

While the tone of this pronouncement contrasts sharply with Canadian policy, the Committee learned that in practice Indian people in the United States face many of the same problems experienced by Indian people in Canada.

The Committee was interested in the work of such U.S. Indian organizations as the Council of Energy Resource Tribes and the American Indian National Bank. (See Appendix G for a complete list of organizations with which the Committee met during its visit.) A visit to several pueblos in New Mexico, including the opportunity to observe a meeting of the Eight Northern Indian Pueblos Council, enabled the Committee to see a unique Indian governmental system in operation in the United States today. The development of Indian law and the advocacy of Indian interests before the courts—supported by the Institute for the Development of Indian Law, the Native American Rights Fund, and the Indian Law Resource Center—have had a notable effect on recent judicial rulings concerning Indian rights. These initiatives have helped to improve the situation of Indian people in the United States. The Committee gained valuable insights from its visit but concluded that Canada must develop its own approach.

### Establishing Self-Government

In considering a new relationship, the Committee found itself at the beginning of a process with the potential for significant change. Current legal assumptions offer an inadequate basis for the new relationship. Band councils do not form part of the constitutional structure in the same way as federal and provincial governments do. They exercise only those powers permitted by the *Indian Act*. According to traditional constitutional interpretation prior to the recognition and affirmation of “existing aboriginal and treaty rights” in the *Constitution Act, 1982*, all primary legislative powers were deemed to be vested either in Parliament or in provincial legislatures. The inclusion of existing aboriginal and treaty rights in the Constitution may have altered this situation. If, as many assert, the right to self-government exists as an aboriginal right, there could be a substantial re-ordering of powers. Indian governments may have implicit legislative powers that are now unrecognized.

Many Indian witnesses asserted that rights implicitly recognized in the Royal Proclamation of 1763 and in the treaties provide a basis in law for true Indian governments to be recognized by the Canadian government and for Indian people to exercise their inherent right to self-government. The Royal Proclamation formalized the process through which the British people and authorities were to relate to Indian nations and tribes. In so doing, it recognized aboriginal title and rights to the land and placed limits on the way colonial governments could secure land for settlement. Witnesses argued that the Proclamation also implied recognition by the Crown of autonomous Indian governments. Judy Sayers, speaking for the Canadian Indian Lawyers’ Association, asserted that

an inherent right [to self-government] was preserved in the Royal Proclamation of 1763 and acknowledged by Lord Denning.\* . . . Any rights or freedoms recognized by the Royal Proclamation of 1763 are now guaranteed in the *Constitution Act, 1982*, section 25.

---

\* Lord Denning, Master of the Rolls, is an English judge who heard an important case brought in the Court of Appeal of England by the Indian Association of Alberta, the Union of New Brunswick Indians and the Union of Nova Scotia Indians in 1982 prior to patriation of the Constitution.