets the requirements of section 411(a)(1) of the Higher Education Act of 1965 be entitled to a grant in an amount computed under subsection (a) of section 411.

147. Congress enact legislation which would carry out a program for funding and administering Indian postsecondary schools. Such legislation should include:

(a) Funds for more Indian owned and operated colleges.

(b) Funds for research in the area of Indian higher education to determine students' academic and psychological needs.

(c) Funds to assess the needs of tribes and communities for certain types of vocations and professions.

(d) Funds to establish liberal arts institutions on or near populous reservations.

(e) Funds to establish institutions of higher learning specializing in the culture, languages, and traditions of Indian people.

(f) Funds for specialized Indian higher education centers, such as the Center for Indian Law.

(g) Federal funding to institutions of higher learning serving Indian students, similar to Johnson-O'Malley funds.

(h) Accreditation for Indian postsecondary institutions be provided by an Indian designed and organized board.

148. Congress hold oversight hearings to clarify the division of responsibility between Federal and State agencies involved with Indian affairs—including BIA, HEW, IHS, Office of Civil Rights, and Social and Rehabilitation Services—and direct these agencies to consult with State agencies to determine the causes of the breakdown in the delivery of services to Indians by the States.

149. The BIA and HEW promulgate regulations to clarify that Indian trust money and land is not to be considered an asset by State and county governments in determining eligibility for welfare programs.

150. BIA be required to publish in the Federal Register and in the Code of Federal Regulations their procedures and guidelines for general assistance under the Snyder Act.

151. Procedures and practices used in the BIA's 64 local welfare offices be standardized and made uniform, ending the practice of discretionary action on the part of the local BIA caseworkers.

152. Receipt of State or local general assistance not make an Indian ineligible for BIA assistance when supplemental aid is needed.

153. Congress, by comprehensive legislation, directly address the problems of Indian child placement and the legislation adhere to the following principles:

(a) The issue of custody of an Indian child domiciled on a reservation is the subject of the exclusive jurisdiction of the tribal court where such exists.

(b) Where an Indian child is not domiciled on a reservation and subject to the jurisdiction of non-Indian authorities, the tribe of origin of the child be given reasonable notice before any action affecting his/her custody is taken.

(c) The tribe of origin have the right to intervene as a party in interest in child placement proceedings.

(d) Non-Indian social service agencies, as a condition to the Federal funding they receive, have an affirmative obligation—by specific programs—to:

(i) provide training concerning Indian culture and traditions to all its staff;

(ii) establish a preference for placement of Indian children in Indian homes;

(iii) evaluate and change all economically and culturally inappropriate placement criteria;

(iv) consult with Indian tribes in establishing (i), (ii), and (iii).

(e) Significant Federal financial resources be appropriated for the enhancement or development, and maintenance of mechanisms to handle child custody issues, including but not limited to Indian operated foster care homes and institutions in reservation areas, such resources be made directly available to the tribe.

CHAPTER NINE.—OFF-RESERVATION INDIANS

The Commission recommends that:

154. The executive branch of the Federal Government conduct a detailed examination of assistance programs and need areas that would be most expeditiously administered by tribal governments.

155. The executive branch provide for the delivery of services to off-reservation Indians consistent with the Federal obligation to all Indians. Accordingly, Congress recommend that the executive branch deliver appropriate services when feasible through urban Indian centers.

156. The executive branch provide financial support for Indian centers in urban areas. This could be expedited by turning over BIA Employment Assistance Offices and other Federal contracting opportunities to urban service centers; and delegating Federal domestic assistance dollars directly to urban centers on a fair per capita share basis.

157. The executive branch consider the placement of Federal funds targeted for urban Indians under an Urban Indian Office as a part of their considerations for the Consolidated Independent Indian Agency.

158. The Federal agency funding such urban center or centers determine the actual representation of such center or centers according to a process of membership certified to the agency.

159. The executive branch mandate that urban centers receive:
Specific consideration for the receipt of Johnson-O'Malley funds;

Technical assistance and orientation in programing, budgeting, regulations, and funding programs;

Specific roles in program and policy formulation in curriculum development for teaching and administrative staff hiring for schools with Indian children.

Funding for administrative and program costs.

160. The executive branch mandate that urban Indian centers be supported to provide:⁴

A real estate clearinghouse to provide information on available living quarters;

Consumer education programs in the areas of credit procedures, lease information, and general advice on moving from the reservation to an urban area;

Grants for initial moving costs, immediate support, rent supplements, housing improvements; and

The Bureau of Indian Affairs reestablish the program formerly funded providing equity grants for downpayments to urban Indians who have lived in the city for more than 2 years.

161. The executive branch mandate that appropriate action be taken to provide urban Indians with health care facilities by providing the urban Indian center with funds to:

Administer Indian health care programs;

Provide information for health care;

Contract for Indian health care;

Establish health educational programs;

Establish health care programs on its premises; and

Act as a monitor for funds designated for urban Indian health care.

CHAPTER TEN.—TERMINATED INDIANS

The Commission recommends that:

162. Congress by joint resolution specifically repudiate H. Con. Res. 108 and the policies of assimilation and termination that it represents, and commit Federal-Indian policy specifically to Indian self-determination.

163. Congress provide appropriate legislation for an administrative restoration process adhering to the following principles:⁵

(a) Purpose of the Act: To establish standards and procedures by which terminated Indian tribes may be restored to the status of sovereign, federally recognized Indian tribes; to restore to terminated Indian tribes and tribal members those Federal rights, privileges, and services to which federally recognized Indian tribes and their members are entitled.

⁴ These funds are presently provided to the Bureau of Indian Affairs for the same purpose.
⁵ See. AIPRC, report of the Task Force on Terminated and Non-federally Recognized Indians, at 1705 for the proposed "Restoration Act" adhering to these principles.

(b) The policy of termination was wrong and Congress expressly recognizes that fact. All reasonable steps be taken to fully and quickly restore Federal recognition to terminated tribes, reestablish their land base, and restore tribal sovereignty. All Federal moneys expended pursuant to the Act should be over and above existing appropriations for Indian affairs.

(c) Any terminated tribe may file a "petition for restoration" with the Secretary of the Interior. The Secretary shall grant the petition where: (1) the tribe is maintaining a tribal identity; and (2) restoration is favored by a majority of the tribal members actually voting in an election. The Secretary shall liberally construe the petition in favor of the tribe and any denials of petition shall be without prejudice to the tribe's right to refile subsequent petitions. If a petition is granted, the Secretary and the tribe shall negotiate a restoration plan, the tribe will be eligible for all Federal services and benefits, and all rights of the tribe under Federal treaty, statute, executive order, agreement, or otherwise shall be reinstated.

(d) The restoration plan provide for election of an interim tribal council, adoption of a tribal constitution and bylaws, revision of the tribal roll, establishment of reservation land in trust, and other specifics. Congress retains the power to approve or disapprove any restoration plan.

(e) Nothing in the Act alters preexisting rights or obligations or affects the status of any federally recognized tribe.

(f) The Act be construed in favor of Indians; the Secretary of Interior shall cooperate with tribes seeking restoration; his action is subject to review by a Federal court; and other specifics.

(g) Authorization for whatever appropriations are necessary to implement the Act.

(h) The Secretary of Interior is authorized to adopt regulations necessary for carrying out the Act.

(i) Congress, as an interim measure, recognizing the hardships caused by terminations, by legislation specifically extend appropriate Federal-Indian services to terminated Indians.

CHAPTER ELEVEN.—UNRECOGNIZED INDIANS

The Commission recommends that:

164. Procedures be established so that all tribes will be guaranteed their unique relationships with the United States. After adoption of the following recommendations, the words "nonfederally recognized" and federally "unrecognized" shall no longer be applied to Indian people.

165. To clarify the intention of Congress and to dispel administrative hesitations, Congress adopt, in a concurrent resolution, a statement of policy affirming its intention to recognize all Indian tribes as eligible for the benefits and protections of general Indian legislation and Indian policy; and directing the executive branch to serve all Indian tribes.

166. To insure that the above declaration is carried out, Congress, by legislation, create a special office, for a specific period of operation,

such as 10 years, independent from the present Bureau of Indian Affairs, entrusted with the responsibility of affirming tribes' relationships with the Federal Government and empowered to direct Federal-Indian programs to these tribal communities. The office should have a dual function: (1) Affirming the Federal relationship with the petitioning tribes; and (2) negotiating the particular aspects of that relationship within the context of general Indian legislation and Indian law, but with the flexibility to meet each tribe's specific needs.

The first function to include the following procedures:

The office contact all known so-called unrecognized tribes and inform them of their rights to establish a formal relationship with the Federal Government.

Technical assistance be provided for tribes, ensuring that they understand the office's procedures, and that they acquire legal assistance and professional assistance when they desire it for presenting their claims to this office. With the assistance of the special office, or with the assistance of persons designated by the tribe but paid by the office, the tribes may submit petitions for recognition to the office.

As soon as possible, but no later than 1 year after receipt of a tribe's petition, the office must decide on a group's eligibility as a tribe for Federal-Indian programs and services.

That decision must be decided on the definitional factors enumerated below, factors which are intended to identify any group which has its roots in the general historical circumstances all aboriginal peoples on this continent have shared.

At the end of 1 year, through appropriate hearings and investigation, the office must justify any rejection of a group's claim to tribal status with a written report documenting the group's failure to establish its inclusion in any one of seven enumerated definitional factors.

The group may appeal the office's ruling to a three-judge Federal district court, as outlined in recommendation 169.

The second function of the office, to negotiate the tribe's particular status within the Federal-tribal system, is intended to place these newly recognized tribes on a firm footing so that their claims are clear, their rights are affirmed, their special needs are assessed, and so that actions may be taken immediately to improve their health, educational, and economic conditions.

This procedure will acknowledge these tribes' different priorities, and will assist in expediting actions on tribal priorities. It is not intended to be a process for limiting tribes' eligibility for any services or constraining the powers, rights, and special privileges of these tribes. The office will be directed to exercise good faith and trust in delineating the tribes' rights to services and protection of laws governing Indian affairs.

167. Congress direct this special office that for the purposes of fulfilling the Federal Government's obligation for the protection and well-being of American Indian tribes and aboriginal groups and their resources, and for the identification of those groups, the procedure outlined in recommendations 168-171 will be followed.

168. A tribe or group or community claiming to be Indian or aboriginal to the United States be recognized unless the United States acting

through the special office created by Congress, can establish through hearings and investigations that the group does not meet any one of the following definitional factors:

(a) The group exhibits evidence of historic continuance as an Indian tribal group from the time of European contact or from a time predating European contact. "Historic continuance" includes any subsequent fragmentation or division of a specific tribe or group, and any confederation or amalgamation of specific tribes, bands, or groups and subdivisions.

(b) The Indian group has had treaty relations with the United States, individual States, or preexisting colonial and/or territorial governments. "Treaty relations" include any formal relationship based on a government's acknowledgment of the Indian group's separate or distinct status.

(c) The group has been denominated an Indian tribe or designated as "Indian" by an Act of Congress or executive order of State governments which provided for, or otherwise affected or identified the governmental structure, jurisdiction, or property of the tribal groups in a special or unique relationship to the State government.

(d) The Indian group has held collective rights in tribal lands or funds, whether or not it was expressly designated a tribe. "Lands" includes lands reserved for the group's exclusive use, occupancy, or related general purposes which have been acquired by the group through Act of Congress, Executive or administrative action, or through such related acts by preexisting colonial and/or territorial governments, or by State governments or through the purchase of such lands by the group. "Funds" includes money designated for the group's exclusive use, possession or related general purposes by Act of Congress, Executive or administrative action, or by such related acts of preexisting colonial and/or territorial governments, or by State governments, or by judgment awards of the U.S. Court of Claims, U.S. Indian Claims Commission, Federal or State courts.

(e) The group has been treated as Indian by other Indian tribes or groups. Such treatment can be evidenced by relationships established for purposes connected with crafts, sports, political affairs, social affairs, economic relations, or any intertribal activity.

(f) The Indian group has exercised political authority over its members through a tribal council or other such governmental structure which the Indian group has determined and defined as its own form of government.

(g) The group has been officially designated as an Indian tribe, group, or community by the Federal Government or by a State government, county (or parish) government, township, or local municipality.

169. If the United States finds that the claimants do not meet any of these definitional factors, such a determination must be made in writing to the claimants and the decision shall be reviewable by a three-judge Federal district court with the burden remaining upon the United States to establish that the claimants are not an Indian tribal community.

170. If the United States affirms through the special office that a claimant tribe or group meets any one of the standards set forth above, it shall promptly begin negotiations with the tribe or group for purposes of extending all benefits and protections of the laws of the United States directed toward Indians to the extent agreed to by the tribe or group. The agencies designated to provide for the negotiation of protection and benefits shall submit to the Congress such additional requests for appropriations as are necessary to fulfill these obligations.

171. Technical assistance be provided by the special office, or by the prime agent of the trust, or by both, so that newly recognized tribes can determine their membership rolls. The process of determining the rolls will entail public notices, the formation of tribal enrollment committees to hear individuals' claims, and written statements of enrollment verification which must be recorded in duplicate by the prime agent of the trust. Tribes must set their own membership standards. This enrollment procedure may begin after the special office informs the group of its recognized tribal status, and may continue after the special office is terminated, although the process should be expedited by the office as fast as possible.

172. Congress appropriate specific set-aside moneys for American Indian community governments and organizations currently not receiving Bureau of Indian Affairs services and programs, to be utilized for program development, planning, and community-based operations. These funds to be an addition to the usual appropriations for the Office of Native American Programs (ONAP) within the Department of Health, Education, and Welfare. Such funds to serve as an interim measure while other Federal departments and agencies are implementing services to all Indians. (It should be noted that there should be a specific set-aside since less than 11 percent of the ONAP grantees during fiscal year 1975 were terminated or "nonfederally recognized" Indian tribes and organizations.)

173. To insure the success of such congressional directive and specific set-aside moneys, the Congress appropriate additional funds for distribution through the Federal departments and agencies on a grantee and nongrantee basis, specifically designed to provide contractual training and technical assistance for American Indian communities at statewide and regional levels. Further, to provide for the continuance of the self-determination without termination concepts surrounding the Indian Self-Determination Act passed in the 93d Congress, individual American Indian community governments and organizations and combinations thereof within a State or regional area are to be encouraged to perform the contractual negotiations with individual contractors, in a cooperative effort with the respective Federal agency. Additionally, to provide the necessary support for the development of non-BIA programs and services, and for the cooperative efforts between Federal agencies and Indian communities in policymaking and policy formation, the Congress stipulate and encourage the utilization and formation of the Indian task force concept on the Federal regional council level. (As such, the presence of an Indian task force at the New England Federal Regional Council has proven over the past few years to be highly effective in the areas mentioned above.)

174. For the purposes of providing effective utilization and improvement of human resources within American Indian communities and

for the successful continuance and rational development of community governments and organizations not currently receiving Bureau of Indian Affairs programs and services, the Congress establish a national Indian scholarship and fellowship program specifically designed to promote the educational development and training of the current Indian leadership within such communities and those young Indian adults who exhibit future leadership qualities and activities.

175. Congress direct the General Accounting Office to immediately proceed with full and complete investigations of the grant award procedures involving: the Office of Indian Education, title IV, parts A, B, and C; and Office of Native American Programs, Tribe and Urban; and the Office of Indian Manpower Programs, sec. 302 of the Comprehensive Employment and Training Act.

176. The Congress extend the statute of limitations as provided in 28 U.S.C. § 2415(b) so as to provide that actions which accrued on the date of enactment of such Act in accordance with subsection (g) thereof may be brought within 25 years after the right of action accrues, so as to provide time for Indian tribes, bands, or groups who have not had access to legal services, effective legal research, and effective historical research to seek redress through actions brought by the United States on their behalf under the Act.

177. The Census Bureau be directed to implement the recommendations suggested by Task Force Ten on pages 1703-1704 of its final report, so that so-called unrecognized Indians will be identified in the 1980 census.

CHAPTER TWELVE.—SPECIAL CIRCUMSTANCES

The Commission recommends that:

178. Congress enact legislation prescribing the order of preference in which applications for benefits under Federal laws and programs will be received from the several kinds of Alaska Native organizations qualified as applicants.

179. Congress enact legislation confirming that the Tlingit and Haida Indians constitute a single tribal entity of which the Central Council is the general and supreme governing body.

180. Congress enact legislation confirming that the authority of the Secretary of the Interior to reserve easements on lands to be conveyed to Native corporations under the Settlement Act is strictly limited to definitely defined easements across such lands and at periodic points along the courses of navigable waterways that are necessary to discharge international treaty obligations and to provide access to remaining public lands. Specifically, Congress make clear that the Secretary is without authority to reserve any lineal easements along shorelines, any nonspecific floating, or blanket easements, or any easements to provide others with any rights to enter upon any lands (including water beds) to be conveyed to the Native corporations for any purpose other than to cross such lands by defined routes to reach remaining public lands.

181. Congress enact legislation confirming that the Secretary of the Interior is not required, prior to conveying lands to Natives and Native corporations under the Settlement Act, to prepare impact statements pursuant to the National Environmental Policy Act.

182. Congress enact legislation requiring the Secretary to convey all lands and estate and interests in lands that the Natives and the Native corporations are entitled to receive under the Settlement Act no later than December 31, 1978.

183. Congress increase its oversight relative to the carrying out of the Settlement Act in general, and relative to the conveying of lands to the Native corporations in particular. Congress require the Secretary to report to it not less frequently than once every 3 months until it is satisfied that all lands to which the Native corporations are entitled under the Act have been conveyed.

184. Congress appropriate funds to provide the advance payments into the Alaska Native Fund that were authorized by § 407(a) of the Act of November 16, 1973, 87 Stat. 591, to ameliorate the adverse impact on the Alaska Natives of delay in construction of the Trans-Alaska Pipeline.

185. Congress take no action in implementing the provisions of § 17(d) of the Settlement Act, or otherwise, that would have the effect of diminishing or impairing the ability of Alaska Natives to make use of any lands or of the products thereof (including fish and animals), for subsistence purposes, or that would have the effect of restricting the uses that Native corporations might make of, or the activities they might conduct on, any land conveyed to them under the Settlement Act.

186. Congress enact legislation permanently exempting lands conveyed to Native corporations under the Settlement Act from State and local taxation, so long as they are not developed or leased, and during periods such lands are not productive of income, whether or not they were previously developed or leased.

187. Not later than during the 1st session of the 101st Congress or 1989, Congress undertake a comprehensive examination of the condition of the Alaskan Natives and of the results of the Settlement Act, with a view, particularly, to determining whether the tax exemptions and the period of inalienability of stock currently provided by the Settlement Act should be expanded or extended.

188. Congress conduct hearings to examine the problems that have arisen in interpreting and effectuating § 7(i) of the Settlement Act and to determine whether further legislation is desirable.

189. The findings and recommendations applicable to Indians generally are part of the Federal-Indian policy and are equally applicable to the Indian tribes and people of Oklahoma without distinction and that no tribe or community of Indian people should be denied the benefits or advantages of Federal-Indian law or policy solely because they are found within the boundaries of the State of Oklahoma.

190. Congress repeal those laws which presently restrict or remove from the tribes of Oklahoma the full measure of jurisdictional and governmental powers enjoyed by other tribes in States unaffected by P.L. 83-280. To the extent that the State of Oklahoma lawfully exercises jurisdiction over Indians or Indian lands at present that jurisdiction should remain as concurrent with the tribal powers, pending the assumption of full jurisdiction by the tribes.

191. For those tribes found lacking an adequate legal base for present assertion of tribal governmental powers, Congress provide by appropriate legislation for the reassumption of Federal jurisdiction

and tribal jurisdiction to the exclusion of State jurisdiction adhering to the following principles:

(a) Reassumption of Federal jurisdiction and tribal jurisdiction to the exclusion of State jurisdiction be to the same extent as are found on reservations in States not presently exercising Public Law 83-280 jurisdiction or other jurisdiction pursuant to special jurisdictional statutes for that State.

(b) The extent and limitations, including any timetables for partial or total assumption of jurisdiction be at the option of the tribe which shall prepare a plan for same.

(c) There be direct financial assistance made available to the tribe or intertribal group which includes a Secretarial designation necessary to qualify for LEAA discretionary funds. LEAA Act also be amended and directed to make funds available for planning and preparation prior to assuming law and order functions.

(d) The plan presented by the tribe or intertribal group reflect consultation with State and local governments concerning transition activities and to reflect cooperation or lack thereof. State and local governments shall have no veto over the plan.

(e) The plan be presented to the Secretary who shall:

(i) Act within 120 days to approve or disapprove the plan, and failure to act within that time shall be considered approval;

(ii) Base disapproval of the plan solely upon the basis of the inadequacy of the plan giving specific reasons and providing technical assistance and resources necessary to meet the inadequacies where possible.

(iii) Within 120 days after the passage of the Act, the Secretary shall draft standards for determining the adequacy of a tribal plan, which standards shall be sent to the individual tribes of Oklahoma who shall have not less than thirty (30) days to prepare comments on the standards proposed by the Secretary. The Secretary shall submit to Congress within 200 days after passage of the Act the proposed standards with tribal comments.

(f) Rejection of a tribal plan by the Secretary shall be appealable to a three-judge district court in the District of Columbia, and the Department of the Interior shall pay all reasonable attorneys fees and costs of the tribe or intertribal group as determined by the Federal court except where such appeal is deemed to be frivolous.

192. The Bureau of Indian Affairs be directed to review its past allocations of funds among its service areas to determine whether Indians in all of its service areas are receiving equivalent services. In those service areas where significant underfunding and/or disparity in allocation has occurred, immediate "equity adjustments" should be made.

193. The system of using past budgets as a data base to establish either floors or ceilings on current or future budgets not be rigidly enforced. This is particularly true in those areas where past budgets have failed to properly provide for the needs of its service population.

194. The Indian Health Service review its service delivery to Indians in California to determine whether its service population in California is receiving health care equivalent to that of Indians in other areas.

195. Congress require each of these agencies to report on their findings regarding past inequities in fund allocations among their different service areas and require each agency to specify the procedure it will follow in future budget developments to avoid repetition of this occurrence.

196. Congress reject any legislative solutions which would completely eliminate claims of tribes based on aboriginal rights in land and claims to damages.

197. The appropriate committees of the House and Senate to which aboriginal and claim abolishment bills have been referred refrain from holding hearings until the White House mediator has had an opportunity for mediation with all parties concerned. The committees should be guided by the recommendations of such mediator.

CHAPTER THIRTEEN.—GENERAL PROBLEMS

The Commission recommends that:

198. The National Endowments for the Arts and Humanities, the Library of Congress, the American Folklore Center, the Smithsonian Institution, and all Federal agencies which fund Indian cultural activity be directed by Congress to redesign all regulations and guidelines to:

- (a) Consider Indian projects along with all other proposals.
- (b) Use a revolving membership panel, changed every 2 years, of Indian and non-Indian scholars to review proposals on Indian-related projects.
- (c) Provide grants to Indian-controlled activities which involve Indian tribal peoples, agencies, scholars, and culture carriers as the primary beneficiaries, recipients, and users of the end product.
- (d) Mandate that all projects which relate to Indian cultural affairs be accompanied by a "cultural impact" statement delineating the cultural worth to Indian peoples of preserving, enacting, performing, recording and filming the materials or programs, including the impact on traditional expressions, cultural institutions, and economies of the peoples involved.
- (f) Reject projects which do not thoughtfully accommodate cultural differences between tribes.

199. The Smithsonian Institution, the National Endowments for the Arts and Humanities and all agencies which fund traineeships in cultural programs (*i.e.*, museum curator programs) train American Indians. Priority in funding be given to those agencies which demonstrate an intent, readiness, and capability for training American Indians to ensure long-term benefits.

200. A clearinghouse for the study of American Indian cultures be established (modeled after the Educational Resources for Instruction Clearinghouse) for Indian cultural materials, projects, and programs.

201. A review agency for funding Indian cultural programs be established. It would be designated to act on behalf of tribes, agencies, educators, programs, institutions, and individuals needing assistance in curriculum development, provision for material and human resources related to cultural programming and proposals for cultural programs, media efforts, or other educational and cultural materials which use Indian artifacts and language. Indian scholars and computer retrieval experts would serve as the base staff for the clearinghouse, which would have the authority to use Federal services allotted to Federal agencies. The clearinghouse would serve as the liaison between Indian institutions and public agencies—pre- and post-collegiate educational institutions, tribal organizations, urban centers, training programs, archival and museum resources, and governmental agencies—to insure maintenance and support of Indian cultural networks and resources.

202. A feasibility study be done on the creation of an Institute of American Indian Culture. An analysis should include the possibility of creating a center of knowledge capable of conferring Ph. D. degrees.

203. Congress, by suitable legislation, require mandatory training in Indian history, legal status, and cultures, of all government employees administering any Federal Indian program or State or local Indian program funded in whole or in part by Federal funds.

204. Congress, by appropriate legislation, appropriate funds to assist school systems in developing educational programs in Indian affairs. Such funds be made available for:

(a) An evaluation of the history and government curricula utilized by elementary, secondary, and higher education institutions.

(b) The identification of gaps and inaccuracies in such curricula.

(c) The provision of model curricula which accurately reflect Indian history, tribal status, and Indian culture. In making this recommendation, it is not the intent of the Commission that such program constitute an "official history." Rather, the intent is merely to encourage scholarly work to fill a recognized void in current educational programs.

205. Congress refer the entire report of the Commission Task Force on Consolidation, Revision, and Codification of Federal Indian Law to the appropriate committee or committees to bring the work to completion.

Optimally, referral be to appropriate committees of the House and Senate or to select committees in each House with sufficient time and funds to complete the task.

The committee(s)' work be conducted through a process of consultation with Indian people.

206. Congress authorize the Library of Congress and, if necessary, appropriate funds to:

(a) Create a Native American Studies Division in the Library with a central reference area and a research support staff of Native American specialists. The contents of such a collection to be determined by the Library staff, but to consist of at least the basic reference works most frequently used in Indian affairs research by both scholars and those active in public affairs.

(b) Compile for publication, a collection of Native American studies resources consisting of: bibliography of basic reference

tools for research in all aspects of Indian affairs, indexed by subject matter; a bibliography of bibliographies relating to Indian affairs; and a directory of research sources for Native American studies, including but not limited to specialized collections such as those in the Department of the Interior Library, the National Indian Law Library in Boulder, Colo., and the Newberry Library in Chicago, Ill. Such a research guide to contain materials located in the Library of Congress or other depository libraries accessible to the public and be made available for sale to the public and updated periodically.

(c) The Selected Dissemination of Information System (S.D.I.) maintained by the Congressional Research Service of the Library of Congress expand its coverage of publications containing Native American articles and be made available for sale to the public.

(d) In response to these recommendations, the Librarian of Congress be directed to report to the Congress the estimated cost of these changes and projects and the estimated time for their completion. In addition, the Librarian be directed to make a feasibility study to determine the requirements for undertaking a definitive retrospective bibliography of all Native American research materials, indexed by subject matter.