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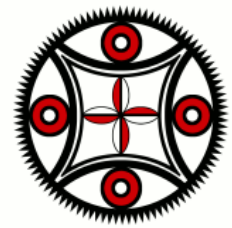

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RECONCILIATION AND THE SUPREME COURT: THE OPPOSING VIEWS OF CHIEF JUSTICES LAMER AND MCLACHLIN
By Kent McNeil

The Supreme Court of Canada has said that Aboriginal rights were recognized and affirmed in the Canadian Constitution in 1982 in order to reconcile Aboriginal peoples' prior occupation of Canada with the Crown's assertion of sovereignty. However, sharp divisions appeared in the Court in the 1990s over how this reconciliation is to be achieved. Chief Justice Lamer, for the majority, understood reconciliation to involve the balancing of Aboriginal rights with the interests of other Canadians. In some situations, he thought this could justify the infringement of Aboriginal rights to achieve, for example, economic and regional fairness. Justice McLachlin, on the other hand, in strongly worded dissent, regarded infringement for such purposes as unconstitutional. In her opinion, reconciliation can best be achieved through negotiation and the time-honoured process of treaty making.

This article will critically examine the contrasting notions of reconciliation of former Chief Justice Lamer and current Chief Justice McLachlin. It will explain why Chief Justice McLachlin's understanding is preferable, and express the hope that the Court, under her leadership, will modify the Lamer Court's approach to justifiable infringement.

"LOOKING AFTER THE COUNTRY PROPERLY": A COMPARATIVE HISTORY OF INDIGENOUS PEOPLES AND AUSTRALIAN AND AMERICAN NATIONAL PARKS
By John Wunder

This comparative study of the modern intersection of Indigenous peoples, nation states and national parks documents the evolving diverse attempts by Indigenous peoples to expand their sovereignty over their homelands and the evolution of new management models that allow Native inhabitants of national parks to have some influence on the policies directly concerning their environments and lives. The essay is derived from fieldwork, interviews, Indigenous writings and extensive analysis of government documents specifically relating to the Pitjantjatjara and Yankunytjatjara Aboriginal peoples and Uluru-Kata Tjuta National Park in Australia, and the Nez Perce peoples and the Nez Perce Historical National Park in the United States.

Australia initially started the process of turning over management of national parks to their Indigenous inhabitants. Of four parks slated for various kinds of Aboriginal management-sharing models, Uluru (previously known as Ayers Rock) in Northern Territory has been the most successful. In 1985, Australia's federal parliament deeded Uluru-Kata Tjuta National Park to its residents, the Pitjantjatjaras and Yankunytjatjaras. The statute required that the new Aboriginal

owners then lease the park back to the federal government, but it also created a Board of Management composed of a majority of Aborigines to construct policies that have attempted to make Uluru-Kata Tjuta into a truly "Aboriginal National Park." This new model fully extending Aboriginal sovereignty has been in operation for 15 years, and a number of changes gradually incorporating the goals and aspirations of the Pitjantjatjara and Yankunktjatjara peoples have graced one of Australia's most well-known tourist attractions.

The closest comparable arrangement in the United States is found at the Nez Perce Historical National Park. This national park, created in 1965 and expanded in 1992, embraces 30 sites in four states (primarily in Idaho and also in Oregon, Washington and Montana). It originally sought to tell the history of the Nez Perce primarily from a non-Nez-Perce, Park Service perspective. While the Nez Perce Reservation resides within the purview of the national park and a number of sites can be found on or near the reservation, Indigenous management or even consultation was initially kept to a minimum. Gradually that has changed, and now there is a federal requirement of consultation and partnership among the Park Service, the states, private site managers and the Nez Perce. For the past 10 years, a new model of Indigenous management has emerged at Nez Perce Historical National Park that may be replicated at other national parks in the United States. Nez Perce partnership, nevertheless, is not yet comparable to Pitjantjatjara and Yankunytjatjara Aboriginal management.

LAW, THEORY AND ABORIGINAL PEOPLES

By Gordon Christie

To some Aboriginal people domestic Canadian law is alien and oppressive. In this paper one source of this perception is explored, the argument digging below the surface of the law to layers of theory and world-view which conflict with the sensibilities of Aboriginal peoples.

I argue that a liberal vision underlies and animates the law, and that while grounded in this vision, the law cannot protect the interests of Aboriginal peoples. In analyzing how the law approaches the protection of Aboriginal interests, an alternative liberal argument focused on group autonomy is also considered. Examining the debate between liberal theorists about how best to protect Aboriginal interests reveals the threat liberalism in general presents to Aboriginal peoples. In adhering to deeper shared visions about the self, the community and the state, and in engaging in the shared mission of transposing these visions onto the lives and worlds of Aboriginal peoples, liberal theorists reveal liberal theory as one source of the perception of oppression.

The perception that the law is oppressive ultimately issues, however, from the law's grounding in a particular intellectual tradition. In exploring an approach highly critical of liberal legal theory, in tracing connections and commonalities between the philosophical groundings of both liberal and critical legal theory, this line of inquiry highlights the cultural divide between Western theorists and the worlds of Aboriginal peoples. Working towards a world in which Aboriginal interests can be appropriately protected does not mean translating these interests into group rights so they can be fit into the matrix of rights in Canada, just as it does not mean understanding these rights as reflective of group autonomy, and does not mean recognizing that the "fluid and dynamic" interests of Aboriginal peoples can be better served through progressive democratic measures. Rather it is essentially a matter of respecting the ability of Aboriginal

peoples to continue to define who they are, a potential for self-definition which includes their capacity to project both their own theories and their particular forms of knowledge.

REFORMING THE INDIAN ACT: FIRST NATIONS GOVERNANCE AND ABORIGINAL POLICY IN CANADA

By John Provart

This essay analyzes the Canadian government's recent efforts to reform the federal Indian Act, a colonial-era statute regulating First Nations life on reserve. The First Nations Governance Initiative suggests that the federal government is still having difficulty coming to terms with the contemporary policy framework in which First Nations – federal government relations operate. The paper looks at Indian Act reform from a historical perspective and explains the impact of more recent developments including the Corbiere decision. The Department of Indian Affairs' efforts to consult with First Nations in the Governance Initiative are explored, as are the effects federal efforts have had on First Nations organizations and the positive development represented by the "Joint Ministerial Advisory Committee" approach to Aboriginal policy-making. The substance of current Indian Act reform proposals is also assessed. Although the author argues that modernizing band governance under the Indian Act as an interim capacity-building measure is an idea with some merit, he concludes that the shortcomings found in Bill C-7 call into question the legality and morality of proceeding with the current proposal.