



**PART II**  
**Conference Papers**

Aboriginal Inherent Rights of Self-Government and the Constitutional Process <i>Robert A. Young</i>	31
Comments on Urban Aboriginals and Self-Government <i>Rosalee Tizya</i>	45
Aboriginals and the Future of Canada <i>David J. Elkins</i>	53
Conference Participants	69
Conference Program	73
List of Publications — Institute of Intergovernmental Relations	75

son texte en secondes parties, ainsi qu'il en sera indiqué en fin de volume. [REDACTED]

nations au sein du territoire actuel du Canada.

son entrée en vigueur, le financement, l'éducation et la formation; des modèles de répartition de compétences pouvant convenir à l'ensemble des situations

auxquelles les peuples autochtones peuvent faire face. On renvoie ici notamment, qui à des problèmes à caractère territorial, urbain ou nordique, qui au cas-type des Métis, etc. La Commission royale sur les peuples autochtones s'apprête à examiner pour une large part toutes ces questions. Au demeurant,

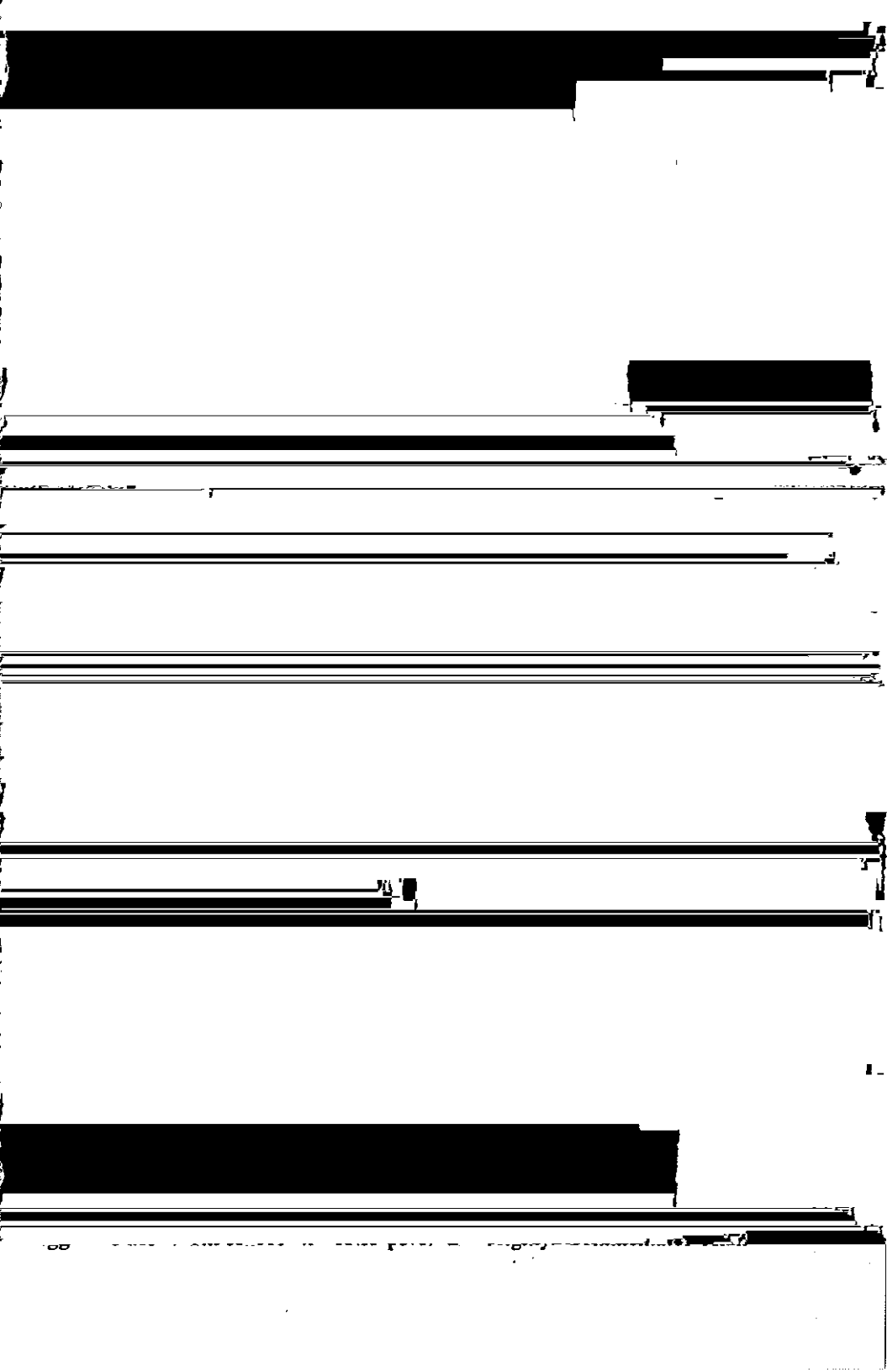
le fait que le débat ait été posé par le nom de notre collègue des *Peuples autochtones et le partage des compétences* constitue en soi une tâche urgente et on ne peut plus exigeante. L'Institut des relations intergouvernementales est heureux d'avoir pris part à cette entreprise et, nous osons le croire également, d'avoir contribué de façon significative à cet important débat.

discussion of the issues. Special thanks to Robert Young, Kosaiee Hiza and David Elkins who agreed to have their remarks published in the second part of

the book.

At the Institute I would like to acknowledge the cheerful and professional support of all the staff, especially Jill Wherrett (who also prepared the digest of the discussions) and Patti Candido for conference organization and Valerie Jarus for publication preparation.

*Douglas Brown*  
*July 1992*

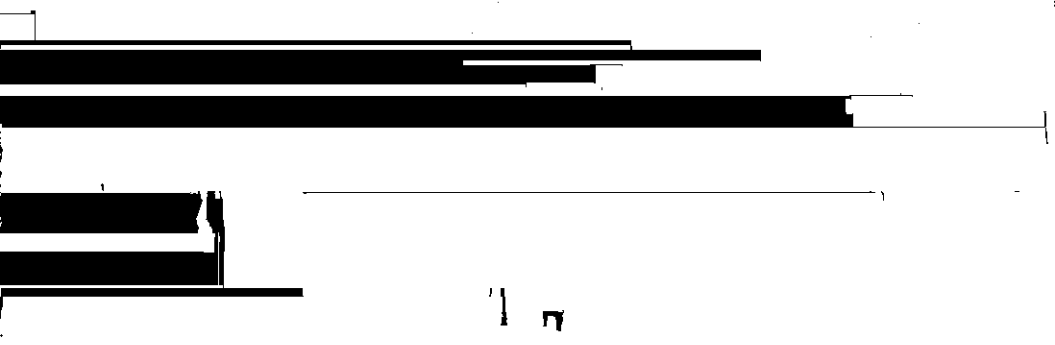


as financing, enforcement, and education and training; and power-sharing models for the variety of specific circumstances that Aboriginal people face, such as land based, urban, northern, Métis, and so forth. Much of this agenda will become part of the broader work of the Royal Commission on Aboriginal

*in Canada* is urgent and absorbing. The Institute of Intergovernmental Relations is pleased to have participated, and, we hope, to have contributed to this important debate.

# PART I

## Conference Summary



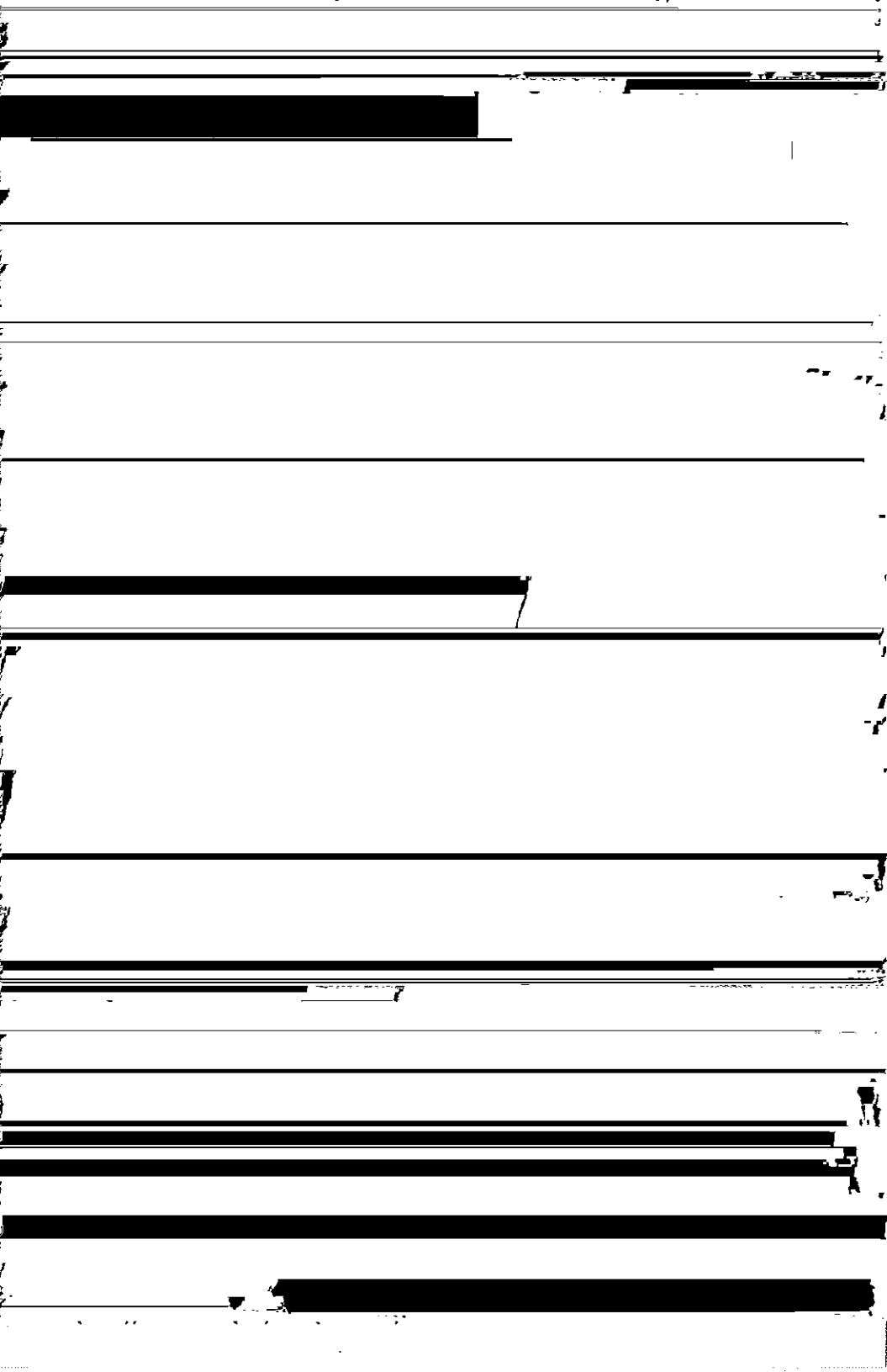
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move towards self-government, they will have to decide what form of government they want and what powers they wish to exercise. The powers they hold under an inherent right to self-government will likely include many, if not all,

of those exercised by the provinces, as well as powers of judicial jurisdiction, such as fisheries.



in turn, the lack of a shared charter could be a disincentive for power and resource sharing. Cairns suggested that we might think in terms of overlapping charters or a series of charters, each different from the others but sharing symbolically important elements so as to recognize a feeling of common citizenship and shared values. Cairns also made note of conflicts within the Aboriginal community on the application of the Charter.

Cairns then turned to the interaction of individual identity and citizenship. He argued that federalism is a device for dividing personal identities as well as jurisdiction. Thus, Aboriginal self-government can be thought of as an emotional division, fostering and reflecting multiple identities in the same person. Aboriginal communities will not be discrete, bounded units, for individuals living in these communities will identify with and relate to three orders of government. Cairns questioned how these individuals would identify

that it could compromise the recognition of their inherent right to self-government. Instead, they are examining the concept of having a nonvoting treaty delegate sit in the provincial legislature.

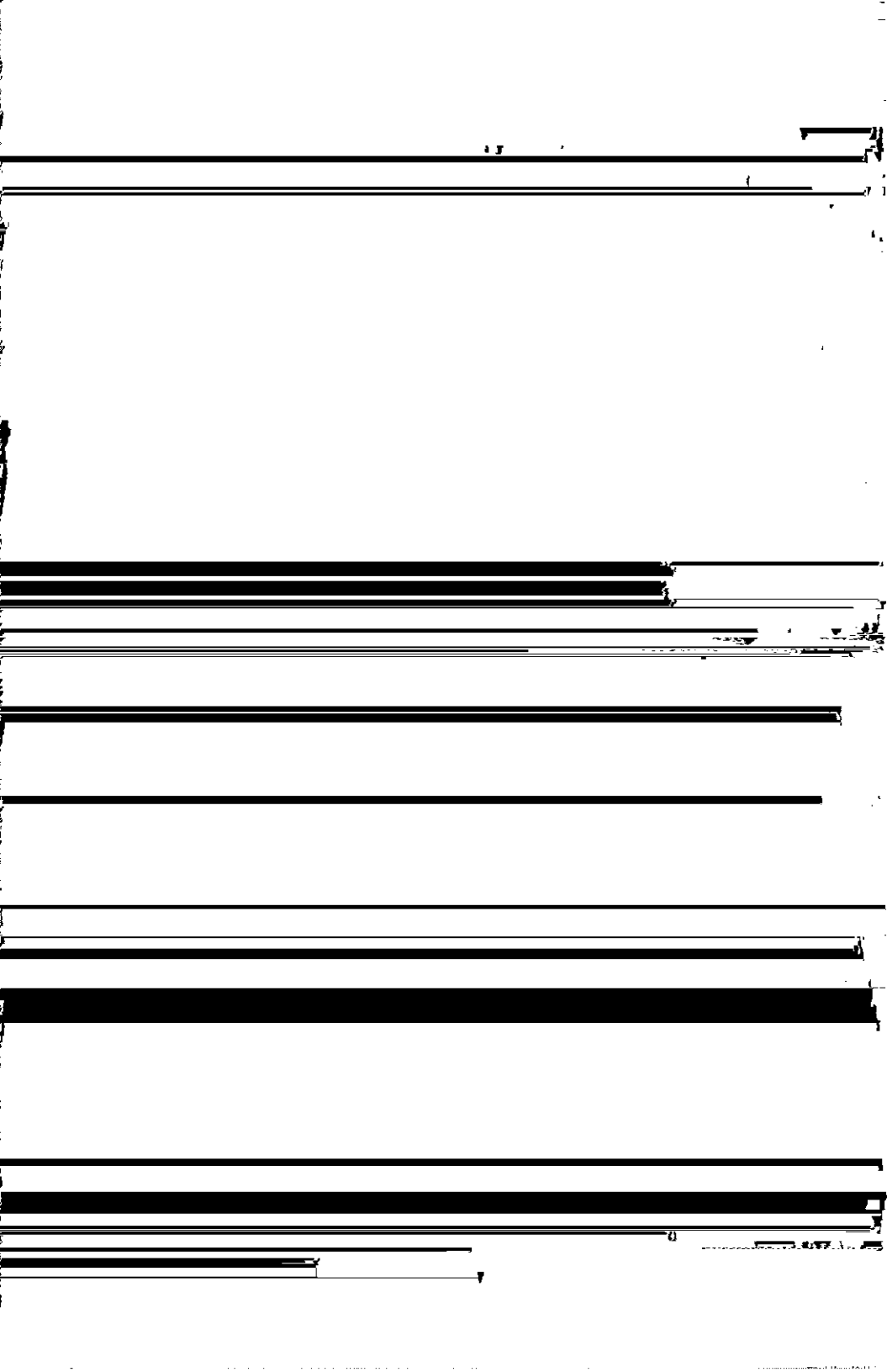
Quebec government and Aboriginal peoples argue over who has the right, or who had the prior right of self-government.

Another participant questioned Young about the possibility of a national

treaty under section 35, referring to the proposal advanced by Prince Edward Island Premier Joe Ghiz.<sup>6</sup> Young responded that any such treaty would have to be acceptable to both Aboriginal peoples and the blocking coalitions. The essential dilemmas of timing and of Premier Bourassa's vulnerability on the issue would remain.

6 Remarks by Premier Joseph Ghiz, "Aboriginal Self-Government and the Canadian Constitution," Faculty of Law, University of Ottawa, 14 January 1992.

fied land and the recognition of an inherent right to self-government enforce-



indians are those who are able to function in the general Canadian society and

Tizya noted that a real conflict exists between traditional and assimilated values, so few bicultural people have emerged.

In Vancouver, the UNN is attempting to further the bicultural model. Rather than waiting for the federal and provincial government to take action on



Negotiation of a New Relationship Between the Mohawks of Kahnawake and  
Canada," December 1991.

government inheres in distinct tribal groups, not *Indian Act* bands. Dorey suggested that a treaty process is necessary to lay out the fundamental ground rules for each nation to reestablish self-government.

seen to take items out of the box and throw them away. Rather, we should deal with some items now and leave the remaining ones in the box.

Another participant pointed to the lessons of Meech Lake for this round of Aboriginal constitutional reform. He noted that issues of popular understanding and trust continue to play an important role in the debate. As well, he pointed

...the difficulty created by attempting to deal with the (b) (6) issues (Quebec and Aboriginal peoples) at the same time. We may be facing a "clash of symbolisms" similar to that which occurred between the Charter and the distinct society during the Meech Lake process.

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each other as in 1980.

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\*A slightly modified version of this paper is found in *Inroads*, 1:1 (June 1992).



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- 5 See the poll results in the *Ottawa Citizen*, 15 February 1992, p. A-1.
- 6 Christian Rioux, "Comment les Cris ont planté Hydro," *L'Actualité*, 15 décembre 1992, pp. 46-50.



gouvernements, se comportent comme ces élites traditionnelles du Canada français qui, pour conserver la mainmise sur leurs ouailles, les tenaient jadis à distance du développement industriel 'protestant.' Aujourd'hui, le mythe est celui de développement 'blanc,' 'destructeur de l'environnement.'"

Aboriginal issues. How could this be resolved?

Ideally, in my own view, all provinces and Ottawa would accept an open-ended inherent right to Aboriginal self-government, trusting that mutual respect and an inevitably shared future would spur negotiations towards acceptable self-government agreements. This would be a great accomplishment.

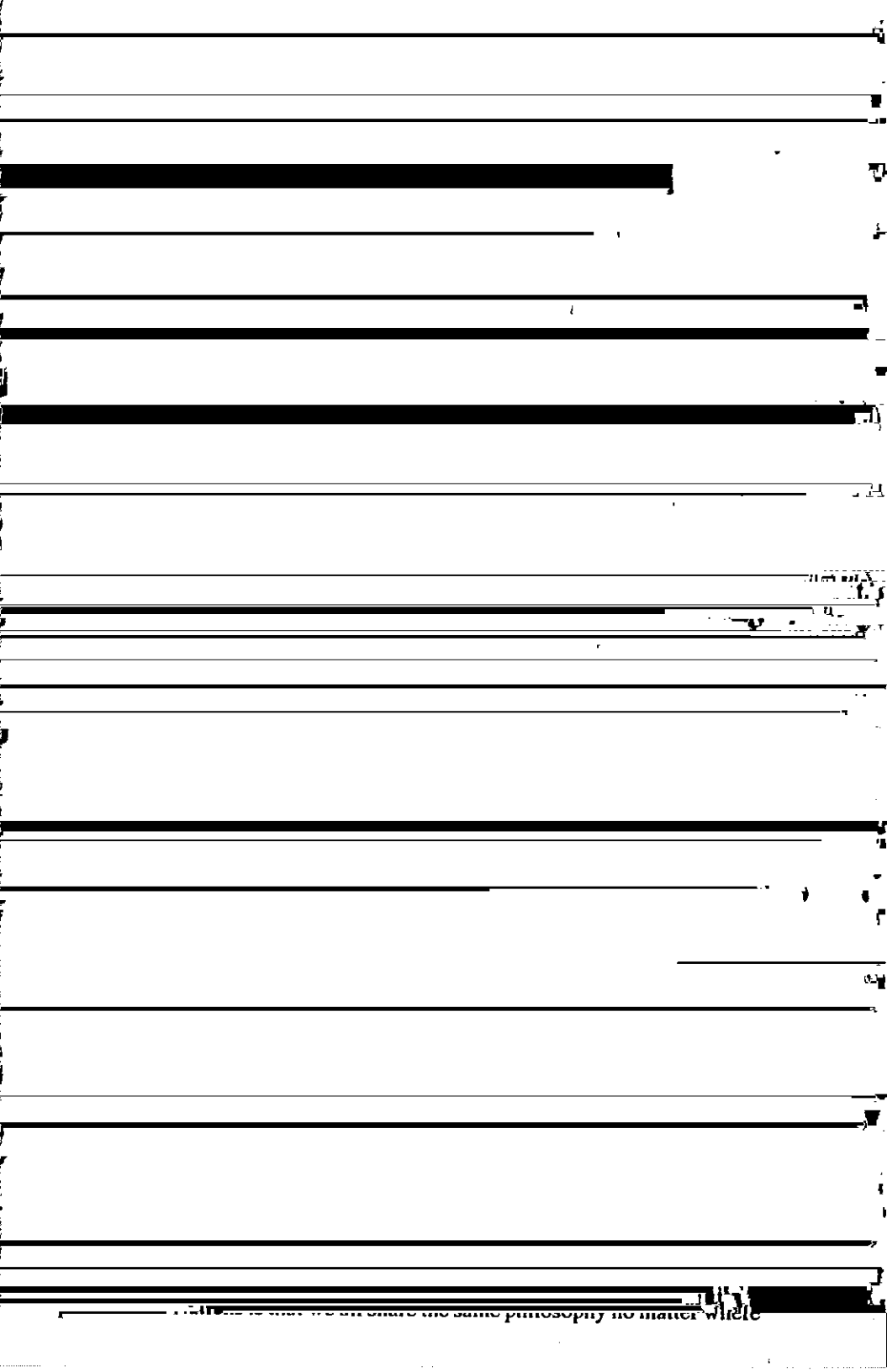
But this seems unlikely to happen. Quebec, and other provinces, would oppose this outcome. Whatever his personal beliefs, Bourassa could not afford to fight the sovereigntists on this issue. Recently, the Quebec premier suggested he would accept an inherent right if the inviolability of Quebec's borders were

trumping any such guarantee, were it not circumscribed, and were the right

various constitutional games are progressing; even for key actors the state of play is unclear. Nevertheless, it seems likely that in the main Canada-Quebec

reserves. Then we have a provincial government that says Indian people are a federal jurisdiction and if it takes on our problems and begins to try and help resolve them then the federal government will abdicate its total responsibility.





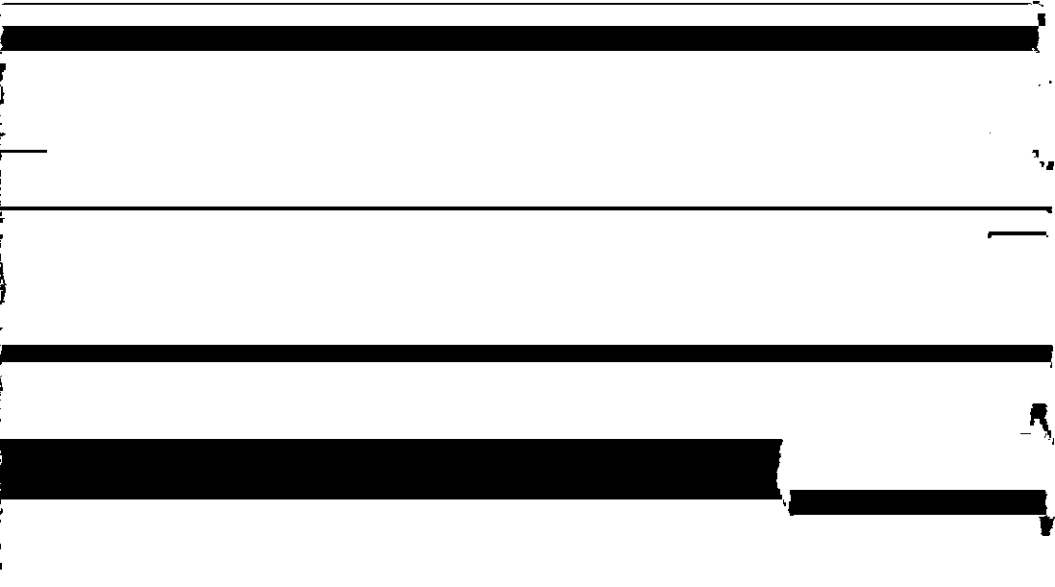
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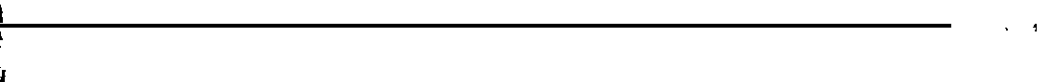
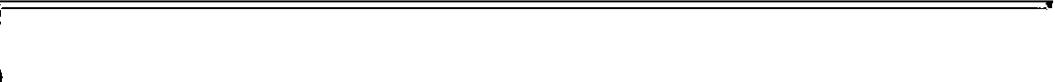
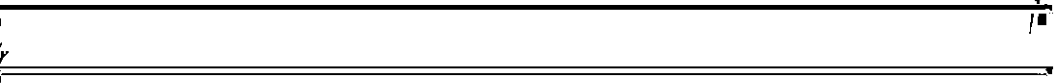
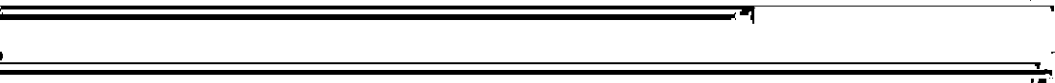
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thank you.

... just want to conclude with that and



...these [redacted] these groups share historical, structural, and political





University Press, 1969). Bruce Clark, *Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada* (Montreal and Kingston: McGill-Queen's University Press, 1990), pp. 200-202, argues that there is an

section 25, because section 35 is in Part II of the *Constitution Act, 1982* and thus is not subject to the "reasonableness" test of section 1 of the Charter, which applies only to Part I. Since section 35 guarantees existing Aboriginal rights and treaty

provincial laws, see Douglas Sanders, "The Application of Provincial Laws" in Morse (ed.), *Aboriginal Peoples and the Law*.

at a time when Canada claims to be linking its foreign aid to human rights improvements in target countries.

How would the new province affect existing provinces? Three areas should be mentioned: loss of land and other resources, equalization payments, and dynamics of future constitutional changes.

The 2,000 or so existing reserves in the ten provinces do not belong to the provinces. The constitution gives the federal government exclusive jurisdiction over Indians and lands reserved for their use. Thus, to cobble them together and call them a province would not subtract any land or natural resources from existing provinces.<sup>8</sup> Of course, currently ongoing land claims will almost

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8 Lyon, "Constitutional Issues in Native Law," pp. 448-50, argues that some lands (but not all) ceded by Indians to the Crown generate revenue (e.g., from timber) for a province rather than for the federal government. If so, the statement in the text would need qualification, although Lyon seems to say that most such ceded

province is and how it works in general. Thus, one might be able to avoid divisive and slow-moving court cases about land claims and about the meaning of self-government.

No political or constitutional change works out exactly as predicted. All have

expectations. Thus, what I have outlined may be wide of the mark, but at least there appear to be good reasons for thinking that the creation of a First Peoples Province would not destabilize Canadian politics beyond its already somewhat

Urban Aboriginals not on reserves, the creation of First Peoples would have, at most, an indirect effect to the extent that this province would help to publicize the plight of these people or to pressure other governments to improve services.

...men have become increasingly concerned about their status if the *Charter of Rights and Freedoms* does not apply fully.

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- 15 The analogy is developed further in Elkins, "Where Should the Majority Rule?"
- 16 One way of dealing with the diversity inherent in First Peoples would be through political parties. We usually think of parties in electoral terms, but they are also ways of organizing ideologies, of expressing regional grievances, and of integrating minority and majority groups. As with my other suggestions, I repeat that no single solution will handle all problems, but there are many vehicles to consider and many institutional forms compatible with provincial status.

political and social organizations elsewhere; and thus there may be ironic justice to find that the evolution of political organizations "beyond the nation state" may, in some cases, bring us closer to the nonterritorial forms that were common before its imperial spread.

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- Aboriginal Philosophy and Approaches to Governing  
*Georges Erasmus*, Royal Commission on Aboriginal Peoples
- Federalism and Pluralism as Methods of Power Sharing

Intergovernmental Relations, Washington

10:15-10:30 a.m.

BREAK

10:30 a.m.-12:00 noon

Commentator: *Alan Cairns*, University of British Columbia

General Discussion

2:00-2:45 p.m.

**SESSION II: Current Issues in Canada**

Chair: *Peter Russell*, Department of Political Science, University of Toronto

- The Current Constitutional Debate in Canada  
*Robert Young*, University of Western Ontario and Visiting Fellow, Queen's University

General Discussion

2:45 p.m.-3:00 p.m.

BREAK

\*Program revised to reflect actual proceedings.

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