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Indian Governments and the Canadian Charter of Rights and Freedoms

J. ANTHONY LONG and KATHERINE BEATY CHISTE

In February 1992, a judge of the Supreme Court of the province of British Columbia ruled that the native ritual of spirit dancing is subject to Canadian law protecting individual rights and is not an aboriginal right under Section 35(1) of the Constitution Act, 1982. The decision emerged from a civil suit brought by a Salish Indian against several other members of the Salish Nation on Vancouver Island, in which the plaintiff argued that he had been unwillingly subjected to this ritual.[1] Spirit dancing, which was banned under Canadian law from 1880 to 1951, is a therapeutic ritual involving fasting and confinement until a person hears the song of a guardian spirit and begins singing and dancing. Ordinarily, entrance into this ritual is voluntary and is considered to be an honor by tribal members. According to Salish tradition, however, relatives may request that a person be subject to this rite to help that person solve personal problems; this tradition reflects the community's responsibility for its individual members. The judge's decision angered tribal leaders within coastal Indian communities, who claim that cultural traditions stressing the primacy of the community over its members are collective aboriginal rights that are shielded from Canadian law, which is rooted in the belief of the supremacy of the individual. The spirit dancing case brings into sharp focus an issue that has been a critical part of the aboriginal

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rights debate in Canada for more than a decade, namely whether the protections of the Charter of Rights and Freedoms guaranteed to Canadian citizens should apply to Indian First Nations in their relationship with their own tribal members, who are also Canadian citizens.

The issue of the relationship between the Charter of Rights and Freedoms and First Nations' governments was recently elevated into public view by a heated debate between the Native Women's Association of Canada (NWAC) and the Assembly of First Nations (AFN); this occurred during the process leading to the 1992 Charlottetown Accord on constitutional reform, Canada's most recent effort at altering existing constitutional arrangements.[2] Throughout both the negotiations preceding the accord and the referendum campaign itself, the NWAC argued that the equality guarantee in Section 15 of the charter is a universal human right and must be applied to First Nations' governments.[3] If this argument were to fail, Indian women would continue to face gender discrimination from male-dominated band councils by being denied an equal voice in the affairs of their communities. NWAC leadership was adamant that Indian governments not be given access to the opt-out provision contained in Section 33 of the charter, which allows the federal and provincial governments to be shielded from the application of the charter for up to five years, if they choose to use this option. The association also argued that the federal government's "preferential" funding of the male-dominated Assembly of First Nations was a violation of their rights of freedom of expression under the charter. Moreover, the NWAC launched separate actions in the Federal Court of Canada, initially to achieve participation in the constitutional negotiations over aboriginal self-government and later to have the referendum declared invalid.[4]

For the Assembly of First Nations—the national political association of status Indians in Canada—the charter issue is basically a cultural one. Indian leaders argue that, since the belief systems of Indian peoples are fundamentally antithetical to the Western liberal ideas that they believe underlie the individual rights guarantees in the charter, Indian societies and cultures cannot survive and traditional forms of governance cannot be revitalized under such an ideological regime. In its elementary form, this argument holds that First Nations possess a collective inherent right to self-government that must override charter-grounded rights of individual Indians in their relationship to First Nations

governments. It is this position that underpins the AFN's consistent opposition to the unqualified application of the charter to Indian governments. Moreover, it has been the basis of demands for separate Indian charters of rights to protect the integrity of traditional tribal governing forms as well as the exercise of their powers. This argument was advanced throughout the First Ministers' Conferences on Aboriginal Constitutional Matters during the 1980s and throughout the debate in the federal Parliament surrounding Bill C-31, which involved the reinstatement of Indian women who had lost status under the Indian Act.[5] Bill C-31, mandated by the equality provision (Section 15.1) of the charter and enacted into law in 1985, is designed to restore Indian status to those women and their progeny who had lost it under the status definition provisions of the Indian Act. The argument of Indian leaders was recently articulated in the First Nations Circle on the Constitution deliberations and reflected in recommendations reached in the Special Chiefs' Assembly on the Constitution Resolution, which provided the basis of the AFN's stand during the negotiations leading up to the Charlottetown Accord.[6]

In contrast, the federal and provincial governments in Canada have historically maintained that the charter must apply to Indian governments, because their constituents are also Canadian citizens. In this view, the universality of Canadian citizenship overrides the rights of an ethnically distinct community over its members, even in the *sui generis* situation of aboriginal peoples. While both the federal and the provincial governments compromised this historical position during the Charlottetown Accord process, their concession to Indian leaders at the constitutional level has yet to be followed through at the legislative policy level. The community-based self-government approach, the main legislative thrust of the federal government for allowing a form of increased self-government for Indian communities, still requires that any form of Indian government that emerges under this policy must be subject to the charter.[7] With the defeat of the Charlottetown Accord, which created a hiatus in constitutional negotiations over aboriginal self-government, it is likely that more Indian nations will enter into this latter process to achieve at least a limited measure of legal and political autonomy. The potential for conflict over the application of the charter to First Nations' governments, therefore, remains serious.

This paper focuses on the fundamental question of cultural conflict involved in the charter debate. First, we will examine the

ideological base of Indian opposition to the Charter of Rights and Freedoms by comparing certain aspects of the traditional political thought of selected Indian societies with counterpart ideas in the Western liberal tradition expressed in the charter. Specifically, we want to discuss the concepts of society and individuality, authority and leadership selection. It is impossible within the scope of this paper to cover the traditional political beliefs of all First Nations in Canada. First Nations exhibit a great deal of diversity in their respective political cultures and patterns of political development. Therefore, we have restricted our focus to Canadian Plains Indian tribes. Even though our focus will be narrowly situated, it will provide the necessary reference context for the second and central part of this paper. Moreover, it is beyond our purpose in this paper to discuss the full spectrum of contemporary liberal thought or the question of whether the Canadian charter contains "communitarian" elements that could ameliorate its application to First Nations. Rather, we have concentrated on the individualistic tenets of the charter that Indian leaders have objected to in their efforts to gain exclusion from its application for their own governments. In the second part, we will examine how these concepts have come to be defined within contemporary Canadian Indian communities, thus allowing us to address the question of whether the evolution of Indian societies affects the argument of uniqueness as a barrier to charter application. Finally, using this analysis as a basis, we argue for the option of creating special charters of rights for Indian nations that not only will meet the culturally grounded argument of the AFN but will also address the question of gender discrimination raised by the NWAC and other women's groups.

It is not our intention in this paper to enter into the larger debate of the legitimacy of individual rights versus group rights. Rather, following Elkins's argument, we assume that within the Canadian constitutional order a collective rights tradition exists alongside of charter-guaranteed individual rights that could be utilized by First Nations.[8] Arguably, the exemption of First Nations' governments from the democratic rights section of the charter proposed in the legal draft of the Charlottetown Accord supports the existence of such a constitutional rationale. Our focus is on the question of whether First Nations have retained sufficient elements of their traditional cultures to substantiate a collective rights claim for exemption of their governments from the application of charter-based individual entitle-

ments within their own communities, as the Assembly of First Nations has argued.

Relatively little effort has been devoted to comparing the political and cultural foundations of Indian societies in Canada with Euro-Canadian political values as a way to better understand the position taken by Indian leaders toward the charter. Most literature dealing with Indian governments and the charter reflects the efforts of legal scholars such as Sanders, McNeil, Barkin, Lysyk, Green, Weinrib, and others. Their work either directly or tangentially addresses the question of the extent to which charter provisions are excluded from application to aboriginal peoples by virtue of the aboriginal rights provisions in Section 25 of the Constitution Act, 1982 and how the charter's status would have been affected by an altered S.25 as proposed in the Charlottetown Accord.[9] This literature has been part of the background legal arguments during the patriation of the constitution debates and the aboriginal rights conferences of the 1980s as well as the Charlottetown Accord process.

Research comparing the political and cultural underpinnings of Indian societies with Euro-Canadian political values as a way to understand the Indian leaders' position on the charter is confined to the writings of Boldt, Long, andTurpel and, indirectly, of Cassidy and Bish.[10] This research is preceded, although the focus is different, by studies such as Svensson's on the American Indian Bill of Rights passed by the U.S. Congress in 1968.[11] Due in part to recent provincial commissions in Alberta, Manitoba, and Nova Scotia, which focused on how provincial justice systems deal with aboriginal peoples, an ancillary literature has now emerged on aboriginal concepts of justice as they relate to Euro-Canadian ideas of justice.[12]

PARALLEL BELIEF SYSTEMS

In his study of the philosophy of the Navajo Indians, anthropologist Clyde Kluckhohn has observed that

> many distinctively Navaho doings and sayings make sense only if they are related to certain implicit convictions about the nature of human life and experience, convictions so deep-going that no Navaho thinks of talking about them in so many words. These unstated assumptions are so completely taken for granted that the Navaho (like all peoples) take these

> views of life as an ineradicable part of human nature and find it hard to understand that normal persons could possibly conceive life in other terms.[13]

Kluckhohn's observation about Navajo philosophy is particularly relevant to a comparison of traditional Plains Indian thought to the Western liberal thought that underpins the charter, because the concepts of man and society are radically different within each belief system. Generally embedded in a set of implicit or explicit value judgments, these concepts structure the fundamental rules of the community that define the nature of the political order and its governing instrumentalities as well as their relationships to individual members of society.

Society and Individual Rights

Although Western liberalism has remained relatively open textured, and liberals themselves continue to engage in a vigorous debate over its content, the tenets of liberal thought that Indian leaders see embodied in the charter reflect a form of philosophical individualism wherein the individual is considered the primary unit.[14] Within this doctrine, a human being is defined as an autonomous, rational, self-interested entity, possessed with a number of unspecified natural or inherent rights.[15] Logically, any form of society that emerges must be based on some form of mutual consent involving a real or virtual form of agreement, so that the interests of individuals can be pursued as well as protected within the social order. The common political authority of society—that is, the state—and its instruments of governance are also products of human volition. In its essential form, the state is an artifact, a product of convention rather than a part of the natural order. The generic individualism that underlies Western liberalism is, in its basic form, a homocentric philosophy, producing a concept of society composed of discreet persons who, while sharing an agreed-upon collective interest, nevertheless are primarily self-interested and hold entitlements to protect their individual interests against the political authority of that society.

The doctrine of Western liberalism provides a powerful argument for the institutionalization of a set of guarantees that protect the individual from arbitrary interference by the state in the exercise of self-interest by the individual where that self-interest does not collide with the mutually agreed-upon common good.

While the delineation of this dividing line between state and individual is open to disagreement with respect to its form and content, the basic principle is not. Consequently, while the Canadian Charter of Rights and Freedoms, the American Bill of Rights, and even the United Nations' Universal Declaration of Human Rights vary somewhat in content, they all rest on the common idea that the individual should be protected against the exercise of arbitrary and excessive interference by the centralized political authority.

In contrast to these Western liberal beliefs, traditional Plains Indian philosophy was cosmocentric in nature, a common feature of tribal belief systems throughout North America. As tribal elders pointed out in the Circle on the Constitution proceedings—an extensive consultation process initiated by the AFN to discern grassroots Indian beliefs and attitudes—Western liberalism is contrary to native tradition, "in which all of these things—language, culture, spirituality, land, people, animals, plants, even the rocks themselves—form part of a seamless whole."[16] Within this tradition, the primary reference point is the cosmos as a whole, and the individual is defined by virtue of status within that whole. As Boldt and Long propose, in the human society that forms part of this larger whole there is no concept of individual claims to inherent or inalienable rights.[17] Where individual entitlements exist, they are grounded in the fulfillment of obligations to others, including inanimate objects, within a broader cosmological scheme. This conception of rights is the logical outgrowth of a belief in the interrelatedness of all life and the necessity of harmony between parts. Social interaction between human beings involves reciprocal relations and mutual obligations based on the need to preserve the harmonious whole.

The social context of rights is reflected in and reinforced by traditional aboriginal notions of justice. Ideas of justice, as David Miller observes, are rooted in the nature of social relationships within a society and in the manner in which responsibilities and benefits are distributed.[18] The objective of aboriginal justice was to restore peace and harmony within the community and "to reconcile the accused with his or her own conscience and with the individual or family who has been wronged."[19] Restoration of community harmony was primary, and adversarial technologies of justice would have been antithetical to this goal. A focus on reintegrating the individual into the community and restoring to an offender an appropriate perspective on his or her status within

and accompanying obligations to the community rests on a principle quite different from the primacy of individual rights and individual self-interest.

What individual rights existed in Plains Indian societies, therefore, were contingent on the performance of obligations to the social group within which the individual lived. In the Blackfoot language, for example, there is no word or phrase that specifically conveys the idea of rights as individual entitlements against other persons or the community as a whole.[20] Any notion of inherent, inalienable rights of individuals, common to Western liberal thinkers and largely contingent on the legacy of Christianity, did not find expression in this language.

The lack of a concept of inherent rights of individuals did not mean that personal autonomy was not highly regarded in Plains Indian societies. A great deal of personal autonomy existed and was reflected in the exercise of authority as well as in collective decision-making. Individual autonomy, however, was not based on an atomistic view of human nature, but rather on a concept of human dignity stemming from the equality of status and interdependence of individuals within the cosmic order, as conceived by the Creator. Where outside intervention in an individual's life was justified, it was primarily because his or her behavior was a threat to the collectivity as a whole—as illustrated by the example with which this paper began.

Authority

Traditional Indian thought did not differentiate between state and society. The political community was conceptually coexistent with society and part of the natural order of things. The stateless societies of Plains Indians required concepts of authority and decision-making that were radically different from a representative form of government, ordinarily associated with liberal democratic theory. Within the theory of liberal democracy, decision-making authority is delegated to representative bodies, although ultimately the political will of the people remains supreme, as commonly espoused in the doctrine of popular sovereignty. Legislative supremacy, therefore, becomes situated in elected assemblies. In the case of Canada, parliamentary supremacy has been a fundamental constitutional principle. Paralleling the development of legislative supremacy has been the acceptance of

majoritarianism, where the majority is given the right to make decisions for the entire collectivity. Despite its general acceptance, liberals have always been uneasy about majority rule, fearing that its practice could result in majority tyranny over individuals and minorities. As Joseph Pestieau points out, when eighteenth- and nineteenth-century liberals demanded that the rights of men, of citizens, or of people be guaranteed, these demands were aimed at the abuse of power.[21] In the course of the evolution of liberal democracy, these demands, as institutionalized in charters and bills of rights, became focused on both executive and legislative authority.

Historically, Plains Indians did not accept the idea that anyone could be given the right to govern others, except for limited periods of time and under restricted circumstances.[22] No human being could control the life of another, and authority to rule could not be delegated for an extended period to any subset of the group. This idea of authority was embedded in the conception of the tribe as part of the divine order, a product of the Creator, rather than a result of a collective act of its members. It found expression in the belief that the Creator gave all persons equal status within the cosmic order.[23] Consequently, circumstances of inequality in decision-making and implementation were considered a violation of the natural scheme of things. Taken collectively, these ideas resulted in a form of authority that lacked any stable hierarchically modeled arrangement.

Authority in Plains Indian societies was maintained through generations by the acceptance of customs and traditions, most easily maintained in a stable social environment. Customs and traditions stood as the Creator's blueprint for the conduct and survival of the community and were invested with authority to regulate individual and group conduct.[24] As such, they constituted a type of impersonal authority that served to protect individuals against arbitrary coercion by leaders, thereby protecting the status of individuals within the group. The impersonal authority of custom and tradition served as a surrogate to the formalized rules that establish and maintain the dividing line between political authority and individual rights within contemporary democratic states. Moreover, as Barsh points out, in traditional tribal political systems, a multitude of institutions—family, clan, religious societies, and others—were locked through ritual in arrangements that neutralized the concentration of power.[25]

The traditional Plains Indian concept of authority, underpinned by a belief system emphasizing equality of status, indi-

vidual autonomy, and personal responsibility for the fulfillment of obligations to the community, required a specific kind of decision-making process for those clan or tribal decisions that did not fall within the purview of custom and tradition. The process involved direct participation by individuals in decision-making and decisions by consensus. Every person or clan had the right to be involved in making decisions that affected them, both as individuals and as members of a group. This process not only enabled the community to be effective in achieving the common goals of its members, but also reinforced the relationship of the individual to the community. Robert Vachon describes the consensual nature of decision-making as a process characterized by "deliberation, negotiation, cooperation and patience rather than that of confrontation, aggressiveness, impatience and the adversary method."[26] Moreover, if a decision on an issue could not be reached by consensus, then the issue was temporarily abandoned. The requirement of consensus precluded majority rule, and those withdrawing from the decision-making process were not bound by it; therefore, issues involving majority rule versus minority rights did not arise.

The practice of consensual decision-making served as both a basis and a stimulus for the idea of communally grounded individual rights that existed in Plains Indian societies. The consensus-building process forced individuals to see the limit of the demands that could be made against the group. Individual interest, if aggressively pursued, could jeopardize the welfare of the collectivity and, by logical extension, the individual members of that collectivity. An awareness of this special kind of relationship of individuals to their clans and tribal groups helps to bring into sharper focus the fears of Indian leaders that the application of a set of rules based on the primacy of the individual could destroy the well-being of their tribal collectivities.

Leadership Selection

One of the most publicly visible aspects of Indian leaders' opposition to the Canadian charter is their argument that its democratic rights provisions (Section 3), allowing every citizen of Canada the right to vote in the election of a legislative assembly, will close the options available to tribal leaders for restoring traditional forms of government based on clans, hereditary chiefs,

or confederacies.[27] This concern on the part of Indian leaders is not without foundation. The democratic rights sections of the charter are designed for an elective leadership selection system with maximum-length terms of office, universal eligibility for office, electoral pluralities, and a kind of contract of representation between the individual and the representative. It is this philosophy of elective government that underlies the contemporary band council system, a system that was forced on Indian communities by the Canadian government via the Indian Act in an effort to destroy traditional methods of governance and integrate individual Indians into the Canadian mainstream.[28]

An elective system for selecting leaders would have been alien to traditional Indian societies. The principles of personal equality and autonomy, combined with the requirement of consensus for clan and tribal decisions, precluded such a system. Moreover, the small, face-to-face nature of traditional Indian societies provided the appropriate environmental context for direct rather than representative democracy. In the case of Plains Indians, leadership selection involved a substantially different process from the elective method. Leadership was based on merit and function. A member of a clan or tribe achieved leadership through demonstrated ability as a hunter, warrior, or peacemaker rather than through a partisan recruitment process and a political election strategy in an election.[29] In Canadian-style politics, an aggressive campaigner is congratulated for his or her drive and political acumen. In traditional Plains society, such behavior would be looked down upon and distrusted. Leadership was essentially a meritocracy, and only qualified people were able to rise through the family and clan to the tribal council. As Russel Barsh suggests, leadership was the obligation of the most capable, and political ambition was disciplined by personal sacrifice, where necessary.[30] The traditional process of leadership selection was largely informal, lacking the well-defined procedural requirements of elections in contemporary democratic societies.

Accountability to clan and tribe was also an informal process; nevertheless, it was rigidly enforced. A leader had to continually exhibit a particular attitude toward the leadership role. Above all else, the leader had to demonstrate to the clan and tribal members, through deeds, that he was the servant of the people. Accountability of leadership to tribal members was also achieved through the task-oriented nature of leadership. There was no fixed number of leaders. Chiefs were selected on the basis of their skills for particu-

lar tasks or needs. When those needs ceased to exist, the leader would resume the status of an ordinary tribal member. This is in direct contrast to the Canadian parliamentary system, where citizens are required to wait as long as five years before being able to turf out unpopular elected officials.

Our overview of some of the basic concepts of Western liberalism contained in the charter, with their counterpart ideas in Plains Indian philosophies and governing practices, reveals the essentially non-Western nature of traditional Plains Indian belief systems. Western liberalism is basically homocentric, whereas traditional Plains Indian thought is cosmocentric. These philosophies in turn demand differing conceptions of society, government, and individual rights. For Plains Indians, what individual rights existed were rooted in the needs of the community; individual and community interests were synonymous. The dignity of the individual was maintained through a system of custom and tradition that guaranteed the equality and autonomy of individuals. Since Plains Indian societies were basically classless and horizontal in structure, they did not require a formalized set of proscriptions against the political community to protect an individual's sphere of activity from the arbitrary exercise of authority by leaders.

This comparison of traditional Plains Indian philosophy and social organization with Western liberalism and its political manifestations, even though portraying only one segment of Canadian Indian societies, supports the argument of Indian leaders that the charter is inimical to their traditional cultures. It also lends credence to the leaders' claim that application of the charter to contemporary Indian communities would seriously impede attempts to redesign their governments in accordance with traditional practices.

An important corollary question must be raised, however. Have decades of forced acculturation transformed Indian societies to the point where traditional governance practices and their underlying belief systems no longer comprise, or even constitute a major feature of, contemporary Indian societies? If so, does this situation, along with the geopolitical environment in which most Indian communities now find themselves, effectively rule out a return to traditional belief systems as a basis for a reconstructed social and political order? Can Indian leaders, therefore, continue to make a legitimate claim for collective rights based on the cultural uniqueness of their societies?

TRADITIONALISM AND MODERNISM IN EXISTING INDIAN SOCIETIES

Any attempt to assess definitively the extent to which Euro-Canadian political structures and Western liberal conceptions of society and man have supplanted traditional Indian governing practices, political cultures, and belief systems in Canada is made difficult by a lack of research on this question. The absence of data is due mainly to the sheer number and diversity of Indian communities across Canada and the corresponding lack of scholars focusing on this subject. Nevertheless, the limited material available allows us to draw some conclusions and to make some general observations in a number of areas encompassed by this question.

Normative Foundations

Certainly the culture of Indian societies, like that of other societies, has grown and changed over time. The evolution of tribal cultures reflects, in part, the need of Indians to survive by adapting to changing circumstances that have been, for the most part, externally imposed. It also indicates a desire on the part of Indians themselves to prevent their societies from becoming culturally moribund. Has this evolution reached the point, however, where the Indian concepts of society and the individual now approximate those present in Western liberalism? It is difficult to gauge cultural transformation, because the underlying premises and concepts within a culture change more slowly than observable behavior. Moreover, different Indian societies have evolved at different rates. Although it is difficult to generalize across the diverse Indian societies and cultures within Canada, the limited research in this area on particular Indian communities; tangential research on community and economic development; and volumes of testimony by Indians at constitutional hearings, aboriginal justice inquiries, and the Royal Commission on Aboriginal Peoples[31] suggest the tenacity of traditional Indian concepts of society and the individual. They also suggest, however, that the resiliency of these concepts is being strained not only by the imposition of Euro-Canadian political structures but also by a number of reinforcing developments in Indian communities. The result is that the internal consistency of traditional belief systems is now threat-

ened, and the necessary congruity between traditional political structures and the larger belief systems may be difficult to maintain.

Testimony at the Circle on the Constitution hearings by ordinary tribal members, elders, and leaders from a large number of Indian communities reveals that Indians appear to remain committed to the primacy of the community and its relationship to the land as the cornerstone of their cultures. In addition, hearings conducted by provincial aboriginal justice inquiries suggest that traditional concepts of justice, emphasizing the harmony between individual and community interests, remain strongly entrenched in many contemporary Indian societies. Indians remain bewildered over the non-Indian practice of incarcerating individuals as a method of punishment, through which they are removed from the traditional rehabilitating and reintegrating processes of their own communities. Finally, the resurgence of traditional Indian spiritualism within many Indian communities, stressing the cohesiveness not just of the collectivity but also of the entire cosmological order, is an important indicator that the primacy of the community has a tenacious hold on contemporary Indian thinking.[32]

At the same time, however, concern is expressed among Indians themselves that the value of the collective interest is in danger of being eroded. Tribal elders, in particular, have stressed that Indian leaders need to refocus on the needs of the total community as part of their leadership roles. They also fear that the younger generation of Indians is losing touch with the importance of community as a basic cultural value. The misgivings of tribal elders over the loss of this traditional cultural value are not without foundation. Certain situations endemic to many Indian communities, as well as circumstances within the larger geopolitical environment, point to a transformation of the traditional Indian concept of individualism, bringing it more in line with that of Western liberalism.

A significant indicator of the changing idea of individualism is the evolution of the concept of property ownership of land that is occurring within many Indian communities. Traditionally, the concept of private property did not exist within Indian culture, and human relationships with the land had a spiritual rather than a commercial aura. Although some Indian societies on the west coast and in central Canada recognized family or clan hunting and fishing territories,[33] there was no counterpart to the fee simple

ownership of land that is a dominant property concept in Euro-Canadian law.[34] Rather, land existed for the collective interest of the tribe, and private interest in land, even where it occurred, was subordinate to community needs. The idea that property could be used exclusively for private interest violated the cosmological basis of traditional Indian belief systems, with its tenets of equality and interrelatedness of man and the natural world. Moreover, the seminomadic nature of some Indian societies rendered problematic any fixed ownership of individual parcels.

The breakdown in the traditional Indian way of conceiving property in land began with the encapsulization of Indians on reserves with restricted land bases and the introduction of location tickets through the Indian Act to encourage individual Indian land ownership and the development of individual self-sufficiency, values common to Euro-Canadian society.[35] It continued with the introduction of farming into societies where the economies were not traditionally agriculturally based. The promotion of agriculture by Indian Affairs involved the allocation of land holdings to individuals interested in farming, particularly on the prairie Indian reserves, which have continued to remain within the same families for generations. In fact, a system of personal wills, paralleling non-Indian forms of transferring property to progeny, is emerging among the economically advanced bands. Moreover, the agricultural lease system that was brought into effect by Indian Affairs during the 1960s on a number of reserves on the prairies allowed individual landholders to receive income for renting out their lands, in general to non-Indian farmers.

The combined effect of land as a source of revenue and the relative scarcity of land due to the expansion of Indian populations within static land bases has led to a heightened individual proprietary interest in land by Indians on many reserves; and the concept of individual property ownership, while not legally defined, nevertheless approaches the fee simple concept within non-Indian law. Despite the fact that authority to allocate tribal lands remains with band governments, proprietary interests of individuals and families make reallocation of land extremely difficult, not only hindering efforts to promote the interests of the collectivity, but also, in certain situations, setting the interest of the individual against that of the community.

Ironically, the land conflict on a number of reserves has been heightened by the passage of Bill C-31, designed to promote equality among male and female Indians. Scores of recently

reinstated status Indians are demanding that they be allocated land on their respective reserves in order to share in tribal benefits, and these demands are being vigorously resisted by current landholders. Arguably, the application of the equality provision of the charter is accelerating the attitudinal change toward the individual ownership of property among Indians, thus endangering the traditional Indian value of the primacy of the community, with its emphasis on cooperation and self-denial.

The transformation of the concept of property has been reinforced by some of the economic development schemes encouraged by tribal leaders. Although most large-scale economic development projects are pursued on a community ownership and control model, small business schemes emphasizing individual entrepreneurship, private ownership, and individual profit-making are not uncommon in Indian communities. The First Nations Chartered Land Act, initiated by a number of the more economic development-oriented bands and now being developed in consultation with them by the federal Department of Indian Affairs, might further this latter trend. Under this initiative, band councils could potentially convert reserve lands to a form of fee simple status, enabling tribal lands to be sold or mortgaged.

Finally, the larger political environment of provincial and federal elections has contributed to the reconceptualization of individualism within Indian thought as it relates to political values. Indians have not remained bifocated as Canadian citizens on the one hand and citizens of their own governments on the other, although many participate minimally or not at all in mainstream politics. Elections at the provincial and federal levels in Canada are conducted within the context of a political party system based on competition for office and alternative policy positions. As such, the election process stands in direct contrast to traditional Indian methods that emphasized consensus and a non-conflictual environment. Although a relatively low proportion of Indians participate in provincial and federal elections,[36] it is unrealistic to expect that the competitiveness of non-Indian politics has not influenced band council elections. Certainly the campaigns now waged by band council candidates on some of the larger reserves furnish evidence of this influence; and in the most recent election of the AFN National Chief, mainstream electioneering was likewise observable.

Over the last several years, the establishment of internal offices by Canada's major political parties to encourage aboriginal party

membership constitutes another step towards incorporating Indians into non-Indian political systems. These efforts, when combined with those of many Indian leaders themselves to encourage greater participation by Indians in federal and provincial elections, have the potential to further break down the insularity of Indian band political systems and foster non-Indian political values and processes. Moreover, the system of aboriginal constituencies proposed by the Royal Commission on Electoral Reform and Party Financing for representing aboriginal peoples in Parliament, although motivated by the desire to give aboriginal peoples more policy-making clout, may have the same effect of helping to erode traditional Indian values, if competitive-style politics are introduced into these constituencies.[37]

Political Structures

Within the general goal of cultural assimilation of Indian peoples into the dominant Canadian society, the Canadian federal government has directed the political development of Indian societies by attempting to destroy traditional Indian customs, leadership recruitment practices, and decision-making structures and to replace them with Euro-Canadian political structures and values.[38] The major instrument of this policy has been the Indian Act band council elective system, which resembles non-Indian municipal government systems.

While the band council elective system has unquestionably become the dominant organizational form on Indian reserves across Canada for selecting tribal leaders, its degree of acceptance as evidenced by participation in its process and commitment to its underlying normative order varies among Indian communities. Within some bands, as Cassidy and Bish suggest, tension continues to exist between band councils and traditional forms of governance.[39] The Gitskan Nation of northwestern British Columbia, for example, still relies heavily on its customary governing system of clans and houses, in which hereditary chiefs exercise political functions.[40] The Iroquois Confederacy, where the battle to retain traditional forms of clan government has waged for decades, stands as another prominent example; despite the forced imposition of the band council elective system on Mohawk communities, traditional forms of leadership selection are still supported by some. The Kahnawake Band, located near Montreal, is

now involved in a concentrated effort to revive the structures, institutions, and principles of the Great Law of the Iroquois Six Nations.[41] On the Blood Reserve in southern Alberta, the Mohk-e-saune, a breakaway group demanding separate band status, has adopted a traditional leadership selection process and tribal council structure rather than endorse a separate version of an elective band council. In these cases, universal subscription to the band council elective system is not present, as evidenced by the number of tribal members that have chosen not to participate in or support Indian Act band governments.

A different manifestation of this conflict between traditional and Indian Act governments, however, appears to be more widespread among Indian communities. Although elective band council provisions have, by and large, replaced traditional forms of leadership selection, the individualized base of representation as well as norms of representative responsibility have not taken hold. In his study of the Blood and Peigan nations in southern Alberta, Long discovered that persistence of the extended kin group in political recruitment indicates that the traditional role of the clan in leadership selection has not been eliminated.[42] He also found that opportunities for unlimited entry and self-selection for candidacy presented by the band council elective system have created a class of candidates motivated primarily by economic egoism. The salaried band council positions represent an opportunity to escape the limited job opportunities available on these reserves. Similar experiences on other Indian reserves indicate that the Blood and Peigan situations are not unique. The band council elective systems, though constituting the formal leadership selection process, have not totally destroyed traditional practices. Moreover, political aberrations have developed that are not part of the normative order of either Indian or non-Indian political systems.

Like the process of leadership selection in contemporary Indian communities, the exercise of authority and standards of accountability of leaders to their people have been systematically eroded by decades of Indian Act implementation. In those tribes where Indian Act band councils constitute the primary policy-making structures, a decision-making process has developed that is characterized by a lack of internal governing authority, accompanied by a corresponding lack of accountability to tribal members and the dominance of internal and external bureaucratic structures.

The circumstances in which many band governments find themselves today are traceable to the historic Indian Affairs policy of using band councils as instruments to control tribal activities and to facilitate administration of policies and recommendations of the department. Accountability of band council members has been directed upwards to Indian Affairs, the major source of band financial support, rather than downwards to tribal members. As a result, the legitimacy of band councils as authoritative decision-making structures has never become firmly rooted in tribal political culture. Even as band councils acquire an expanded decision-making role for social services and economic development due to the twenty-year-old federal policy of devolution, the frustration of tribal members with the inability of band councils to understand and promote community interests remains high, and political trust in band councillors remains low. Because traditional norms and procedures of leadership accountability have not been functionally replaced by those ordinarily associated with representative types of government, political distrust of and political cynicism toward incumbent tribal leaders have become pervasive. It is not surprising, therefore, that the lack of political effectiveness of band councils and the lack of clear standards of accountability to tribal members have been major contributors to the divisive political factionalism that exists within many Indian communities across Canada.

Moreover, in communities where strong traditionalist followings still exist, this situation is magnified by the divided loyalties among tribal members—based not only on divisions between "traditionalists" and "moderns" but also on religion, blood quantum, and clan membership. A significant effect of political factionalism is that it works against the consensual process of decision-making, which comprised an important instrument in traditional Indian societies for guaranteeing the dignity of individuals and protecting them from abuse. Factionalism violates the entire structure of traditional Indian thought that is based on the concept of harmony between the individual, fellow tribal members, and tribal social institutions. It is within the context of political factionalism that most charges of abuse of authority and discrimination by Indian leaders against community members occur. Events during the last several years on reserves in Manitoba, Saskatchewan, and Alberta, among others, reflect this situation; here dissident groups of tribal members claiming unfair treatment at the

hands of band councillors and chiefs have threatened legal action and even political separation.

The general political ineffectiveness of band councils within Indian communities has placed an inordinate degree of decision-making authority in tribal administrations, to the point where bureaucracies have become the dominant authority structures on many reserves. The growth in bureaucratic infrastructures is a natural evolution of the tutelage relationship between Indian communities and the federal government, wherein band governments have been treated as administrative units to implement the policies and programs of Indian Affairs. Moreover, the policy of devolution appears to have encouraged the proliferation of tribal bureaucracies as band leaders develop more administrative agencies to grapple with their new responsibilities. Indian governments are typically the largest employers in their communities, and many feature a structure of departments, committees, boards, and other agencies significantly larger and more complex than those governing a municipality of the same size. Even the bands with small populations have not been immune to this bureaucratic expansion.

The effects of bureaucratization on tribal decision-making are compounded by the fact that the rules of political neutrality associated with Western bureaucracy have not taken hold on many reserves, resulting in clashes between modern bureaucratic norms and traditional interests. For example, as Long discovered in his study of the Blood and Peigan reserves, tribal administrators are expected to look out for the interests of individuals and families within their kin groups.[43] This attitude, along with the deplorable economic conditions prevalent in most Indian communities, has made band bureaucracies prone to patronage, thus strengthening and reinforcing notions of political abuse by tribal leadership.

The ascendancy of bureaucracy within contemporary Indian governments stands as perhaps the most significant change from traditional governing practices and cultural values. Bureaucratic structures, regardless of their origin, impose hierarchical relationships within communities that are antithetical to the traditional Indian principles of equality. The flow of authority to bureaucracies from band political structures violates traditional notions of equality of access by individuals to tribal decision-making processes.[44] Instead, bureaucracy has helped to foster an attitude of political dependency and subordination among many tribal mem-

bers. Under such attitudinal conditions, political equality in either its liberal or traditional Indian forms remains a somewhat empty concept at best.

Our survey of contemporary Indian political institutions and their normative foundations suggests that decades of directed development have resulted in the intrusion of some of the basic values of Western liberal thought, as well as their political manifestations, into traditional Indian cultures and systems of governance. Although some Indian societies have been more resistant to the breakdown of their cultures than others, none has been completely immune from the influence of liberalism. Consequently, present-day First Nations are best characterized as unique mixtures of traditional Indian and Western liberal values and institutions. If placed on a continuum, some Indian societies would fall toward the traditionalist side, whereas others would appear closer to the Western liberal position, having been transformed from dignity-based to more rights-based societies. Unfortunately, in all cases, the mixtures remain volatile as fundamentally different belief systems are placed in positions of confrontation.

DISCUSSION

It is no longer possible to speak in terms of polar opposites when the cultures and governing processes of modern Canadian Indian communities and the larger Canadian society are compared. While the argument that traditional Indian cultures were essentially non-Western in nature rests on solid foundations, this statement does not apply to contemporary Indian communities without some important reservations. On the surface, this situation seems to weaken the claim of Indian leaders that fundamental cultural differences between Indian peoples and non-Indians substantiate a collective right to be shielded from the application of the charter to their governments. At the same time, it appears to give credence to charter advocates and enhances the pragmatic argument of groups such as the NWAC, who see the charter as a critical instrument in the protection of Indian women from discrimination and oppression by male-dominated band councils and Indian political organizations.

However, despite evidence that transformation has occurred in governing processes and value systems within Indian societies,

we believe that philosophical and pragmatic reasons exist to support a collective rights claim for exempting Indian peoples from the application of the charter to their own governments. In the first place, in some Indian communities political and cultural transformation has been limited. Traditionalist orientations remain dominant, and the possibility of restoring traditional governing practices remains strong. Even in those Indian societies where Indian Act political structures constitute the primary organizational forms, normative ideas congruent with these structures have not taken hold, and the resultant governmental processes are often problematic. Underlying premises and concepts change more slowly than overt behavior; the extent of acceptance of the charter values underlying the band elective system remains an open question.

In the second place, although there appears to be a convergence of modern Indian values and those of Western liberalism around such individual rights as personal entitlements and a paralleling belief in the equality of persons, the strength of these concepts as guides to individual and collective behavior depends very much on perceptions of their origin. After decades of failed government policies aimed at enhancing the welfare of Indians through cultural assimilation and political control, Indian peoples are understandably reluctant to accept externally imposed standards to guide their conduct. To be meaningful, such standards must emerge or reemerge from within their own societies. If they do not, the elimination of gender-based inequalities and the restoration of the notion of human dignity that was part of the fabric of traditional Indian culture face a difficult path. As Noel Lyons observes, since its inception the present charter—with its individual rights guarantees based in universalist principles—has had little effect on the reality of the lives of Indian peoples.[45] Certainly Indian peoples should be given the opportunity to develop guidelines for personal political conduct that will have a real impact on community institutions.

Although the Charlottetown Accord was rejected by the Canadian electorate, the aboriginal rights provisions of the accord constituted a major step in recognizing the unique nature of Indian societies in Canada and the special nature of the relationships between tribal governments and members that this uniqueness entails. Section 25, which originally had been placed in the Constitution Act, 1982 to recognize the special rights of aboriginal peoples, would have been buttressed to "ensure that nothing in

the Charter abrogates or derogates from the aboriginal, treaty or other rights of aboriginal peoples, and in particular any rights or freedoms relating to the exercise of their languages, cultures or traditions."[46] As Sanders suggests, a revised Section 25 could have been construed to permit traditional forms of government that do not conform with the democratic or other rights guaranteed in the charter.[47] This interpretation is strengthened by a provision in the draft legal text that would have limited the democratic rights provisions of the charter to federal and provincial legislatures, rather than to legislative assemblies in general.[48] Also, the Canada Clause could have been interpreted in a manner that recognized a collective right to aboriginal government, thereby shielding such governments from many of the charter provisions.[49] And finally, aboriginal governments would have been able to access the opt-out provisions in Section 33 of the charter, previously available only to the federal and provincial governments.[50]

In the end, however, the Charlottetown Accord remained an external concession to aboriginal demands rather than a document engendered within aboriginal communities themselves. Moreover, the accord was based on the premise that the judiciary would give special consideration to certain prescriptions and proscriptions of the charter to bring them into closer correspondence with traditional Indian practices. This approach places the onus on judges to surmount the cultural monopoly of Western liberal values that has marked the Canadian judiciary's treatment of Indians for decades.[51] On the practical side, relying on judicial interpretation of the charter might impede the development of aboriginal justice systems that employ radically different notions of due process, a situation that has plagued American tribal courts for years. As the report of the Manitoba Aboriginal Justice Inquiry points out, in the case of a First Nation developing its own justice system, "upholding the Charter principle of protecting the individual's rights could well be seen as violating the more accepted and long-standing primary law of that nation."[52]

On balance, Indian nations will best be served by allowing them the option of creating special Indian charters as an alternative to the Canadian charter. Charters specific to Indian bands or tribal groups could recognize and give substance to the different governance practices preferred by each group; such charters would have more relevance for small, face-to-face communities than would the legal codes developed to constrain the potential of political oppressiveness in larger groups. Within these frame-

works, provisions could be developed that provide for equal participation in collective decision-making and access to tribal resources, and that reflect uniquely Indian values of human dignity. Such charters could evolve within framework agreements negotiated under the current community-based Indian self-government approach and would also facilitate the development of aboriginal justice systems either within or without of the mainstream Canadian one.

We realize that this position differs fundamentally from the kind of arguments presented by Donnelly and others for the necessity of legally enforced universal standards of human rights to guarantee human dignity within every cultural group[53] and that this position is also subject to the charge of cultural relativism. Although it is beyond the scope of this paper to respond to these arguments, we will point out that there is an emerging school of thought that qualifies the Western-oriented, universalistic approach to human rights and seeks to reconfigure the rights of indigenous peoples within individual states as well as within the broader international community.[54] We believe, moreover, that the welfare of Indian peoples will be better served if First Nations have the option of reestablishing traditional social systems and political structures or reforming present ones to reflect their own culturally relevant standards.

The exclusion of Indian governments from the authority of the charter within their respective political jurisdictions raises important questions about the relationship of the charter to individual Indians as Canadian citizens. In doing so, it highlights the complexity of operationalizing collective rights for aboriginal communities. Unfortunately, this topic has not been given either the public or scholarly attention within the charter debate that it deserves.[55] At this point, we suggest that the exclusion of charter guarantees apply only to Indian governments in their relationship to citizens of Indian communities, and not to the rights and freedoms of Indians as Canadian citizens. Hence Indian governments would be prevented from interfering in those activities of individual Indians that relate to the exercise of their federal and provincial franchises. It is not unreasonable to assume that certain categories of political action relating to provincial and federal citizenship of individual Indians could be established and made exempt from the authority of Indian governments. Such a delineation of citizenship rights could have helped to prevent the action that some band governments in Alberta and Manitoba took

during the Charlottetown Accord referendum, when federal electoral officials were prevented from enumerating band members or establishing polling stations on their reserves. Consequently, tribal members of these reserves who wanted to participate in the referendum had to leave their reserves to register and vote in neighboring non-Indian municipalities—a formidable task for a member of a geographically isolated community. The necessity of clearly establishing the respective rights of Canadian and Indian citizenship is underscored by the increasing levels of participation of Indians in federal and provincial politics, as well as the possible establishment of aboriginal electoral constituencies.

In the final analysis, however, the issue of how the Charter of Rights and Freedoms should relate to Indian peoples must be put into the broader context of the social and economic conditions of contemporary Indian communities—where the charter's liberal ideals have little resonance in the philosophy and practice of governance and seem unlikely to in the immediate future. The political and cultural assimilation of Indian peoples into the Canadian mainstream is a massive social project that has failed, as the reality of their communities will testify. In fact, the reconstruction of "community" seems to us the most urgent task facing contemporary Indian leaders. The development of Indian charters—with the necessary iteration and evaluation of traditional values that would be entailed—might prove a fruitful way to begin addressing such a challenge.

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NOTES

1. *Thomas v. Norris* [1992], 2 *C.N.L.R.*, at 139.
2. In an agreement reached at Charlottetown, Prince Edward Island, during September 1992, the prime minister of Canada, provincial and territorial leaders, and the heads of four national aboriginal organizations agreed on a constitutional reform package that would have recognized an "inherent right to

self-government" within the Canadian constitutional order for aboriginal peoples and would have recognized aboriginal governments as a third order of government within Canada. This reform package, however, was rejected by the Canadian electorate in an October 1992 referendum.

3. Native Women's Association of Canada, "Statement on the Canada Package" (Ottawa: 1992) and Native Women's Association of Canada, "The Future Will Live With the Choices We Make Today" (Oshweken, ON: October 1992). See also Anne F. Bayefsky, "The Effect of Aboriginal Self-Government on the Rights and Freedoms of Women," *Network on the Constitution No. 4*, University of Ottawa, October 1992; Wendy Moss, "Indigenous Self-Government in Canada and Sexual Equality under the Indian Act: Resolving Conflicts Between Collective and Individual Rights," *Queen's Law Journal* 51 (1990): 279–305; and Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter of Rights and Freedoms," *Canadian Woman Studies* 10 (1989): 149–57.

4. *Native Women's Association of Canada v. Canada* [1992], 4 C.N.L.R., at 59 and 71.

5. This position was clearly articulated in the AFN's brief to the Parliamentary Subcommittee on Indian Women and in the Indian Act. See The Assembly of First Nations, "Memorandum Concerning the Rights of First Nations in Canada and the Canadian Constitution" (Ottawa: 16 June 1982), 17–18.

6. The Assembly of First Nations, *To the Source, Commissioner's Report, First Nations' Circle on the Constitution* (Ottawa: 13 April 1992), 61–64 and 73. The Assembly of First Nations, "Resolution Adopted at the Special Chiefs' Assembly on the Constitution Resolution" (Ottawa: 23 April 1992), no. 6/92. See also Assembly of First Nations, "Restoring the Path, Renewing Our Nations: A First Nations' Guide to the Charlottetown Agreement" (Ottawa, ON: Assembly of First Nations, 1992); and First Nations of Treaties 6 and 7, "A Message to All Canadians from First Nations of Treaty 6 and 7," *Toronto Globe and Mail*, 24 September 1992.

7. *Indian Self-Government Community Negotiations: Guidelines* (Ottawa: Indian and Northern Affairs Canada, 1988), part 1. See also Policy Directorate, Self-Government Sector, Department of Indian Affairs and Northern Development, *Leadership Selection Regimes under Self-Government* (Ottawa: Indian and Northern Affairs Canada, 1990), 17.

8. See, for example, the arguments raised by David Elkins. David Elkins, "Facing Our Destiny: Rights and Canadian Distinctiveness," *Canadian Journal of Political Science* 22 (1989): 699–716.

9. Representative works include Douglas Sanders, "The Rights of the Aboriginal Peoples of Canada," *Canadian Bar Review* 61 (1983): 316–37; Kent McNeil, "The Constitutional Rights of the Aboriginal Peoples of Canada," *Supreme Court Law Review* 4 (1982): 255–65; Ira Barkin, "Aboriginal Rights: A Shell Without a Filling," *Queen's Law Journal* 15 (1990): 307–25; Kenneth M. Lysyk, "The Rights and Freedoms of the Aboriginal Peoples of Canada," and L.C. Green, "Aboriginal Peoples, International Law and the Canadian Charter of Rights and Freedoms," *Canadian Bar Review* 61 (1983), 338–53; and L.E. Weinrib, "Charlottetown Accord Constitutional Proposals: Legal Analysis of Draft Legal Text of October 12, 1992," mimeographed, 21 October 1992.

10. See Menno Boldt and J. Anthony Long, "Tribal Philosophies and the Canadian Charter of Rights and Freedoms," *Ethnic and Racial Studies* 7 (1984): 478–93; Boldt, *Surviving As Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1993), 167–222; Turpel, "Aboriginal Peoples and

the Canadian Charter: Interpretive Monopolies, Cultural Differences," in *Canadian Perspectives on Legal Theory,* ed. Richard F. Devlin (Toronto: Edmond Montgomery Publications Ltd., 1991), 503–40; Turpel, "Aboriginal Peoples and the Canadian Charter of Rights and Freedoms"; and Frank Cassidy and Robert L. Bish, *Indian Government: Its Meaning and Practice* (Lantzville, BC: Oolichan Books, 1989).

11. Frances Svensson, "Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Indian Tribes," *Political Studies* 27 (1980): 421–39. For a useful analysis of the legislative history of the Indian Civil Rights Act, see Donald L. Barnett, Jr., "An Historical Analysis of the 1968 'Indian Civil Rights' Act," *Harvard Journal on Legislation* 9 (1972): 557–626.

12. Government of Manitoba, *The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg, MB: Government of Manitoba, 1991) and Government of Alberta, *Justice on Trial: Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta* (Edmonton, AB: Government of Alberta, 1991). See also *Reflecting Indian Concerns and Values in the Justice System,* a joint study of the Government of Canada, the Government of Saskatchewan and the Federation of Saskatchewan Indians, 4 April 1985.

13. Clyde Kluckhohn, "The Philosophy of the Navaho Indians," in F.S.C. Northrop, ed., *Ideological Differences and World Order* (New Haven, CT: Yale University Press, 1949), 359.

14. A. James Gregor, *Contemporary Radical Ideologies* (New York: Random House, 1968), 14–16.

15. Terrance Bell and Richard Dagger, *Political Ideologies and the Democratic Ideal* (New York: Harper Collins Publishing, 1991), 50–51.

16. Assembly of First Nations, *To the Source,* 9.

17. Boldt and Long, "Tribal Philosophies," 479.

18. David Miller, *Social Justice* (Oxford, England: Clarendon Press, 1976), 253–72.

19. Government of Manitoba, *The Justice System and Aboriginal People,* 22.

20. Donald G. Frantz and Norma Jean Russell, *Blackfoot Dictionary of Stems, Roots and Affixes* (Toronto: University of Toronto Press, 1989).

21. Joseph Pestieau, "Minority Rights: Caught Between Minority Rights and Peoples' Rights," *Canadian Journal of Law and Jurisprudence* 4 (1991): 361.

22. Long, "Political Revitalization in Canadian Native Indian Societies," *Canadian Journal of Political Science* 23 (1990): 764.

23. Boldt and Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians," *Canadian Journal of Political Science* 17 (1984): 543. See also Delores J. Huff, "The Tribal Ethic, the Protestant Ethic and American Indian Economic Development," in *American Indian Policy and Cultural Values: Conflict and Accommodation,* ed. Jennie R. Joe (Los Angeles: American Indian Studies Center, University of California, Los Angeles, 1986), 75–89.

24. Boldt and Long, "Tribal Philosophies," 481.

25. Russel L. Barsh, "The Challenge of Indigenous Self-Determination," *University of Michigan Journal of Law Reform* 26 (1993): 297.

26. Robert Vachon, "Traditional Legal Ways of Native People and the Struggle for Native Rights," *Inter-Culture* 15: 75, 76, 77 (1982).

27. See, for example, Ovide Mecredi's statement during the first round of hearings by the Royal Commission on Aboriginal Peoples. Royal Commission

on Aboriginal Peoples, *Public Hearings: Overview of the First Round* (Ottawa: Royal Commission on Aboriginal Peoples, October 1992), 41.
28. Wayne Daugherty and Dennis Madill, *Indian Government under Indian Act Legislation, 1868–1951* (Ottawa: Department of Indian and Northern Affairs, 1980), 2.
29. Jesse Bernard, "Political Leadership among North American Indians," *American Journal of Sociology* 34 (1928): 315. See also Ernest L. Schusky, "The Evolution of Indian Leadership on the Great Plains, 1750–1950," *American Indian Quarterly* 10 (1986): 66–71.
30. Barsh, "The Nature and Spirit of North American Political Systems," *American Indian Quarterly* 10 (1986): 191.
31. The Royal Commission on Aboriginal Peoples, created in 1991 and scheduled to report in 1994, is roughly equivalent to a United States congressional select committee in its proceedings and objectives.
32. The renewed interest in traditional Indian spiritualism was especially evident during both rounds of hearings by the Royal Commission on Aboriginal Peoples. *Public Hearings: Overview of the First Round,* 13, and *Public Hearings: An Overview of the Second Round* (Ottawa: Royal Commission on Aboriginal Peoples, April 1993), 60–61. See also Assembly of First Nations, *To the Source,* 11–12.
33. See, among others, John J. Cove, "The Gitskan Traditional Concept of Land Ownership," *Anthropologica* 24 (1982), 3–17; and Colin Scott, "Property, Practice and Aboriginal Rights among Cree Hunters," in *Hunters and Gatherers* 2, ed. Tim Ingold, David Riches and James Woodburn (Oxford, England: St. Martin's Press, 1988), 35–51.
34. See Harold E. Driver, *Indians of North America* (Chicago: University of Chicago Press, 1961), 244–64.
35. See J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian White Relations in Canada* (Toronto: University of Toronto Press, 1989), 190–91; and Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Norman: University of Oklahoma Press, 1992), 283–86.
36. A useful analysis of aboriginal electoral participation is contained in the Committee for Aboriginal Electoral Reforms, *The Path to Electoral Equality* (Ottawa: The Committee for Aboriginal Electoral Reform, 1991), 7–12.
37. Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy, Vol. 4, What Canadians Told Us* (Ottawa: Minister of Supply and Services Canada, 1991), 46–51. This proposal has received support from a number of Indian leaders, tribal groups, and Indian political associations.
38. Daugherty and Madill, *Indian Act Government under Indian Act Legislation, 1868–1951.*
39. Cassidy and Bish, *Indian Act Government: Its Meaning and Practice,* 74.
40. Ibid., 73.
41. Recently, the Kahnawake Mohawk signed a framework agreement with the Canadian government under the community-based self-government negotiating process, within which they will attempt to revive elements of their traditional leadership and governing systems.
42. Long, "Political Revitalization," 761.
43. Ibid., 768.
44. Huff, "The Tribal Ethic," 79.
45. Noel Lyons, "First Nations and the Canadian Charter of Rights and Freedoms," *Newsletter of the Network on the Constitution* 2:4 (1992): 4–5.

46. Government of Canada, *Consensus Report on the Constitution* (Ottawa: Minister of Supply and Services, 1992), part A, paragraph 2.
47. Douglas Sanders, "Aboriginal Self-Government: The Elements of the Accord," *Network Analysis* 4 (September 1992), 3.
48. *Draft Legal Text*, 9 October 1992, Section 24, p. 36.
49. Government of Canada, *Consensus Report on the Constitution*, part A, paragraph l, 2(b).
50. Ibid., paragraph 43.
51. For an expanded discussion of this point, see Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies," 504.
52. Government of Manitoba, *The Justice System and Aboriginal People*, 334.
53. Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *American Political Science Review* 76 (1982): 312–15.
54. For a representative example of this school, see Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism*. Frontiers of Anthropology, vol. 6 (Newbury Park, CA: Sage Publications, 1990).
55. There is a brief, although insightful, analysis of this question in Roger Gibbins and J. Rick Ponting, "An Assessment of the Probable Impact of Aboriginal Self-Government in Canada," in *The Politics of Gender, Ethnicity and Language in the Constitution*, ed. Alan Cairns and Cynthia Williams (Toronto: University of Toronto Press, 1986), 216–19. See also Cairns and Williams, "Constitutionalism, Citizenship and Society in Canada: An Overview," in *Constitutionalism, Citizenship and Society in Canada*, ed. Cairns and Williams (Toronto: University of Toronto Press, 1986); and Noel Lyon, *Aboriginal Self-Government: Rights of Citizenship and Access to Governmental Services* (Kingston, ON: Institute of Intergovernmental Relations, Queen's University, 1984).