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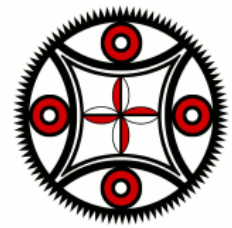

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THE EXPECTATIONS OF JUSTICE
By Denielle Boissoneau-Thunderchild

The aim of this paper is to explore the Crown's obligations to a First Nation claimant leading up to and following the settlement of a specific claim, wherein the specific claim is for the unlawful surrender of Indian reserve lands set aside under treaty. According to the Department of Indian Affairs' published material, specific claims deal with specific actions and omissions of government as they relate to obligations undertaken under treaty, requirements spelled out in legislation and responsibilities regarding the management of Indian assets.

As part of this exploration, this paper will review the unwritten requirement of the federal Specific Claims Policy to obtain modern surrenders in order to settle the Crown's historical breach, the unwritten implementation guidelines for Canada's compensation criteria, and the length of time it takes for lands to be added to reserve where that is a component of the settlement agreement. The paper will begin with a brief historical overview of the development of the federal Specific Claims Policy, and review the larger political and legal context within which it has evolved. The paper will then move on to review the current policy and two case samples of settled unlawful surrender claims related to reserve lands set aside under treaty for Garden River First Nation and Thunderchild First Nation.

NEGOTIATING THE CONSTITUTIONAL CONUNDRUM: BALANCING CULTURAL IDENTITY WITH PRINCIPLES OF GENDER EQUALITY IN POSTCOLONIAL SOUTH PACIFIC SOCIETIES
By Jennifer Corrin Care

One of the most significant challenges currently facing the island states of the southwest Pacific is that of dealing with the competing claims of customary norms and rules on the one hand and contemporary international human rights on the other. Some commentators have assumed these goals to be complementary, a stance which ignores the fundamentally different values involved. Nowhere is the conflict between customary law and human rights more relevantly illustrated than in the area of gender equality. This paper looks at a small sample of South Pacific cases highlighting this conflict and at the way in which the competing norms have been balanced by the courts. The paper considers the constitutional conundrum facing South Pacific nations with a constitutional mandate to preserve a unique cultural identity, which involves a conservative manifesto, whilst upholding human rights agendas developed in a very different context. The dichotomy linking tradition with subjugation and Westernization with freedom and equality is also brought into question.

A People Without Law

By Richard B. Collins and Karla D. Miller

American Indian nations seldom brought lawsuits to enforce their rights prior to the 1960s but have often done so since. Why were so few cases filed until recently? In addition to such obvious barriers as poverty, racial hostility, and smothering federal control, legal and popular literature raised doubt about whether Native American tribes had legal capacity to sue. Our article examines the grounds for this view, from its beginning in 1830 until its last gasp in 1968.

The incapacity question was one of the grounds for tracts in pamphlets and journals published in the 1880s by the self-proclaimed Friends of the Indian, a group of eastern reformers preaching assimilation as the cure-all for Native American grievances. Led by Harvard professor James Bradley Thayer, the Friends provided strong support for the ill-fated allotment policy that undermined tribal societies for over 70 years. The issue also became entangled in the jurisdiction of the Court of Claims over Indian treaty claims and over the notorious "Indian depredation" cases.

We conclude that the incapacity claim never had legal validity but at times suited the political agenda of powerful men and was the subject of careless and ignorant dicta. When the issue reached the U.S. Supreme Court, it was consistently rejected without a dissenting vote. We could not determine whether the capacity error was a serious impediment to Indian claims; proof of a negative is always difficult. But in any case, other barriers were more than sufficient to deny justice to Native American claims.

Kwakwaka'wakw Laws and Perspectives Regarding Property

By Lucy Bell

The Kwakwaka'wakw people, like all Indigenous peoples in Canada, have been dispossessed of their lands. Land is but one form of property. Now Indigenous knowledge and other property are being commodified and appropriated. In response to this problem, I describe customs from Kwakwaka'wakw p'ɘsa (potlatch) that can be used to protect Kwakwaka'wakw property. These customs were followed in my research and writing, which includes a metaphor of Chilkat weaving as my research and writing methodology. I share with my readers knowledge and some Kwa'kwala words shared with me in interviews I conducted. Based on these interviews, I suggest some principles from p'ɘsa to be considered in making proposals for contemporary laws for the protection of Kwakwaka'wakw property.