

A separate aboriginal justice system?*

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THE ABORIGINAL JUSTICE INQUIRY¹ may well be considering proposals that would set up special, and to a greater or lesser extent, separate systems of justice for aboriginal people. A variety of worthy initiatives are possible that would enhance local self-government in aboriginal communities and that would facilitate their contribution to the direction of programmes elsewhere. This submission will, however, caution against going too far in the direction of separatism and special status for aboriginal people. It will urge that the Inquiry pursue a balanced approach. The Inquiry should propose reforms that ensure fair treatment for aboriginal people, sensitivity to their culture, and respect for their democratic rights; but which, at the same time, are consistent with the principle of the equality of all citizens and the integration of aboriginal communities within the network of institutions and values common to all Canadians.

* This comment is a slightly revised version of a written submission to the Aboriginal Justice Inquiry, dated 4 October 1989. The approach here taken is consistent with the "strategy of statecraft" proposed and elaborated in the author's book *First Principles, Second Thoughts: Aboriginal People, Constitutional Reform and Canadian Statecraft* (Montreal: Institute for Research on Public Policy, 1986). Chapter 25 of that work discusses the application of the *Canadian Charter of Rights and Freedoms* to aboriginal governments, and includes a discussion of the American experience with the U.S. *Indian Civil Rights Act*.

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1 The Inquiry has a broad mandate to investigate the administration of justice in Manitoba with respect to aboriginal people generally, and to examine two controversial cases in particular. It was established in 1988 by Orders in Council; after they were ruled invalid for not complying with constitutional requirements concerning bilingualism, the Manitoban Legislature re-affirmed its mandate through *An Act Establish and Validate the Public Inquiry into the Administration of Justice and Aboriginal People* (S.M. 1989, c. 1).

It must be emphasized that this submission is not proposing the assimilation of aboriginal people, nor is it disregarding the real inequalities that exist. On the contrary, we should encourage the development of aboriginal communities on reserves that have a strong measure of local self-government; we should ensure that the system of justice does respect the cultural values of aboriginal people. We must eliminate discrimination directed against aboriginal people, but it is my view that we can achieve these goals without weakening the bonds that hold us together as a national political community and without granting extensive privileges to some groups or individuals that are denied to others.

The model of quasi-independent aboriginal communities and courts may have some attractions to the Inquiry, but it has drawbacks that the Inquiry should carefully consider.

I. DRAWBACKS TO A SEPARATE ABORIGINAL JUSTICE SYSTEM

A. Problems with Separatism

1. Separatism Leads To Indifference From the Larger Community Instead of Supportive Interaction.

The interweaving of aboriginal communities with the larger communities of a province and the nation can be poorly done. It can involve ignorant and paternalistic meddling; however, it can, and should be, an involvement that benefits both sides. Aboriginal communities can benefit from the fiscal and administrative support of a larger entity. Even smaller Canadian provinces heavily rely upon federal fiscal transfers; grants to support their governmental structures; economies of scale achieved by having a national bureaucracy assist with administration (for example, nine provinces allow the federal government to administer their income taxes); sharing information, expertise, and experience with national politicians and bureaucrats; and, having a national government to advocate or support their position with large powers such as United States or the European Economic Community. Federal-provincial interaction also is an integral part of the justice system. The provinces rely on the federal government to do the research, consultation, and hard politicking necessary to define society's attitudes towards the most serious offences. Canadians everywhere benefit from being tied to a system that draws from the widest range of experience and perspectives, and that moderates the responses to local passions. All parts of Canada learn from the precedents established elsewhere and, ultimately, by the Supreme Court of Canada.

Most provinces and municipalities further rely on a larger partner to establish and carry out policing.

Aboriginal communities, no less than provinces, can benefit fiscally, intellectually, and politically, from participation in a larger community. If aboriginal justice systems are detached from the larger network, the consequence will not be benign, "no-strings-attached" support. It will likely be increasing indifference and neglect. Why should voters and politicians care about communities that are not strongly connected to their own?

2. Separatism Can Limit the Real and Perceived Right of Aboriginal People to Participate Fully in the Politics of the Larger Community

Former Prime Minister Trudeau always made this point about special status for Quebec: Canadians in other provinces are not going to accept Quebecers as being equal partners in national government if Quebecers have special exemptions from national laws. If you have no say over how another person is governed, why should that person have any voice over how you live?

Most Canadians, however, want aboriginal people to be full and accepted participants in the national and political system. We want aboriginals to be able to serve as members of Parliament, to be judges in the provincial and federal courts, and to occupy other high positions in the general political system.

Another fact that should be recognized is that an extremely high proportion of persons born on reserves end up living in the cities. Part of the preparation for that life should be contact with the legal and political systems that are exclusively in place in the rest of Canada. It is possible to have some unique or adapted institutions for aboriginal communities; even if modified somewhat though, the general criminal justice system should be present and operating in aboriginal communities, just as it is in the rest of Canada.

3. Separatism Does Not Allow for the "Checks and Balances" Effect of Having Different Orders of Government

In a small community, it is fairly easy for one faction to take over, to dominate all aspects of life, to favour its own and discriminate against others. If a small community participates in a larger system, as well as having some local self-government, there can be effective checks and balances. Provinces check abuses at the local level; national governments can stem overbearing provincial governments. Conversely, local autonomy helps to prevent central governments from being arrogant and insensitive.

If aboriginal communities participate in a larger federation of aboriginal communities, then some of the necessary, mutually correcting interaction of local and larger government can occur. Still, even a federation of aboriginal communities in Manitoba, for example, would be a "small world."

4. The Proper Administration of Justice Requires A Level of Impartiality that Can Be Difficult To Achieve in Small Communities

If justice is solely administered by the inhabitants of small communities, all of whom know each other, the possibility for personal favouritism and discrimination is high.

5. A Separate System of Aboriginal Justice Would Too Greatly Depart from the Principle of the Equality of All Citizens

Canadians rightly expect that a reasonable measure of political and legal equality is maintained among citizens. When the stakes are high, as when for example a serious criminal offence is alleged, the ideal should be that an accused will not be treated any more harshly or leniently on account of his ethnic origin. Nor should the group affiliation of the victim or the place where the offence occurred, diminish the demands of equal justice. Even the American model has limited the extent to which tribal courts are autonomous. The American Supreme Court has held that a tribal court has no inherent criminal jurisdiction over a non-member. The American Congress has insisted, largely at the urging of Indians themselves, that tribal courts must observe the criminal process guarantees of the American constitution. Furthermore, jurisdiction over the most serious offences is denied to tribal courts, regardless of who the accused and victim are.

6. Separate or Privileged Treatment for Aboriginal Offenders Would Make Less Visible a Symptom of Underlying Social and Political Disorder rather than Dealing with Its Causes

The number of aboriginal persons accused of crimes and incarcerated in the system is an expense and embarrassment to the larger system. Hiving off aboriginal people in a special system might reduce the "public relations" embarrassment to the general community and ease consciences, but it would do little to address the underlying social and political causes. By making the problem less visible and expensive or by creating an impression that "something has been done," it might even discourage responsible conduct by politicians.

B. A Caution about the American Example

As I understand it, the Inquiry officers have visited some aboriginal communities in the United States. It will be sponsoring a seminar that will focus largely on tribal courts in the United States. Several factors should be kept in mind in studying the American example. First, in the United States, criminal law primarily is a state matter, rather than a federal one. In Canada, by contrast, criminal law is an important element of our nationally shared system of values. The divisive effect of detaching aboriginal people from the criminal justice system would be felt more profoundly in Canada.

Secondly, even in the United States, the autonomy of the tribal is seriously constrained. The Courts do not have jurisdiction over non-members or over the most serious crimes; they are subject, by the 1968 *Indian Civil Rights Act*, to the criminal process provisions of the American Constitution.

II. THE INQUIRY SHOULD INSTEAD SEEK CREATIVE SOLUTIONS THAT BENEFIT ABORIGINAL PEOPLE BUT THAT ARE OPEN TO ALL

MANY STEPS CAN BE TAKEN that will help to resolve the specific problems of aboriginal people but that will also be appropriate and helpful to all. Such universal measures will have far more political support than those that single out aboriginal people for special treatment.

A. General Proposals

1. Much Can Be Done that Requires No Special Variations on Account of Ethnicity

For example, measures to ensure that police conduct is adequately reviewed would benefit all of society, not only aboriginal people. It is probably not necessary, for example, to establish a special complaint or review mechanism open only to aboriginal people. On the contrary, a review board would benefit from seeing the spectrum of complaints; among other things, it would be able to detect discrimination against certain groups. A board that serves the public as a whole is likely to have more credibility; it will be seen as a defender of citizens rights generally, rather than an advocate of one segment of the community.

Similarly, the Inquiry might want to comment on prison conditions. It might find them unduly harsh or unsafe. It might advocate approaches that are more rehabilitative and less punitive. Any reforms can and should be proposed in a way that would benefit inmates and the public generally. Obviously, the Commission's mandate is focused on aboriginal people, but the remedies that it proposes need not always

be restricted in their application. The likelihood of a reform being implemented may in fact be greater if it is cast in equal and encompassing, rather than special and parochial, terms.

2. Other Measures Might Take Account of Ethnically-Based Needs While Maintaining Equality In So Doing

The "heritage language" programmes in Winnipeg School are potentially open to all language groups, including the aboriginal ones. The curriculum mixes the standard one with courses that helps a people to maintain its own special heritage. The "heritage language" programme is a good example of how equality can be maintained while actively supporting cultural activities.

Measures to ensure that prison inmates are not subjected to violence from other prisoners or guards or that they have educational opportunities and freedom of religious expression, would benefit all inmates. That is not to say that prison administration should be indifferent to the fact that many prisoners are aboriginal. If it is helpful to have counsellors with special knowledge of aboriginal people, languages, or culture, that should surely be done as it should be done if another group of inmates needs special expertise.

B. Some Specific Issues

1. Aboriginal Self-Government

The *Indian Act* has long recognized the existence of distinctive aboriginal land bases with distinctive forms of government, but almost everyone nevertheless agrees that the current system is unacceptable. The matters over which band governments have jurisdiction are severely limited, and, even when a band does have authority, the Minister of Indian Affairs and Northern Development can preempt or veto its actions.

On simple grounds of political equality, it is clear that members of First Nations on reserves ought not to have less local self-government than other Canadians. Substantially increased local control would benefit everyone. The reserve members would have more opportunity to shape their own destiny. They could better respond to problems and opportunities over which they have the most knowledge and interest. A people that feels politically dominated and stifled is liable to waste its time and energy on resentment over past treatment and current government policy. A people that has more authority over its own affairs is encouraged to feel responsible for its conditions and to take the concrete steps needed to change them.

As argued earlier, it is undesirable in principle and practice for aboriginal communities to be placed in the position of quasi-independent nations within Canada. Unfortunately, there has been inadequate discussion of what the limits on enhanced aboriginal government ought to be. It is easy to pay lip-service to rhetoric, even the most expansive rhetoric, of First Nations' autonomy, while doing nothing to implement it. Instead of disingenuous and patronizing acknowledgments of even extreme aboriginal demands, we need an honest and forthright discussion of the general limits of aboriginal self-government. If this discussion were to take place, it might actually be easier to proceed with concrete means towards the creation of reasonable forms of aboriginal government. If "aboriginal self government" were understood as involving a balance of local control and participation in the larger provincial and federal communities, perhaps there would be less concern about entrenching it in the Constitution.

The Penner Report proposed that the specific details of aboriginal self-government should be worked out through community-by-community negotiations. The constitutional reform talks of 1982-1987 pointed towards a similar conclusion. It would be better if there were a framework in which these national discussions took place, thus giving some sense of, for example, the division of federal and provincial fiscal responsibilities, the application of *Charter of Rights and Freedoms*, and those forms of democratic and financial accountability that aboriginal governments must have. However, there is much to be said for allowing local variation and for giving various aboriginal communities the sense that they have negotiated the new regime, rather than having it imposed from above.

The five years of constitutional negotiations tended to fuel the widely-held perception that nothing can or should be done about aboriginal government until constitutional reform takes place. Entrenched changes to the Constitution may, however, still be a long way off. There are concerns, some of them legitimate, about an overriding and practically irreversible commitment to such concepts as a "right to self government," the meaning of which is subject to drastically different interpretations. Furthermore, the constitutional politics concerning Quebec are very unsettled. Until they are, it will be difficult to predict when and how the next stage of constitutional reform will proceed.

But the development of aboriginal self-government need not be stalled until constitutional reform talks produce a consensus. It is constitutionally and practically possible for federal, provincial, and aboriginal governments to work out all sorts of new regimes for aboriginal self-government. Granted, these changes would not enjoy the irreversibility of entrenched amendments. Yet the fact that an arrange-

ment is not "carved in stone", will make it easier for federal and provincial governments to try them. Innovations that do take place could provide much-needed models and experiential lessons for constitutional changes at a later stage. I would recommend that federal, provincial, and aboriginal governments in various communities not let the prospect of constitutional talks deter them from trying out new arrangements for the government of aboriginal communities.

Measures to enhance aboriginal self-government need not always result in ethnically exclusive structures. The Inuit of the Northwest Territories, for example, are seeking to obtain adequate democratic institutions in the form of the new territory, and eventual province, of Nunavut. The Inuit of James Bay chose to establish public, regional governments. The Métis of Manitoba at times seem to have been seeking land-bases and special regimes that would, in effect, be reserves; however, the Métis tradition in nineteenth-century Manitoba was not to hold land collectively or to retreat to ethnically homogeneous enclaves. The Métis were a people who developed through the intermixing of different groups. Under the *Manitoba Act*, they received individual allotments of land, not reserves. Increasing the power of municipal government in Northern Manitoba and the use of multicultural programmes are ways in which Métis people can promote their political development and culture without closing themselves off from others or from the receiving of special privileges.

2. *Aboriginal Courts To Administer Laws Enacted by Aboriginal Governments*

I do not believe that it is appropriate for aboriginal people, or their governments, to acquire any exemption from the *Criminal Code* or an ability, in effect, to supplement it. It would, however, be appropriate for aboriginal governments to acquire jurisdiction over more regulatory areas than they currently enjoy, and the power to define offences and penalties in these areas. Should these governments be able to set up a special system of handling offences that they themselves define?

In favour of this proposal, it could be argued that there are a number of sectors where we allow specialized "governments" to administer discipline. The self-regulating professions are able to fine members for misconduct. While they may not often have done so, provincial governments have the constitutional authority to delegate to municipalities the power to set up courts to prosecute local by-laws. Specialized tribunals in the aboriginal communities might have a number of advantages: they could reflect ideas, both old and new, among aboriginal people about how justice should be dispensed; and, they might be more open to innovation, more sensitive to the purposes behind the laws and to the practicalities involved in administering them.

Some caution also is in order, however. Even if aboriginal tribunals are only administering "regulatory justice," the penalties involved may be significant; even if the fines or disqualifications involved are limited, the impact on a person's general reputation or standing in the community might be significant. In the absence of some sort of review or appeal by other courts, aboriginal tribunals like any other may depart on occasion from a necessary level of procedural and substantive fairness. In the Canadian legal tradition, review of the actions of specialized tribunals has always been conducted by superior courts. Like any other holders of power, adjudicators are encouraged to be responsible by the knowledge that someone else can review and correct their decisions. The superior courts have traditionally maintained supervisory jurisdiction over inferior courts and administrative tribunals, and have had a salutary effect on the extent to which the latter stay within their jurisdiction and observe procedural fairness.

If specialized aboriginal tribunals are set up, they should be linked to the general system of courts by a system of review or appeal. The *Canadian Charter of Rights and Freedoms* should apply, and the "notwithstanding clause" should not be available to aboriginal governments who wish to circumvent it.

3. *Special Courts for the Administration of the Criminal Law*

Where serious crimes are involved, the top priority must be given to ensuring that there is equal and impartial justice, that procedural fairness is observed, that the right to counsel is respected, and that the usual appellate and review mechanisms are available. Accordingly, as mentioned earlier, I do not believe that there should be a substantially different system for trying aboriginal, as opposed to non-aboriginal, persons accused of *Criminal Code* offences.

4. *The Model of the Young Offenders Act*

The *Young Offenders Act* appears to offer some promising models of how responsiveness to community concerns and needs can be accommodated in a manner that maintains equality among various communities, adequate safeguards for the accused, and integration into the larger political and legal system.

Locking Up Natives In Canada, a report to the Canadian Bar Association released by Professor Michael Jackson in 1988, cites the pre-trial diversion scheme operated by the First Nations of South Island Tribal Council of Vancouver Island. There are several inviting aspects to this model, which is authorized by the *Young Offenders Act*: first, it is not a special privilege available only to aboriginal people, because non-aboriginal communities are free to set up diversion plans; secondly,

different communities can simultaneously experiment with different schemes, aboriginal people can set up diversion systems that reflect their traditions and innovations; because the scheme must be approved by the Attorney General, appropriate standards of procedural fairness can be verified, and the effectiveness of the scheme can be tested; fourthly, no alleged young offender is obliged to participate in the diversion scheme, it being only with the consent of the accused that matters are removed from the ordinary young offender institutions; and, finally, participation in the scheme is not a bar to ordinary proceedings against a young offender, because, if the young offender has not complied with the diversion plan, he is subject to the usual quasi-criminal liability.

Further information about the South Island model would be needed before coming to a final judgment about it. How often do "diverted" young offenders fail to comply with the plan? How often do they commit another offence later on? Are victims of crime satisfied that justice has been done? Have local politics and personal relationships resulted in unequal justice? The apparent strengths of the South Island model are its balance of sensitivity to local concerns and the integration of the local with the larger system, making further investigation of the model necessary.

The South Island model appears to involve a diversion scheme operated by members of the aboriginal community only. In some cases, such exclusivity is neither necessary nor desirable. For example, a reserve may be located close to a city, and the residents of each may be committing crimes within the boundaries of the other. Mutual understanding and assurance of equal treatment may be best served in such a setting by having diversion programs that involve residents of both the aboriginal community and the non-aboriginal one. The Inquiry should also be sensitive to the necessity of equal treatment of the aboriginal and non-aboriginal residents of the same residential community. There should be absolutely no negative discrimination against a person on account of his ethnic origin, including aboriginality. Members of a mixed community, like a city, will not, and should not, accept substantially more favourable treatment for some individuals purely on account of ethnicity.

The *Criminal Code*, unlike the *Young Offenders Act*, does not expressly provide for diversion. Where offences are more serious and the offender more responsible for his conduct, it is open to debate whether diversion schemes should be built into the system. The risks are that there will be excessive departures from the principle of equal justice, and that victims will not feel that there has been an adequate recognition of the injury done to them. There should not, in my view, be a

separate diversion policy for aboriginal adult offenders. Parliament should make a general determination about the desirability of diversion and the safeguards that should be installed. If Parliament does endorse a diversion scheme for adult offenders similar to that in the *Young Offenders Act*, then aboriginal offenders and communities should of course have equal access to it.

5. *Aboriginal Correctional Facilities*

Locking up Natives in Canada recommends that aboriginal communities have the opportunity to administer their own correction programs. There does seem to be considerable scope for programmes that enhance the rehabilitative aspects of imprisonment for aboriginal persons within the framework of legal safeguards and institutions common to all Canadians. Community service appears to be a more humane and constructive sentence than confinement, and aboriginal communities could certainly assist with the design and administration of programmes. Within the prisons themselves, there could be a policy of welcoming the formation of voluntary organizations that would promote personal, vocational, and cultural development. Prison policies might want to encourage cross-cultural friendship and co-operation, and it is not necessary or desirable that all prisoners' organizations be based on ethnic affiliation.

With respect to young offenders, several interesting options are already available. It would be possible for aboriginal communities to establish "open custody" facilities for the detention of young offenders. The youths would be closer to their families and communities, and better able to re-integrate themselves after they served their sentences. As with diversion programmes, there appears to be adequate integration with the general institutions and norms of the legal system. "Open custody" programmes would require the approval of the provincial government, and the individuals confined would be subject to the usual safeguards and liabilities of the *Young Offenders Act*. Similarly, s. 6(1) of the *Act* would allow aboriginal persons to act as the "responsible" person to whom control is entrusted prior to sentencing.

But some concerns about an increased aboriginal role in corrections must be considered. First, there is the question of equality. When serious offences are committed and substantial punishment is involved, the demand for equal justice and treatment is high. An aboriginal offender should not be subjected to any greater punishment by virtue of his ethnicity. Giving the offender a choice of whether he wishes to be imprisoned in a mainstream or aboriginal prison may appear to resolve that difficulty. But a victim should not receive any lesser vindication from the system merely because the offender is aboriginal.

A system that gave the "option" to the accused would not satisfy this other aspect of equal justice. It is proper that there be a variety of correctional facilities and options, and a major consideration in sentencing should be directing the offender to a place where he is most likely to be rehabilitated and equipped for re-integration into society. But the overall guidelines for correctional policy, and the system of review and appeal, should ensure that a reasonable measure of equality is maintained in the severity or leniency of sentences. Also necessary in the operation of an aboriginal correctional programme is the equal protection of legal safeguards for inmates, such as *Charter* guarantees, access to lawyers, rights to challenge correctional discipline, and intervention by ombudsmen people.

The second concern relates to the extent of commonality among aboriginal people. There are large differences among land-based aboriginal communities, and between these and the increasing proportion of aboriginal people living in the cities. It would not be fair or productive to commit an aboriginal person to a facility operated by an otherwise alien community, just because it happens to be generically "aboriginal."

Thirdly, if the idea is that a person would only be incarcerated by a community with which he is familiar, other problems arise. It would be difficult for any small community to find the money or trained staff to operate an adult correctional facility. No economies of scale could be achieved, and the level of support for inmates might suffer. A series of small facilities would each find it difficult to maintain medical, psychological, religious, vocational, and legal services for their inmates.

Finally, it may be unfair and counterproductive to encourage aboriginal people to punish members of their own community. No self-respecting person should be expected to take a loving view of his jailors. Should we create a situation in which aboriginal inmates are liable to develop resentment against their own people for keeping them confined? Aboriginal people are convicted and sentenced under the laws of a society in which they are a minority. Would sending them to all-aboriginal institutions create the suspicion on their part that the majority is trying to hide its own role; namely, that the majority is trying to make it look like aboriginal people are confining aboriginal people, whereas the reality is that the legal and political system is mostly controlled by the non-aboriginal majority? Conversely, the majority might be encouraged to be more indifferent or insensitive to the disproportionate numbers of aboriginal people in prison. If aboriginal people are being locked up by other aboriginal people, the majority may be encouraged to believe that everything is fair and legitimate. Incar-

cerating aboriginal people in far away aboriginal communities could contribute to an "out of sight, out of mind" indifference.

6. *Aboriginal Judicial Personnel*

The Inquiry will undoubtedly be examining programmes in other provinces that have installed aboriginal persons as justices of the peace on reserves. Any recommendations in this regard should take into account the following considerations. First, it should not be considered necessary or desirable that every aboriginal community have only aboriginal persons as justices of the peace. Well-trained aboriginal persons may have much to offer in terms of knowledge of local conditions and languages. The presence of some aboriginal people in the system may encourage greater confidence about its overall fairness, but we should not foster the impression that only aboriginal persons are capable of dispensing fair and humane justice to aboriginal communities. Secondly, it is important to ensure that necessary standards of impartiality and impersonality be maintained. If one person is the only justice of the peace in small community over a period of time, he may find it difficult to fulfil his role. Thirdly, it is necessary to ensure that the justices are properly trained. Once again, this is an area in which a universal approach can be taken. All non-lawyer justices of the peace could be sent for training, not just those who happen to be aboriginals. Among the elements of their training could be an introduction to aspects of aboriginal law and life that will be relevant to the sort of decisions that justices of the peace are obliged to make. Fourthly, the training required of justices of the peace would depend on the responsibilities they will exercise. The *Cree Naskapi Act*, for example, contemplates that justices of the peace will have jurisdiction over certain, relatively minor, *Criminal Code* offences. Finally, it should be recognized that any encounter with the punitive power of the state can have profound consequences for the individual. Caution should be exercised in assigning jurisdiction to justices of the peace who are not fully qualified lawyers.

III. CONCLUSION

WISE CANADIAN STATECRAFT requires an attempt to accommodate diversity in a manner that is consistent with the equality and liberty of individuals and with the unity of the nation as a whole.

It may be tempting for the Inquiry to act as an uncritical advocate of separate structures of justice for aboriginal people. Such a proposal would appear bold, original, and responsive to aboriginal demands for more self-government. The fact that the Inquiry is about "aboriginal

justice" in itself encourages ethnically-focused, instead of general, proposals. Almost any public inquiry might consider a strategy of deliberate overstatement. Governments can be seen as so inert and insensitive that a radical proposal may seem necessary to make moderate progress. But overstated proposals tend to result in overstated responses. The debate will be better served by the production of balanced and thoughtful proposals that have a real chance of implementation.

Reforms that benefit the public generally may in fact be the most effective remedies for aboriginal people. For example, the Inquiry may find that general reforms are needed with respect to police training, record-keeping, and internal investigation. If so, the Inquiry should not feel obliged to propose reforms that only apply when aboriginal people are involved. On the contrary, reforms that benefit citizens generally may be more politically appealing, producing institutions that have a broader range of experience and responsibility and greater public confidence.

Many needed reforms can and should allow for more control by aboriginal communities of their governmental structures, and more accommodation of the cultural and religious values of aboriginal people. But many such reforms do not require special or separate status for aboriginal people. Local self-government and respect for religious expression, for example, should be enjoyed by all Canadians, regardless of geography and ethnicity. In some cases, the distinctive legal situation of aboriginal peoples may require unique innovations in our system of government. In developing these new arrangements, it is essential that the fundamental principles be kept in mind. First, to every reasonable extent, we should maintain the political equality of Canadians. For example, the level of local autonomy enjoyed by non-aboriginal communities should be an important standard in determining the scope of aboriginal self-government, even if the arrangements do involve certain distinctive elements. Individual rights are also deserving of protection. Aboriginal governments should be constrained by legal safeguards, such as the *Charter*, and by institutional safeguards, such as access to outside appellate mechanism. Furthermore, there is a need for checks and balances among governments. Local communities are no less liable than provincial or national ones to abuse power. It is necessary to ensure that necessary checks and balances exist; the powers of aboriginal, provincial and national governments should co-operate, but also act as constraints on each other's excesses. Finally, there should be a unifying, moderating, and mutually supportive interaction of aboriginal institutions with federal and provincial ones.

An open discussion of the appropriate constraints on aboriginal self-government will not inhibit its coming to be. It will more likely

speed it. Stalling and hesitation, based upon objections, which are often unstated, to the more extreme possibilities might disappear. Instead, we might see political energy and imagination directed towards real innovations.