



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND TORRES
STRAIT ISLANDER AFFAIRS

Reference: Capacity building in Indigenous communities

MONDAY, 3 NOVEMBER 2003

CANBERRA

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS
Monday, 3 November 2003

Members: Mr Wakelin (*Chair*), Ms Hoare (*Deputy Chair*), Mr John Cobb, Mrs Draper, Mr Haase, Dr Lawrence, Mr Lloyd, Mr Melham, Mr Snowdon and Mr Tollner

Members in attendance: Mr John Cobb, Mrs Draper, Ms Hoare, Mr Tollner and Mr Wakelin

Terms of reference for the inquiry:

To inquire into and report on:

Strategies to assist Aboriginals and Torres Strait Islanders better manage the delivery of services within their communities. In particular, the committee will consider building the capacities of:

- (a) community members to better support families, community organisations and representative councils so as to deliver the best outcomes for individuals, families and communities;
- (b) Indigenous organisations to better deliver and influence the delivery of services in the most effective, efficient and accountable way; and
- (c) government agencies so that policy direction and management structures will improve individual and community outcomes for Indigenous people.

WITNESSES

BEGAY, Dr Manley, Director, Native Nations Institute, University of Arizona..... 1365
**CORNELL, Professor Stephen, Director, Udall Center for Studies in Public Policy, University of
Arizona 1365**
STERRITT, Mr Neil, President, Sterritt Consulting Ltd..... 1365

Committee met at 10.04 a.m.

BEGAY, Dr Manley, Director, Native Nations Institute, University of Arizona

CORNELL, Professor Stephen, Director, Udall Center for Studies in Public Policy, University of Arizona

STERRITT, Mr Neil, President, Sterritt Consulting Ltd

CHAIR—Welcome and good morning. I declare open this public hearing of the Standing Committee on Aboriginal and Torres Strait Islander Affairs. Welcome, Professor Stephen Cornell, Dr Manley Begay and Mr Neil Sterritt. For the purpose of the record, could you please identify yourselves, the positions that you hold and the basis on which you are joining us in Australia. We are delighted to have you with us.

Prof. Cornell—I am a professor at the University of Arizona where I direct the Udall Center for Studies in Public Policy. I co-founded and co-direct the Harvard Project on American Indian Economic Development at Harvard University. I am here in Australia for the upcoming conference on indigenous self-governance.

Dr Begay—I am a citizen of the Navajo Nation and also serve as a senior lecturer within the American Indian Studies Program at the University of Arizona. I also direct the Native Nations Institute for Leadership, Management and Policy. I am also co-director of the Harvard Project on American Indian Economic Development at Harvard University.

Mr Sterritt—I am a member of the Gitksan Nation in north-western British Columbia. I was the leader of the Gitksan from 1981 to 1987. We launched a major title case that was won in the Supreme Court of Canada in 1997. I operated at local provincial and national levels as a leader, and now I work almost exclusively on governance. I have written a handbook on governance. I advise and conduct workshops on governance with first nations throughout western Canada.

CHAIR—Thank you very much. I will invite those of the committee members who have been able to join us this morning to identify themselves and the part of Australia that they represent. I am Barry Wakelin from the state of South Australia. My electorate runs from just south of Alice Springs and almost to Adelaide.

Ms HOARE—I am Kelly Hoare. I am a Labor Party member for New South Wales on the eastern coast, just south of Newcastle.

Mrs DRAPER—I am Trish Draper from the state of South Australia. My electorate is Makin, and I come from a background in nursing and health.

Mr JOHN COBB—I am John Cobb. My seat is Parkes, which comprises about a third of the state of New South Wales. Around 8.5 per cent of the population there is Indigenous—more or less integrated but obviously there are still a lot of issues.

CHAIR—It is a pleasure to welcome you here and to take the opportunity to share something from an international perspective. I would like to understand the context of your visit to

Australia—how long you have been here and what impressions you have drawn, if any. Maybe you could pick out two or three things where you see similarities and differences between our respective countries. That is pre-empting it a little bit. I should have asked you whether you had an opening statement to make, which is what we normally do. I have perhaps made a few suggestions on how we might lead off with our discussion.

Mr Sterritt—In terms of the context of our visit, we were here 18 months ago and were invited to present papers on governance and our experiences in North America, both in Canada and in the States. We spent about two weeks travelling around the country at that time, meeting with local community groups and seeing how they operate and what they do. We have done very much the same thing this time but in different parts of Australia. We have been here for over a week now. We travelled to Ikunji, met with groups in Alice Springs, travelled up to Katherine, met with some of the local groups there, then up to Darwin and to Wadeye and met the people there, and also the Larakia here.

My impressions, based on my experiences in Canada, is that there are similarities between my experiences in Canada and what is going on here. There are also differences. I will just briefly state this: the similarities are that the problems in the Aboriginal communities and the solutions seem to be generally the same. In our communities, some of the leaders have not necessarily had a long background in contemporary governance, but may have had in traditional Aboriginal governance. If, in some of our communities, they can take those traditional experiences and equate them to contemporary governance, they have a better chance of succeeding than if they just tried to deal with what sometimes appears to be a mysterious form of governance imposed on them from afar. Having visited Ikunji and Wadeye, I would say that there are aspects of what is happening in each of those communities that are very similar to what I have experienced in Canada.

As for the differences, it appears that there is more of a legislative framework for much of what goes on here. For example, we do not have anything like ATSIC. We have the Department of Indian Affairs and a minister, and then band councils, which are community organisations. Band councils are legislated. They appear in the Indian Act, but we do not have a legislated body such as ATSIC. The closest thing I could compare ATSIC to would be if we have a board of directors in between the Minister for Indian Affairs in Canada and the communities: We have aboriginal political organisations that are created by aboriginal people, from the community up to the national level. I will stop there to give my colleagues a chance to comment on their impressions as well.

Prof. Cornell—Most of the work that Dr Begay and I have done has been in the United States, and to a lesser degree in Canada, but I agree very much with Neil Sterritt that there are both similarities and differences. The striking thing that has happened in the last 25 years in the United States has been a major policy shift on the part of the federal government towards a policy known as self-determination, which can mean many things but in practice what it has meant is putting substantial decision-making power into indigenous hands over resource management, the design of indigenous government, internal civil affairs, development strategies and so forth.

The second striking thing, apart from this shift in government policy—and that was a somewhat revolutionary policy shift that happened over the decade of the 1970s—is that it

appears to be the first federal policy in a century of trying to deal with indigenous poverty, ill-health and other issues in the United States to produce any sustainable, positive results. We have got a remarkable history of policy failure in the United States, in which Washington has wrestled with problems in Indian country, designed solutions, trotted them out in Indian country and prayed that they would work—which they have not done. We have seen in the last 25 years a number of Indian nations that have taken control of their own affairs and are building sustainable economies and beginning to overcome some of the economic, health, behavioural and other problems they have had for a long time.

Coming to Australia has been very interesting, because a lot of the problems that we see in your Indigenous communities appear to be quite similar. Some of them are more extreme. For example, rates of literacy are lower than in the United States. Certain things, like housing, which is a problem in Indian country in the United States, appear to be even more of a problem here. There are a number of problems which may be more extreme but they are generically very similar. We have not encountered any problems in Indigenous communities here that were not in some sense familiar to us. Also, in some of the communities we visited, one gets the sense of Indigenous people beginning to take a sense of ownership of their affairs and beginning to do things that appear to be very positive.

We realise some of these things are in the early stages, such as what we saw out at Wadeye, but they resemble some of what we have seen in the United States as indigenous peoples have moved to reshape their own futures. So, in many ways, I view this trip as a very encouraging one and, while there are significant differences between your situation and ours, I do not see anything that would argue that what we are seeing in the United States is not possible here. I will now turn to my colleague Dr Begay.

Dr Begay—From my observations, thinking about the historical context in which various governments have made decisions, in these governments you have Canada, New Zealand, the United States and also Australia. I see similarities among New Zealand, Canada and Australia in terms of the Commonwealth establishment of the federal governments. In the United States, obviously that is not the case. I think it is partly because of that structure that you see different kinds of relationships with the indigenous peoples. In the United States, from the very beginning there was a formal recognition of a government-to-government relationship with indigenous peoples. Obviously, down through the years, because of vacillating federal policies, that has changed—from that government-to-government relationship to wars, to termination and then back to self-determination that Stephen Cornell was just mentioning.

Given that historical context, the similarities and differences that Steve mentioned hold very true. Since the 1970s we have seen a tremendous amount of success in key tribal nations. For example, at the Mississippi Choctaw reservation in south-eastern United States, the unemployment rate is zero. Any Choctaw that wants to work has a job. In fact they have so many jobs on indigenous land that they have to import labour—upwards of 7,000 black and white workers. There has been a tremendous amount of success there, and a lot had to do with assertions of self-rule by the Mississippi Choctaws. As a result of that assertion, they had land rights—subsurface as well as on land—and I think one of the keys there was the establishment of a separate but equal government with a court system which allowed for investors to invest on that nation's land, knowing that their investment would be safe.

In thinking about the context here in Australia, we see the beginning of some success. One success that I saw was at Nitmiluk, Katherine Gorge. The joint management between that group and the federal government will, I think, produce some significant results. In the United States, there is no joint management agreement over national parks between indigenous peoples and the federal government, or even the state governments. Seeing that brings to mind that we have stories of success in Australia that we might be able to share with indigenous peoples and the federal government of the United States when we get back. We see the beginning of some success with Larakia Nation. You have an urban Indigenous group beginning to plan long term, thinking very clearly about their place in the city of Darwin. That was rather encouraging. And also, seeing the governance change at Wadeye—the Thamarrurr—we saw reduced factionalism, we saw the beginning of a sense of unity. I think the territorial government ought to be congratulated for supporting that change of governance, because one of the keys to success that we see in the United States is this culturally appropriate establishment of political structure, and we saw that occurring there in Thamarrurr.

CHAIR—I would like now to go to some questions and allow the committee members to ask some reasonably quick questions and obtain reasonably brief responses in the time available. I will go to three or four things. I will make a brief statement to respond to one or two of the points you made.

The issue of literacy strikes you gentlemen quite clearly. The US Surgeon General made a similar comment while visiting Australia some three or four years ago. It does strike as quite a stark difference. As far as the mysterious central government is concerned, many of us are regularly mystified by central government, but that does not necessarily prevent us from moving forward. Can I just ask about some of the differences. There is a debate in this country, which you are probably aware of, around welfare, and the US-Canada experience versus the Australian experience. There are those who are deeply concerned about the welfare dependency and how it restricts progress and some of the first nation sovereignty. So I have made a couple of comments about literacy and numeracy, and I am interested in your comments about the context of welfare.

Prof. Cornell—We have seen some significant changes in welfare legislation in the United States, as you may be aware, over the last decade which have certainly placed increased pressure on individuals to take responsibility for their situations. As far as Indian country goes, that legislation applies to indigenous people there. What we have seen though is that the federal legislation on welfare has had less of an impact on welfare statistics among indigenous nations than have the economic initiatives that indigenous nations themselves have made. One of the things that we have discovered is that, as indigenous nations in the US take control of their own affairs, they tend to move from an attitude to welfare as being an entitlement towards a position of wanting to escape the dependency, because they have realised that that dependency has a political dimension to it. The decisions that are shaping economic conditions in Indian country are being made somewhere a thousand miles away, and these nations want to make those decisions for themselves.

They realise that one of the best ways to do that is to create sustainable economies that reduce their dependency on the federal government. I think the major progress that has been made in the US regarding welfare dependency has been through tribal economic initiatives and tribal assertions of self-governance, which have produced this desire to reduce that dependency. Reducing dependency through fiat from Washington has tended to encounter enormous

resistance. But reducing it through initiatives by Indian nations has been considerably more successful.

Just on the matter of literacy, we have some experience in the US of indigenous people taking control of their schools, and it has had a significant positive effect on attendance rates. So we see some connection between indigenous assertions of control and literacy in the long run. They have had better success in getting their children into schools that the children and their parents see as their schools, rather than someone else's schools imposed on them

Mr Sterritt—I will add quickly to what Steve said. My experience with communities in Canada relates to when some federal and provincial legislation has been set aside. For example, originally we could not sell salmon. Huge runs—millions of fish—go right by our door, and our people were not allowed to engage in the commercial fishery. We managed to change that through court cases and political lobbying, and now, in the summer when the fish come through, all those people who may not have any other job are busy doing something that they have known how to do all their life. They do not have to be trained. They know how to harvest fish. They know that there are markets. We have to meet certain health standards, but we can turn around our welfare dependency by local economic initiatives such as Steve has talked about.

The same goes for literacy. When our people get involved in the curriculum and on our own school boards in our own communities, the community begins to benefit. The children have a reason to go to school, to stay in school. They are taught in their own culture, they are taught in their own language. They are taught their culture, but they are also taught about the larger society as well. That has not happened everywhere, but where it occurs, changes are made—in literacy and in lower welfare dependency.

Dr Begay—Let me just add something quickly on the question you raised about literacy and numeracy. On a personal note, I have had a public school education in the United States and when I graduated from grade 12 I knew very little about my own Navajo Nation's governmental structure. I knew very little about the history of my own nation. I knew very little about what the Navajo Nation was all about—the treaties that were signed with the Spanish government, with the Mexican government, with the United States. As a result, I felt somewhat deprived in my own knowledge and how I could help my own people. I had to relearn all of this at our own college. We started the Dine's College in 1969. It was the first tribal college in the United States. I had the privilege of attending that school for two years and I significantly improved my knowledge of my own people.

I say that I was miseducated in the public school system and realised that there was another world that I knew very little about that I needed to know to be able to help my own people. I think one of the reasons for success was because of the control by the Navajo people and Navajo Nation government in how best to educate Navajo people. We had control over our curriculum, and there was vested interest which really pushed Navajo people to make the right decisions—because we knew what the consequences would be if we did not make the right decisions. So this coupling of decisions to consequences allowed for good decisions to be made, not only about curriculum but also about how to run good schools. And since then there has been a movement in local communities taking over schools, and it has shown some significant results in terms of attendance and better financial management and so forth.

CHAIR—Thank you very much. I think that was a very valuable insight. I will make one last statement and then hand over to other members. With regard to the power for indigenous people to make their own decisions about their own future and the research in relation to good governance from central government and the way that the Commonwealth government responds to these issues, could you go a little further on people making decisions on their own future. Is this sovereignty issue absolute? And how does the central government respond to that, interact with it and learn to deal with it? Could I just have a couple of comments on that before I hand over to Kelly Hoare.

Prof. Cornell—The term ‘sovereignty’ in the United States is generally used without the attached meaning that it is an all or nothing business—that it is absolute. When we talk about tribal sovereignty, which is a common term in the United States, it is really talking about increasing the degree of control that Indian nations exercise over their own affairs. There are some substantial limits on that control. Indian nations in the United States can establish their own court systems which have very substantial jurisdiction, but there are certain categories of crime that they do not have jurisdiction over. That is a limitation on their sovereignty.

In the area of the gambling industry, which Indian nations have moved into in the United States, there are limits to what they can do—limits placed by the United States Congress on their freedom of action. So the sovereignty is not absolute, but it is very substantial—and it is very substantial in some critical areas, including the organisation of government itself. So you see indigenous nations in the US that are successful that have radically different forms of indigenous governance, because they have been indigenously generated. The great advantage of the fact that they have been indigenously generated is that the people in those communities believe in them. Those governments have enormous legitimacy with their own people, and therefore they are effective vehicles for action. The disadvantage from the federal viewpoint is that you get enormous variety in the governments that you deal with, but that is part of the price—and it is probably worth it in reduced welfare costs and things like that.

The role of the federal government as we see it has been to move from being the decision maker for Indian country to being a resource and partner working with indigenous nations to try to achieve objectives identified by those indigenous nations, and investing in improving the capacity of those nations to achieve those objectives. So it is kind of like the government moving out of the driver’s seat but remaining very much in the vehicle as a resource.

Ms HOARE—I think my questions lead on from what you said about the central government investing in the capacity of communities to self-determine. I am more interested in the process. Steve said that in the 1970s you moved to a policy of self-determination and that this was fairly revolutionary. I am wondering how it got from the seventies with the change in policy and direction to that community that you spoke of, Manley, where there is nil unemployment. What was the role of government in that, and can you just take us through the process from the change in government policy to having an economically and socially sustainable community.

Prof. Cornell—In that particular case, in about the late 1970s, the federal government, in moving to a policy of self-determination, opened the door to indigenous action. Before, the decisions were being made by somebody else, so indigenous nations had very little room to manoeuvre. Once the federal government moved to a policy of self-determination, indigenous nations had room to move. That also shifted the responsibility to them, and what happened at

Mississippi Choctaw depended in part on a particular set of leaders who realised that if they were going to be successful in building a sustainable economy there, they were going to have to make some changes in how they did business.

They did a couple of things. Perhaps the critical move was to begin to construct a political environment, an environment of governing institutions on Choctaw land, that would provide an environment for investors—by ‘investors’ I don’t just mean people with lots of money but also tribal members who are trying to decide, ‘Shall I stay here and teach in the tribal school or shall I move to Texas or Los Angeles or New York and get a job?’ They created a political environment in which people felt, ‘It is worth investing here.’ They got the factional politics and patronage out of the governing system. They created a court system that assured people that disputes would be dealt with fairly. They got stability into how decisions were made at Mississippi Choctaw. They also went out and talked to big companies and said, ‘Come and invest in us. Come to Mississippi Choctaw and help us. We can offer you good people.’ Some of those companies expressed concerns: ‘Your people aren’t educated enough.’ Their response was: ‘Help us invest in education. We will commit to improving the quality of our labour force if you will commit to working with us.’ That sort of dual track of saying, ‘We will get our own political house in order and we will try to persuade those who can help us to come along as partners,’ has been a remarkable success story there. Today they are one of the economic engines of the state of Mississippi and one of the great success stories there. Neil, do you want to add something?

Mr Sterritt—Just from a leader’s point of view, in the 1970s, there were no laws that allowed us to sell fish. So, as one of several leaders, we tried to lobby the federal government to make this happen. The attitude of the federal government local representatives was, ‘The law is the law and you’re not allowed to do it.’ In that process we ended up running into one person who operated as a deputy minister in Ottawa who was open to our ideas. In fact, he was really taking a leadership role and started to facilitate ways by which what we wanted to do on the ground could happen, despite the legislation. We saw him as a leader, a forward thinker. But the bureaucracy rallied around and within six months he was gone. We didn’t give up. Because of the problem we carried on. We ended up taking on court cases and winning them, which is something that had never happened before in British Columbia. Most of our people either pleaded guilty to charges or just went to jail, paid the fine or whatever.

What happened was that, through change in the Canadian constitution and through political effort, we started to find more and more people like this individual who had been there in the 1970s. So what I am getting at is: what is the role of the central government? I think the role of the central government from time to time is to be facilitator, to play a leading role, to recognise that some of these things that are going on on the ground are not so bad. In fact, there is a benefit to society to have everyone in the community working. If our people are off welfare, there can only be benefits. So in provincial governments, which would be the equivalent of a state government, and central governments, which would be the equivalent of your Commonwealth government, I think there are people who understand the need for these changes, and I think the central governments have to take the time to think about what is the effect of the current policies and legislation and what is needed to facilitate growth on the ground by Aboriginal communities.

By the way, this is not restricted to aboriginal communities. Many of our communities—people we live beside in northern British Columbia and other parts of rural Canada—are having the same problems. Their welfare rates are increasing and their unemployment is increasing. I

think there are benefits to all of Canadian society to have these changes. So a real leadership role by central governments is critical.

Ms HOARE—Talking about the fishing, we came across a similar instance. I do not know whether you visited Maningrida in the Northern Territory. The people of Maningrida can't fish their own waters, firstly, because there is a cap on the number of fishers in those waters and, secondly, if there were a licence to be bought, they don't have the resources to buy it. So they have to sit on their own land, living in poverty and looking out at the people who are benefiting from their natural resources. So that is where government can make a difference. They are laws which can easily be changed. Neil, can I go back to what you said right at the beginning when you spoke about traditional and contemporary governance. You talked about leaders bringing traditional governance structures into contemporary governance. Can you expand a little more on that?

Mr Sterritt—Yes, I will back up a bit. Basically, with respect to traditional governance, where I come from, we have hereditary chiefs. Some comparisons could be made to landowners, but hereditary chiefs are really the leaders of the communities. If you explore that traditional governance, there are elements there that are directly translatable to contemporary governance. They in fact were trustees for all of the members—the extended family or the entire village group. Survival depended on them looking after the resources properly, making sure that people were fed and clothed properly, that they did the right thing at the right time of year and so on.

The word 'governance' wasn't in our language—it wasn't an issue 10 years ago. It has really become the buzzword today. But governance embodies a whole bunch of things. So when somebody says, 'You are going to create a board and are going to have to do this today,' for many young people who have never been involved in leadership and have not had leadership training or background or skills in either the traditional or contemporary modes, that is a very foreign word in a very foreign environment. So how do you make the bridge from what is required today to what people might understand in the community? Well, if you can bridge that gap it makes it easier. I don't know of a community at home that does not know how to organise a softball tournament, soccer tournament or bingo. They go through the motions and they do everything necessary to do a good job, and in fact they are exercising good governance when they do that. So then they get elected to council and they are asked to do governance and they do not know what to do. Quite frankly, if someone were to point out to them that organising a \$100,000 bingo game for 5,000 people is no different in the longer term from organising for council, they can make the link. If you also point out that the values and traditions of traditional governance are the same values—honesty, respect, sharing—that apply to contemporary governance, you are making the bridge.

What I see in many of the communities that I work with—and I work with several hundred in western Canada—is that when they make those links, they have a much easier time. They have a skyhook that they can rely on. They have a much easier time of beginning to do the job of governance that they are supposed to do. Frankly, I have seen some of that right here, both 18 months ago and on this trip. Those links need to be made.

Sometimes they may have lost their traditions. Then it may be a bigger job. But, actually, my impression is that more Indigenous people in Australia have closer links to their traditions than some of our communities in Canada. After 400 years of assimilation there is a problem in some

of our communities—not all of them. I see more people here having links to their traditions so, if those links can be made, it may help.

Dr Begay—One of the tribes that we work with in the United States is the Cochiti Pueblo tribe. Cochiti Pueblo still has an ancient way of decision making process, which dates back to even before the Spanish arrived in the south-west part of the United States. Cochiti Pueblo is one of the most successful tribes in the country. They run a retirement community. Harry and Martha from Ohio go to retire on an Indian reservation—it's unheard of! They also manage one of the top 25 public golf courses in the United States and have a number of other investments. And they have a traditional government.

Here is a success story about a culturally legitimate government making contemporary, modern investments. One of the problems we face in the United States is that, in the infinite wisdom of the federal government, they placed several tribes onto one property and said, 'Build a nation.' Whose tradition do we follow? How do we think of our self-governance in those situations? Who is the 'self' in self-governance there? That is one of the big problems we face in the United States.

The successful tribes have actually developed governing structures that work and that allow for a disbursement of power and authority among the groups. It is the sort of thing we saw in Wadeye, with the Thamarrurr. There, the federal government provided some technical assistance to many of these tribes. For some tribes, once they were given the authority to change the governing structure, they developed a governing structure that worked really well. It was really about legitimacy. It was really about how to arrange that in a modern context.

CHAIR—I am mindful of languages as some of the tools of this process. Do you have a comment about languages per se?

Prof. Cornell—Yes. Language retention here in Australia among Aboriginal groups on Indigenous land is much higher generally than it is in the United States. This has been a matter of concern to indigenous nations in the United States. A number of them, though, are making progress in restoring language. We also have some very striking cases.

The first group that Manley Begay mentioned, the Mississippi Choctaw—who today import labour because they created so many jobs—also have one of the highest rates of language retention in the 18 to 34 age group of any nation in the United States. You go to Mississippi Choctaw and you hear people speaking the Choctaw language. They have taken some of the revenue from their economic enterprises and poured it into cultural preservation, language retention and so forth.

This has been a priority for a number of nations. The range of degrees of language retention is enormous, but it is a matter of considerable concern. We know tribal governments in which election to council requires fluency in the indigenous language. It is one of the requirements for service in a governing position. We know other tribes where hardly anyone speaks the language.

Mr JOHN COBB—One of the issues I believe holds our Aboriginal people back to a very marked degree is the fact that they find it hard to relate to other Aboriginal people in an open way, a business way or a social way outside their own family or group. I do not mean tribal; it is

much smaller than that. It may not be that way in the Northern Territory, Western Australia or the more remote areas, but it certainly is in New South Wales and probably Victoria and Queensland as well. The family group seems to be a support to them, but it is also the thing that holds them back the most from becoming part of the whole. Have you had to deal with this issue in America or Canada and, if so, how?

Prof. Cornell—Without giving more thought to it, the closest thing to the issue that I can say is that past policy has often encouraged competition within groups among family units. In the United States the view of tribal government that has been encouraged by the federal government—inadvertently, but in fact has been encouraged—is the view that what tribal government is about is divvying up the goodies—who gets the jobs, who gets the money, who gets the welfare services, who gets this and who gets that.

Federal policy has inadvertently encouraged that by basically limiting tribal government. It is not self-government; it is self-administration. We invent a program in Washington. We give you the bucks and you decide who gets the money. They call it self-governance; it is not self-governance. It is just self-administration and a patronage system. That has encouraged family units to see other family units as competition for scarce resources.

What happens when a tribal unit begins to rethink what government is about—to shift in thinking about government as the distributor of goodies to the vehicle by which the nation starts to reshape its future—is that it changes its thinking from an emphasis on distributive economics to an emphasis on productive economics. It gets people within the community to see the government less as the source of all the things that they need and more as the vehicle by which all of them can work together to produce more of what they all need. When we see that happen, we tend to see some of these family units that can no longer remember why they do not like each other begin to work together and begin to see themselves as participants in a larger enterprise.

I do not know if that is the whole answer to what you are talking about, but it is certainly a dynamic that we have seen in the United States. It is an indicator of how some of the things that happen at the micro-unit level can be reflections of major policy phenomena that are driving some of this.

Dr Begay—For a long time the Soviet Union ran this experiment with East and West Germany—same people; two different economic development results. Only when the Iron Curtain fell down were the two groups able to get back together and work together to build an economy. The same issues have affected native groups in the United States. It seems as though what you are referring to is allegiances. These tribal allegiances vary considerably across American Indian groups.

With some indigenous nations we find allegiance to the tribe as a whole first, then to a community, and then to a clan. In other tribes, it is the reverse. It has implications for political structure development. It has implications for the development of economies. If your first loyalty is to your clan, then to a community and then to your tribe as a whole, it really affects the type of business you want to develop—if you need clan support, maybe a cottage industry. Maybe a private entrepreneurship type of economy is the way to go. But if the loyalty is at the tribal level, tribal enterprises might be the way to go. It is reflected in how the political system is developed

as well. If loyalty is at the clan level, maybe some consideration ought to be given to elections occurring at the very beginning, with clans, and then to moving up the line.

CHAIR—I want to pick up the point about families and these issues. Stephen Cornell, your point about central government acting inappropriately, unwisely or in a way that does not give the best outcome—you said that was not governance; that was administration—seems to me quite critical. I am regularly reminded of the policies in this country. In smaller communities—it is not just Aboriginal communities; it is interplay between them, the white community and other members of that community—we quite often see the results of inappropriate and unwise central policy. We may come back to that point, and you might bear it in mind.

Mr TOLLNER—Thank you, Dr Begay, for mentioning the Larakia Nation. I am particularly proud of them. It is part of my electorate that they are in, and that you are in at the moment, so thank you for the mention. I am interested in the impact of land rights, both in Canada and in the United States, and whether there are any differences between your system of land rights and what we have in Australia, particularly in the Northern Territory.

I am not aware if you have had the opportunity to familiarise yourselves with the Northern Territory land rights act. Basically, all of the Aboriginal land in Northern Territory land rights land is inalienable freehold, which means that it cannot be sold and it is very difficult to put a lease on. That land is controlled fundamentally by two large land councils: the Northern Land Council and the Central Land Council. A very rough line is drawn across the middle of the Northern Territory, and they each administer those various parts.

You talked about investment in Indian lands and the people who invest their time and expertise. I take it that corporate investors also turn up. In order to build golf courses, casinos and the like, some sort of negotiation must be done on the tenure, or title, of the land. Can you explain that? Have you had the opportunity to look at the Northern Territory land rights act, and can you advise whether there are any differences between the two systems?

Prof. Cornell—Our understanding of land rights in the Northern Territory is probably at the point of being dangerous. We know just enough to think we know what we need to know, and I am sure we do not. To explain the situation in the United States, there are limits on what Indian nations can do with their lands without federal approval. The primary limit is simply sale. An Indian nation cannot sell tribal land without federal agreement but, if an investor comes onto Indian land and wants a 50-year lease in order to develop some project there, it is up to the Indian nation itself. It controls leasing, it can decide the terms of the lease and it can decide which investors can do it. It can make those decisions entirely free of state interference. There are some other technical details but, up to that limit of sale, they have complete control over their lands.

The other limitation, which tends to vary across the United States, is that environmental and natural resource related laws apply across Indian land and they are federal in nature, which limits some of the uses the tribes can make of it. Some tribes have been very aggressive in getting control of environmental regulation. In fact, a number of tribes in the United States regulate their lands to a much higher environmental standard than federal law requires. They have gotten into some conflicts with cities and states because tribes demand a higher standard of environmental quality than some of the cities and states do. They have also been very aggressive in the

regulation of wildlife and other resources on their lands. A lot of that has happened in intergovernmental agreements.

Manley Begay already mentioned that in the United States we do not see the kind of joint management agreement of a national asset, such as a national park, that you have got out at Nitmiluk. To us, that development, pioneered in the Northern Territory, is very interesting and seems to show enormous promise and is something we wish we would try to do more of in the United States. It seems to be a win-win arrangement, from which both the indigenous nation and other governments can benefit.

In terms of the situation here, without knowing enough about the land councils and so forth—you should take this with a grain of salt, and I will just speak for myself—one problem you are likely to encounter is that, as Indigenous communities here try to pursue development strategies of their own design, they will run into limitations imposed simply by the fact that they have very limited control over their land base. That control is centred in these land councils.

These land councils may be very amenable to supporting strategies developed in local communities. I do not know whether they are or not, but it strikes me that it certainly complicates the process when a significant number of people who do not come from that community exercise a significant degree of control over what that community does with its resources. That may be a problem down the road.

A lot of Indian nations in the United States would find it very difficult to operate under that system because they would feel they would not be able to pursue strategies without first of all having to bring a whole lot of other people on board. They have to do that to some degree with the federal government in environmental and some other areas, but they have a lot more freedom to use the assets as they see fit. In general, the record in the United States is that they have been very intelligent in their use of those assets.

Mr Sterritt—In Canada there are similarities with much of what Steve has said about the United States. In Canada, until 1973, we had two kinds of land. We had reserve land—in comparison to the United States, very small reserve land—and we had some treaty land. The treaties were mainly on the prairies and other parts. The last one had been signed in 1899, so there were no modern day treaty negotiations in BC until the beginning of 1973.

After 1973, the reserve based indigenous leadership began the real push in the land rights movement in Canada. The Nisga'a launched their Calder case in 1968, and it was heard in the Supreme Court of Canada in 1973. At that point, Prime Minister Trudeau recognised that there was an issue there, and the land claims movement began. There was then an effort to settle land claims in Canada.

The Nisga'a case was mainly about rights. We launched a case in 1984 that was geared to deal with title—'ownership and jurisdiction' was the way we described it—which we won in the Supreme Court of Canada in 1997. What we did was raise the bar; it did not mean we owned all that land. Now there was a higher bar for negotiating. In the meantime, the land claims effort led to a number of what we call 'modern-day treaties'. So there is reserve land and there is treaty land from long ago, and now there are modern-day treaties.

Part of the lands rights movement led to some of our communities being able to lease land to outside business and to invite non-aboriginal people to build houses and live on reserve land. A lot of economic development for those who were near big communities was generated there. It moved along pretty well. Modern-day treaty land like that under the Nisga'a treaty, which was signed about three years ago, led to an incredible economic boom for the Nisga'a and for the whole of north-western BC. The city of Terrace, the city of Prince Rupert and all of those larger communities nearby are doing very well. The Nisga'a also have other categories of land outside their so-called treaty land. They cannot sell their treaty land, but they have other categories of land that they can develop for fisheries and forest management, and so on. As a result, a lot of good things are happening, not just for the Nisga'a but for everyone. It is the economic driver right now in north-western BC, where the forest economy is floundering and mining is down. Nisga'a development is advancing the area.

We encountered one situation here where the perception by the Northern Territory government is that some development cannot take place without leasing the land. If they could lease the land, housing could move forward in some of the communities. Manley has been asking the question: why is it so important that that be leased? Why can't the money be made available in any event for the housing to take place? What is it that will make a difference there?

That is one issue where there appeared to be a difference here. We could lease land. We can even alienate land, if all the members of a reserve agree. But we cannot necessarily alienate treaty land.

Mr TOLLNER—One of the problems that I see with our land rights act is that it is inalienable, in as much as there is no public land on Aboriginal land rights land. For instance, a government can build a school, a hospital or any sort of centre there, but there is no right of access to that and there is no way of valuing that. The government cannot say, 'This is our school', because it does not sit on a piece of land that they own. And there is no public land. The public do not have right of access on any roads going through land rights areas. Is it the norm around the world for a government to be expected to fund a whole heap of facilities and infrastructure on land that they have no control over?

Prof. Cornell—I do not know if that is the norm or not. In the United States at least, road access is something that would be negotiated between the state government and the Indian nation. They would form an agreement saying that for X number of years this nation agrees to a right of way across its land on these roads. A number of federal facilities that are built on Indian land are built on long-term lease arrangements, where the federal government is essentially coming to an agreement with the indigenous nation about how that land should be used.

In many ways it is taken as a government-to-government relationship: 'If we want the use of some of your assets, let's sit down and negotiate an agreement that gets us what we need and assures you of what you need—one that we can rely on for investment and where we can make the term long enough for it to be in our interest to build that facility.' Those are the kinds of agreements that other governments work out with each other all the time. In the United States, we have generally taken the point of view that we will deal with Indian nations in the same way.

Mr TOLLNER—The land rights act has been operating in the Northern Territory for 25 years, and there is not a single one of those agreements. Is it an evolutionary thing that has

occurred in other parts of the world, or is this a quirky act that pertains just to the Northern Territory of Australia?

Prof. Cornell—I am sure we are the last people to ask about the details of what the obstacles might be. If I were looking into that question, I would ask whether the Indigenous peoples on those lands have in place governing institutions capable of that kind of negotiation and of making that kind of long-term decision. That is exactly what self-governance is about.

If those are things that the Northern Territory or the Commonwealth would like to see happen, a prior step is to say, 'We've got to support the development of governance capacities to get us to the point where we can sit down with one of these groups and create the kinds of agreements we think are important.' I say all that without knowing the legal details of the land rights act or what legal obstacles you might run into in pursuing that kind of agreement. The real questions are: who are the parties that are, ideally, negotiating with each other, and are both of them capable of that kind of negotiation and making those kinds of decisions? If not, how do indigenous nations move to a point where they can engage in that?

CHAIR—I have three quick questions. As I have taken it, the priority for you is the issue of sovereignty. With sovereignty you empower the community, and that is the best way to get the best result. The central government has to be a partner, and that has the underpinning of the cultural relationship and respect for the culture. You can make a comment about that, but can you talk specifically about your research, your Harvard Project faculty and your data collection? I presume the latest data, say, from within the United States and Canada, would be available to us. Can you comment on your research effort and the data you have that is publicly available and available to this committee?

Prof. Cornell—Certainly. The research we have done has had several components. The two primary components have been extensive field research with indigenous nations, specifically trying to discover what works where. We spent a lot of time in the field looking at nations that are successful and also at nations that are not successful, which seem to be having great difficulty. That data does not exist in an easily accessible form, but the results of it certainly do, and there are field notes behind it.

More extensive data is quantitative and includes a significant amount of information on about 70 indigenous nations in the US where we were able to get comparable data. It also includes information—for example, on what appears to predict success in tribally owned and operated enterprises and what the link is between economic development and political structure for those enterprises. We have substantial data on that—quantitative and qualitative—and we would be glad to share all of that with you. One of the most important things coming out of this research is that it has not been purely academic. From the start, it has had a very applied component.

One of your committee members asked earlier about the evolution of the Mississippi Choctaw case. We spend a lot of time telling the stories of success in Indian country; we spend time communicating that within Indian country. That has been a powerful stimulus. Indigenous nations learning what other indigenous nations are doing that works often has the effect of expanding the imagination.

What organisations like Reconciliation Australia are doing in this country—to try to publicise what is working, where it is working and the success stories—is very important. That has been an outcome of the research we have been doing. We would be glad to make that available to you, if it would be useful.

CHAIR—I have a question on banking. I understand that in the United States there is a legislative requirement to offer what we would call a universal service obligation, or a community service obligation. Am I right, and how has that worked?

Prof. Cornell—I am not sure what ‘community service obligation’ is. It is not a term we are familiar with.

CHAIR—We have it here with telecommunications. For instance, where it may not be viable to run a banking service, banks would be required to offer a service, particularly to Indigenous people, in terms of that facility, and there is a kind of—for want of a better phrase—cross-subsidisation from the industry itself. I may not be accurate in that, but I understood there was some requirement for the banking industry to provide that sort of service.

Prof. Cornell—It is not directly comparable. Providing banking services to indigenous communities in the United States has been a problem. There are significant communities with either very limited access to the banking system or no access at all on indigenous lands, and having to travel significant distances to obtain banking services. This is one of the areas where some indigenous nations themselves have moved to solve the problem by forming relationships with banks.

We also have a very small, but growing, number of tribes in the United States that now own banks and in fact offer banking services in tribally owned, federally chartered banks to both indigenous and non-indigenous people. But we do not have a comparable requirement that the banking industry service these communities, and it is a problem.

CHAIR—My last question goes back to my summing up of your belief that the best opportunities to move this whole issue forward lie in community empowerment to make decisions and having central government as a partner, underpinned by the cultural base. I struggle with the question of where the priority is. You make the point continuously: each to their own—each community evolving in a way that suits it. I would like a comment in conclusion about prioritisation. You will probably say you have already done that, but I would like a comment about the priority of capacity building. We have talked about literacy and numeracy, and we have talked about attitude and the role of central government. Can you make a comment about prioritisation?

Mr Sterritt—I am more of a practitioner than anything. I work with communities, and I have deliberately decided that that is where I want to work because that is where the people are and that is where the rubber hits the road. That is where services are or they are not. I have tried to simplify things for myself and for others by saying that there are only two kinds of organisation: there are community organisations, and then there are umbrella organisations.

An umbrella organisation is any grouping beyond the community that tries to meet a need for the community. In Canada, a tribal council or a provincial territorial organisation is an umbrella

organisation, and a national organisation, like the Assembly of First Nations, is an umbrella organisation. Governments are also umbrella. There is talk about regionalisation here. My priority is always the community. If an umbrella organisation is created, it can provide certain umbrella services. But if it is not meeting community needs at some umbrella level or in some other way, it is not an effective organisation.

I also focus on the community for another reason. There is an indigenous brain drain from the community level to regional, provincial and national levels, and we need leaders in the community. If we can somehow deal with community issues, needs and problems and build effective governance, whether it is a community of 50, 100 or 500, we will begin to solve problems. When people can take control of their issues, needs and problems at the community level, even though they create an umbrella organisation for their benefit, I think we are beginning to move forward. That is my focus, and I am dealing with it because, in many ways, others are ignoring that level. I will stop there.

Dr Begay—I appreciate the invitation to appear before this body. The priority in establishment, first and foremost, is taking a risk. It really requires leadership on the part of both non-indigenous leaders and indigenous leaders. Taking the risk of ensuring that there is empowerment in indigenous communities and that governing institutions are established the way indigenous people want them to be established—thinking along those lines—requires a tremendous amount of leadership.

Fundamentally, if a risk is not taken, by both indigenous and non-indigenous leaders, you will have status quo. Things remain the way they are: poverty remains entrenched and educational attainment rates continue to plummet. There is that moral responsibility. It begs the question: what legacy do you want to leave and how do you want to be remembered? Indigenous leaders, and non-indigenous leaders, face that tremendous reality. In terms of priority, the responsibility lies at both ends.

Ms HOARE—I have a brief question on funding arrangements. You made the comparison between the Harvard Project and Reconciliation Australia. Reconciliation Australia was started with a small contribution from the Commonwealth and was then left to raise funds. How is the Harvard Project funded, and do you see a role for government in funding Reconciliation Australia so that it is eventually able to get to where you are?

Prof. Cornell—There is an important difference between the United States and Australia, in that the United States has a substantial system of philanthropic funding by major foundations. The bulk of the Harvard Project's funding came from major foundations, such as the Ford Foundation or the Pew Charitable Trust. There are no comparable opportunities in Australia, as I understand it, or that sector is rather small. Something like Reconciliation Australia, from my understanding, cannot depend on the kind of source we have depended on.

We have received, particularly at the Native Nations Institute, some federal funding from the US government to advance this research and to advance an educational effort designed to make that research available to indigenous leaders who can make the best use of it. The federal government has certainly supported our effort, but the Harvard Project's early growth was supported largely by the philanthropic sector—and I am not sure that there is anything comparable here.

I would guess that Reconciliation Australia, or any other organisation, would not be able to get that kind of funding. It has taken time to accomplish what we have done. The difficulty is that government often wants very quick results, but the kind of research and work that has to be done with Indigenous communities here will require a certain amount of patience. You need to think in the long term.

The Harvard Project has now been in operation for about 17 years. Most of the significant research results began to take shape within about three years, but it has taken a good deal longer to translate that effectively into action in Indian countries. There needs to be a long-term perspective on the funding issue, and it may need to take a form here that is a little different from the form it has taken in the United States.

CHAIR—That raises another interesting issue: the future and how you will continue to roll that information out. Do you have a couple of pointers about the future of the Harvard Project and the couple of things you have in the pipeline—a bit of crystal ball gazing?

Prof. Cornell—We expect to be at this for a long time to come. When you begin to document the successes, indigenous nations that are having difficulty come to you and ask what the key to those successes is and how they can reproduce it. The proportion of research we do and the proportion of hands-on practical work with communities we do have changed. The research component has declined somewhat, simply because the demand from indigenous nations themselves has risen.

We expect to continue this research. There are endless issues out there. We are now very interested in the link between economic success in Indian country and social problems—that is, health care, suicide, domestic violence and issues like that. We have anecdotal evidence that the combination of self-government and economic progress produces significant drops in some of the major social and behavioural problems that we have seen in Indian country.

We want to document that more systematically and see if we are right about the relationships. That is one of the directions we are moving in. We are also very interested in changed intergovernmental relationships, not only between Indian nations and the federal government but also between Indian nations and state governments. That is peculiar to the US situation.

Dr Begay—What still remains is the practical application of the research. That practical application is around executive education and the training of current leaders and up-and-coming leaders. We are also moving in the direction of training non-indigenous leaders and thinking about these types of issues. Hopefully, with enough physical stamina and strength, we will get it done.

CHAIR—That is a great place to conclude. Thank you very much, Stephen Cornell, Manley Begay and Neil Sterritt—and Reconciliation Australia. I also thank the Australian Industrial Relations Commission for the use of their facilities. I wish you gentlemen all the best for your time in Australia.

Resolved (on motion by **Ms Hoare**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.29 a.m.