"Aboriginal Rights":

A Comparative Analysis of Anishinaabe and Canadian Liberal Traditions

by

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Abstract

It is apparent that the philosophies and worldviews of Aboriginal peoples are unique in many ways from that of mainstream Canada. The profundity of these differences is often ignored in the name of the liberal principles of equality and individualism. This thesis sets out to explore the extent of these differences through a comparative analysis of the philosophical bases of the organization of societies in the Anishinaabe and Canadian liberal traditions. Once these differences have been explored, the manifestations of ignoring these differences are exemplified through an examination of the concept of "aboriginal rights" in Canadian legal and political spheres. This study concludes with a discussion of how these two groups may search for common ground in an effort to create a society dedicated to both the freedom and substantive equality of its citizens.

Acknowledgements

This work is dedicated to *nmishoomisag miinwaa nookomisag. Chi-miigwetch.*

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1. Introduction

The relationships between Aboriginal[1] and non-Aboriginal peoples in Canada have undergone several transformations. In the final decade of this century, this relationship continues to be burdened by misunderstanding and ignorance. In the wake of the Oka Crisis, and in an attempt to rectify some of the continuing injustices impacting upon Aboriginal peoples, the federal government commissioned The Royal Commission on Aboriginal Peoples (RCAP). In 1991, four Aboriginal and three non-Aboriginal commissioners undertook the daunting task of completing a comprehensive examination of the issues which confront Aboriginal peoples in Canada, to focus upon the relationship between Aboriginal and non-Aboriginal peoples, and to "propose specific solutions" to these problems.[2] After five years of commissioning reports, studying inquiries, and participating in public hearings, the RCAP released its multi-volume report which encompassed an enormous breadth of information and made numerous recommendations.

Due to the complexity and diversity of the relations between Aboriginal and non-Aboriginal peoples, the RCAP devised a cycle to understand the history of this relationship. According to this typology, this relationship has gone through several stages. First, societies in the Americas and societies in Europe lived in *separate worlds*, each developing in igorance of each other. A period of *contact and cooperation* began in which the Aboriginal and non-Aboriginal peoples developed a relationship of mutual interdependence in economic, social and political spheres. This relationship eventually

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[1]In this thesis, the term "Aboriginal" is meant to encompass all of the terms for the original people of this territory and their ancestors, including status and non-status Indians, Inuit, Metis, Native Canadians, Amerindians, indigenous peoples, and First Nations. The author acknowledges the shortcomings of this term. As one Anishinaabe Elder put it, "We are **not** *Aboriginal* people; we are *Original* people."
[2]Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples: Volume 1* (Ottawa: Minister of Supply and Services, 1996) at 699.

gave way to *displacement and assimilation*, a period in which the Aboriginal nations were losing their economic importance to newcomers, and soon came to be regarded as impediments to settlement and the economic exploitation of their territories. Policies, characterized by the RCAP as "domination and assimilation", were pursued by the colonial and Canadian governments in an effort to bring about the demise of Aboriginal cultures and their distinctiveness as peoples. This policy direction culminated in the 1969 White Paper, which proposed an end to the special status of Aboriginal peoples in Canadian society. This policy proposal ignited an era of political activism among Aboriginal peoples, and the year 1969 marks the beginning of the present stage of *renewal and renegotiation*. This brings us full circle to the spirit of the original relationship.

According to the RCAP, this renewal and renegotiation process should be based upon four principles: mutual recognition, mutual responsibility, mutual respect and sharing, thus abandoning the destructive policies aimed at the disintegration of the cultural distinctiveness of Aboriginal peoples. Referring to the assimilationist nature of Canadian Indian policy, the Commissioners stated:

> Our central conclusion can be summarized simply: *The main policy direction, pursued for more than 150 years, first by colonial then by Canadian governments, has been wrong.*[3]

The federal government's response to the RCAP report came just over one year later in a document entitled *Gathering Strength: Canada's Aboriginal Action Plan*; a plan that appears to be premised upon the RCAP's four principles, including the abandonment

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[3]Canada. Royal Commission on Aboriginal Peoples. *People to people, nation to nation: Highlights from the report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services Canada, 1996) at x.

of the policy of assimilation. For example, in the first section of this document, the "Statement of Reconciliation" states:

> We must... continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish into the future.[4]

This response and the "action plan" of the federal government is a far cry from the degree of change recommended by the RCAP; however it is considered by many to be a start to the renewal process.[5]

Unfortunately, it remains uncertain whether the broader Canadian society shares the sentiments outlined by the federal government. It is evident that to many Canadians, the aspirations and goals of Aboriginal peoples remain elusive and confusing. The release of the RCAP, and the recent release of the federal response to the RCAP report, led to editorials and columns which denounced the continuing special status of some Aboriginal people in Canada. *The Ottawa Citizen*, for instance, responded to the above statement with the following:

> Such a formulation, though common, is reprehensible, because whatever else one may wish to say about the errors of the past, surely the root of them all was to regard 'Indians' as inherently different from 'non-Indians.' Yet that approach, far from being repudiated, remains the cornerstone of Canadian government policy.[6]

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[4]Canada. Indian and Northern Affairs Canada. *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Minster of Supply and Services Canada, 1997) at 5.

[5]Minister of Indian and Northern Affairs Canada, Jane Stewart, is said to have worked closely with the Grand Chief of the Assembly of First Nations, Phil Fontaine, on this "action plan". Chief Fontaine expressed support for the efforts of the Minister and her department. See "Reconciliation divides native groups" *The Ottawa Citizen* (8 January 1998).

[6] "You say 'regret', we say 'apology'" *The Ottawa Citizen* (8 January 1998) A9.

It is apparent that many Canadians remain unconvinced that Aboriginal people differ in any significant way from mainstream Canadian society, and it remains unclear to them why Aboriginal peoples should be treated differently than any other "minority" in Canada.[7]

Further, this misunderstanding is perpetuated by the popular media through the characterization of Aboriginal aspirations as running counter to the principles which underlay Canadian political culture. Aboriginal self-government, for example, is viewed by some as a "racially based concept" which flies in the face of the values of individualism and equality which form the basis of Canada as a liberal democratic society.[8] Further, it is argued that liberal values may be regarded as *universal human values*, as liberal democracy has become the most influential social and political philosophy in the world today. Often, arguments are made utilizing superficial characterizations of Aboriginal societies as "collectivist" and "communal", attributes which are considered inappropriate for the new economic demands of globalization.[9] These arguments are persuasive to many Canadians, as they tend to appeal to what many feel that they know intuitively. Often these arguments are made using very sophisticated terms, which appeal to Canadian sensibilities

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[7]Often these arguments take the form of calls for "equality", and an end to the special status of Aboriginal people in Canada. Differences, if they are acknowledged, are often understated or dismissed, and are not taken seriously enough to lead to fundamental questioning of the structures which continue to define the relationships between Aboriginal and non-Aboriginal peoples. While this thesis does not claim that these perspectives represent the beliefs of *all* Canadians, it is put forth that these arguments are common, and are well represented in the popular media, in academic circles and in public policy discourse. See for example: Selick, Karen, "Praising a 'superior' culture" *The Ottawa Citizen* (30 June 1998) A9; Gibson, Gordon, "Where the aboriginal report takes a wrong turn" *The Globe and Mail* (26 November 1996); "Out of the past: the native Commission," *The Globe and Mail* (23 November 1996); Francis, Diane, "Time to get tough with the natives," *Maclean's* (10 July 1995). See also: Schwartz, Bryan, "Individuals, Groups and Canadian Statecraft" in Devlin, Richard F. ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery Limited, 1991). These arguments also continue to be echoed in public policy discourse. The offical Opposition party, the Reform Party, echoes these sentiments in *The Blue Book:Principles and Policies of the Reform Party of Canada.* (www.reform.ca/bluebook/constitution.html#AboriginalAffairs, accessed October 3,1998).

[8]Gibson, Gordon, "Where the aboriginal report takes a wrong turn" *The Globe and Mail* (26 November 1996).

[9]See, for example, Selick, Karen, "Praising a 'superior' culture" *The Ottawa Citizen* (30 June 1998) A8.

regarding the nature of a liberal democratic society, to a particular understanding of equality, or by creating a stark dichotomy between individual and collective rights. As a result of these arguments, as well as numerous other factors, the confusion regarding the goals of Aboriginal peoples persists.

It is the purpose of this study to delve deeper into the differences between Aboriginal and non-Aboriginal societies in order to conduct a critical analysis of their relationship. It is necessary to look to the broader picture -- to meaningfully and seriously look to the philosophies and world views of both Aboriginal peoples and mainstream Canadian political culture, and to examine the values and principles which underlay political and social structures. Often the elements of political ideology boil down to some basic philosophical questions: What is human nature? What is the proper relationship between the individual and the state? The answers to these questions impact profoundly upon how a society is structured. This study will attempt to elucidate the differences in the world views of these two groups, and how they answer these basic philosophical questions, through a comparative analysis of the Anishinaabe[10] and Canadian liberal traditions (sections three and four).

This study is an attempt to elucidate the foundations upon which Aboriginal peoples and Canadians build their societies in order to challenge those who wish to undermine these differences, and further to exemplify the concrete implications of ignoring differences. This will be accomplished through an examination of the concept of "aboriginal rights".

[10]This thesis will use the term "Anishinaabek" (plural) and "Anishinaabe" (as adjective) to describe the Aboriginal peoples of the Great Lakes region, also called the Ojibway ,Chippewa, Ottawa, Potowatomi, Delaware and Algonquin. The territory of the Anishinaabek covers an expansive area extending from Quebec, west to Manitoba and parts of Saskatchewan, and from northern Ontario south to Michigan, Minnesota and Wisconsin.

Canada is a country which continues to struggle for a national identity. Its evolution as a nation in the latter part of this century may be marked by its attempts at formal constitutional change and development. Dating from Trudeau's efforts to bring about the patriation of the constitution and the addition of a charter of rights, through to the nation-wide referendum on the Charlottetown Accord, Canadians have attempted to guide the development of the nation to coincide with the values and principles considered appropriate to this diverse society. While most of these developments have focused upon the demands of the French-speaking population in Canada, Aboriginal peoples have come to occupy a prominent position in this constitutional discourse.

It is evident through this participation that Aboriginal people have taken up the battle against the effects of colonialism and the continued exploitation of their lands and their peoples through engaging in a "rights" discourse with non-Aboriginal Canadians. It seems that Aboriginal peoples have achieved much through the courts and constitutional reform in terms of bringing their concerns to the country's agenda; however this course of action is not without danger. Currently, in the Canadian political and legal system which defines this discourse, there remains a lack of meaningful consideration of Aboriginal values and perspectives. Aboriginal peoples, in participating in this discourse, have been forced to translate their philosophies and conceptions into mainstream legal and political discourse of constitutionalism, and to build upon the foundation of a non-Aboriginal framework.

Once the discourse enters the arena of "aboriginal rights", we have entered a particular paradigm along with its limitations and boundaries. For example, much of the debate about Aboriginal issues centres upon the tension which exists due to the inclusion

of both collective and individual rights provisions in the Canadian constitution. This debate surrounding the apparent divergence of these two concepts only begins to scratch the surface of what is at issue concerning the aspirations of Aboriginal peoples. Canada, as a liberal democracy, begins from a premise markedly different from Aboriginal world views. The nature of these differences warrants recognition and discussion.

The manifestations of these divergent yet coexistent world views can be exemplified through an examination of the discourse surrounding Aboriginal rights. It is apparent that Aboriginal and non-Aboriginal peoples have profoundly different understandings of this concept. The rights paradigm, as understood by most Canadians, has emerged from seventeenth century notions of natural rights, including the right to property ownership, and is focused largely upon legal discourse. Aboriginal peoples on the other hand, tend to view their rights as rooted in their responsibilities to be stewards of Mother Earth. There are no corresponding concepts in each of these cultures. The sixth section of this study, "Aboriginal Rights", will examine the treatment of the concept of Aboriginal rights in Canadian courts in order to discuss the shortcomings of translating Aboriginal concepts into Canadian legal terms, and the injustices which have resulted from efforts to define and delimit them.

That is not to say that the differences between Aboriginal and non-Aboriginal peoples are so great that these groups cannot hope to understand each other, nor that it may be concluded that there is nothing that can be done to rectify the inequalities of the relationship. We must attempt to identify some commonalities between the philosophies and goals of both Aboriginal and non-Aboriginal peoples to reflect a respect for shared foundations. While it will be established that the world views of these two cultures differ

in fundamental ways, there are some commonalities in goals and values. It will be demonstrated that in addition to the benefits which Canadians have reaped from the lands of Aboriginal peoples, enormous contributions to Canada's political culture have been made by the rich philosophical traditions of the Original Peoples of this territory. These cultures have, and can continue to, impact upon each other in *positive* ways.

This thesis is an effort to discover how the merits of Anishinaabe and liberal traditions may be combined to impact upon Canadians in a positive manner. It is obvious that these groups must continue to coexist and interact; hopefully this interaction can be based upon the principles of mutual respect, recognition, responsibility and sharing, which includes a combined effort to create a society dedicated to the freedom and substantive equality of its citizens.

2. Methodology

This study will conduct a comparative analysis of the Aboriginal (in this case Anishinaabe) and Canadian liberal philosophies in order to discuss the appropriateness of the discourse surrounding Aboriginal rights, and to attempt to locate some common ground between these two different and often conflicting world views. Because of the scope and breadth of this analysis, it necessitates an interdisciplinary approach, utilizing the disciplines of philosophy, law, political science, and anthropology; however this is all encompassed by the culture-based methodology of Native Studies.

"Native studies... in the preferred form draws its vitality and inspiration and cognitive style from the cultural foundations expressed in the traditions and teachings of Native people: a culture-base".[11] A culture-based methodology is premised on the key notion that a person conducting Native studies research must practice, participate and live the culture, and embrace the essence of living oral tradition.

Native studies requires the translation of various elements of Aboriginal epistemology into a written form, in order to bridge the cognitive styles of the Western academic knowledge system and Aboriginal ways of knowing. Undoubtedly one must acknowledge the limitations and shortcomings of this format to effectively relay the teachings of Anishinaabe culture; it is best left to oral teachings and especially to personal experience. One must also acknowledge that the unique challenges of relating Aboriginal epistemology may lead to deviations from traditional academic inquiry.

For example, when discussing Anishinaabe societal structure, it is ineffective to devise a categorized or compartmentalized account of the political, economic and social

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[11]Deleary, Nicholas, *The Midewiwin, An Aboriginal Spiritual Institution, Symbols of Continuity: A Native Studies Culture-Based Perspective* (M.A. Thesis, Carleton University, 1990) at v.

spheres. Contrary to this Western means of analysis, which includes a strict separation of religion and state, when analysing Anishinaabe society one must undertake an all-encompassing world view. The use of the term "world view" is meant to take into account the fact that analysis of Anishinaabe society does not entail an examination of only political ideology or religious belief; examination of Anishinaabe world view requires a change in mind set, and a recognition of the fact that the ways in which people of various cultures experience and relate to the universe can be dramatically different. The term "world view" is necessary to this type of study because it transcends merely the political, economic and social aspects of a society and takes a more holistic approach.

> The notion "world view" denotes a distinctive vision of reality which not only interprets and orders the places and events in the experience of a people, but lends form, direction, and continuity to life as well. World view provides people with a distinctive set of values, an identity, a feeling or rootedness, of belonging to a time and place, and a felt sense of continuity with a tradition which transcends the experience of a single lifetime, a tradition which may be said to transcend even time.[12]

Redfield defined "world view" most succinctly when he stated: "world view attends especially to the way a man, in a particular society, sees himself in relation to all else".[13]

The profundity of the differences in world views can extend into how reality itself is perceived. The philosophic tradition of exploring metaphysics, to discover the *nature of reality itself*, may be impacted by culture. It has been put forth that even metaphysics is culturally constituted; that those of different cultures may structure their reality differently from those of other cultures. This has been coined "*ethno*metaphysics". Overholt and

[12] Ortiz, Alfonso, "Look to the Mountaintop" *Essays in Reflections.* ed. E. Graham Ward (Boston: Houghton Mifflin, 1973) qtd. in Beck, Peggy V. *et. al., The Sacred: Ways of Knowledge, Sources of Life.* redesigned edition (Tsaile, Arizona: Navajo Community College, 1992) at 6.

[13] Redfield, Robert, "The Primitive World View" *Proceedings of the American Philosophical Society* (96:30-36, 1952). qtd. in Hallowell, A. Irving, "Ojibwa Ontology, Behaviour, and World View," *Teachings from the American Earth: Indian Religion and Philosophy.* eds. T. Tedlock & B. Tedlock (New York: Liveright Press, 1992) at 142.

Callicott explain :"One of its [ethnometaphysics] implicit assumptions is that all people do not cognitively organize human experience in the same way and thus that there exists a variety of 'world views', perhaps as many as there are cultures".[14]

This study will attempt to explore how the Anishinaabek see themselves in relation to their universe, how they operate from within a particular world view and how this differs profoundly from other non-Aboriginal cultures. In particular, the rights and responsibilities of the individual within the community will be explored.

This examination of the Anishinaabe world view will rely on both written and oral accounts. The works of Anishinaabe authors provide written accounts of the heritage and tradition of Anishinaabe thought; in particular the works of Basil Johnston, James Dumont and Edward Benton-Banai will be of importance to this study. These authors provide accounts of Anishinaabe philosophy in a manner which bridges the teaching styles of Anishinaabe and Western world views. In particular, Johnston provides written accounts of Anishinaabe oral history, prayers, songs, and ceremonies. He relates his teachings in the traditional way of telling stories -- stories which are multifaceted, seemingly simple but with numerous levels of meaning, stories whose lessons can only be discovered by pondering their messages within oneself.

The examination of Anishinaabe world view will also make limited use of some anthropological works. The work of A. Irving Hallowell, an anthropologist who studied and lived with Anishinaabe people in Manitoba and Wisconsin in the early half of the

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[14]Overholt, Thomas W. & J. Baird Callicott, *Clothed-in-Fur and Other Tales: An Introduction to an Ojibwa World View* (Washington: University Press of America, Inc. 1982) at xi. For further discussion of "ethnometaphysics" and Aboriginal world view, see: McPherson, Dennis H. & J. Douglas Rabb. *Indian from the Inside: A Study in Ethno-Metaphysics* (Lakehead University. Centre for Northern Studies. Occasional Paper #14 1993).

twentieth century, will provide insight into the traditional beliefs and practices of the Anishinaabek. The works of anthropologists are often considered ethnocentric and ineffective at grasping the key aspects of Aboriginal cultures simply because of the contrast in Western ways of learning, researching, and compartmentalizing, and the imposition of these elements of Western analysis on non-Western societies. While Hallowell's academic training is readily evident throughout his work, his analyses are remarkable in that he repeatedly acknowledges the depth and profundity of the differences between his own world view and that of the Anishinaabe people with whom he interacted; this lends legitimacy to his work.[15]

Because this study is to be conducted utilizing a culture-based methodology, I will also use my own life experiences as an Aboriginal woman, and the knowledge which I have gained from the oral teachings of Elders. These will be interspersed throughout the section examining Anishinaabe world view. Again, I would like to acknowledge the limited nature of this study, and the limited knowledge of myself as a young person. Even if I did have the capabilities, it would be impossible to include a comprehensive examination of the richness of Anishinaabe culture and knowledge within this brief written account. However, it will be shown that even a limited examination will demonstrate the vast differences in world views of the Anishinaabek and mainstream Canadian society.

The fourth section of this paper will contrast this account of the Anishinaabe tradition with an examination of the philosophical basis of Canada as a liberal democracy.

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[15]For example, Hallowell expressed doubt regarding the effectiveness of conventional academic inquiry into the world of the Anishinaabek: "We are confronted with the philosophical implications of their thought, the nature of the world of being as they conceive it. If we pursue the problem deeply enough we soon come face to face with a relatively unexplored territory -- ethnometaphysics. Can we penetrate this realm in other cultures?" in Hallowell, A. Irving, "Ojibwa Ontology, Behaviour and World View" in Tedlock, D. & Tedlock, B., eds., *Teachings from the American Earth: Indian Religion and Philosophy* (New York: Liveright Press, 1982) at 143.

It will attempt to uncover and elucidate the values upon which Canadian society is built. This will be done by examining the liberal tradition, and the work of contemporary liberal philosophers to explore how liberals see individuals "in relation to all else." The source of material regarding the Canadian liberal tradition will come from contemporary liberal philosophers, in particular John Rawls, C.B. Macpherson, Will Kymlicka, James Tully, Samuel Laselva, and Ronald Manzer. This analysis will be supplemented by communitarian critiques of liberalism, including the works of Charles Taylor and Michael Sandel.

To attempt to enumerate a list of Canadian "values" is a daunting task; it is a highly contested area and has been the subject of much reflection. Nonetheless, there are a few basic philosophical foundations which may be identified and commonly accepted; that Canada subscribes to a liberal democratic tradition is one of them. Further, when contrasted with a divergent philosophical tradition such as the Anishinaabe world view, these values will come into clearer focus.

Key to this study will be an examination of the "social contract" theory which has been used by liberal theorists over time in an attempt to explain their conceptions of the basis for organizing society. From Hobbes and Locke, to Rawls's *Theory of Justice,* liberal theorists have used "social contract" theory and the "state of nature" as methodological tools to understand the proper organization of society, including the rights and duties of individuals, and the proper relationship between the individual and the state. Examination of these elements will serve to draw out liberal theory's conceptions of human nature.

This study begins with the assumption that every political philosophy has as its basis a particular conception of human nature. Macpherson states that "to show that a model of a political system or a society... is practicable ... one must make some assumptions about the human beings by whom and with whom it is going to run. What kind of political behaviour are they capable of?"[16] Ultimately, any theory exploring the proper organization of society, and the appropriate relationship between the individual and the state, has as its starting point a belief concerning human nature. It is useful to examine these underlying values and assumptions of political structures and social organization in order to effectively assess their implications and therefore, their appropriateness.

Once these differing philosophies have been examined in relative isolation, a historical account of the relationship between Aboriginal and non-Aboriginal peoples will be outlined, with particular attention to the discourse surrounding "aboriginal rights" (section five). This examination will serve to exemplify the manifestations of the differing world views, or ethnometaphysical understandings, of these groups. The historical relationship will be explored in a chronological manner, utilizing the historical methodology devised by the RCAP, which divides the relationship into four stages: separate worlds, contact and cooperation, displacement and assimilation, and renegotiation and renewal. Particular attention will be paid to the stage of renegotiation and renewal, as it is in this period that the concept of Aboriginal rights gains prominence in Canadian political and legal discourse surrounding Aboriginal issues.

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[16]Macpherson, C.B. *The Life and Times of Liberal Democracy*, (Oxford: Oxford University Press, 1977) at 4.

A prolific amount of scholarly work has been generated regarding the legal definition of constitutionally guaranteed "aboriginal rights".[17] Further, there has been much debate and discussion regarding the inclusion of Aboriginal rights, as collective rights, within a liberal framework.[18] Discussions of these types have tended to dominate the discussion regarding the issues which impact upon Aboriginal peoples, and their relationship to non-Aboriginal Canadians. While this is helpful, it is evident that much of the discourse surrounding these issues takes place within the narrow confines of the rights paradigm, with its culturally constituted underlying assumptions, in which the participants are unable (or unwilling) to meaningfully encompass Aboriginal world views.

This study is an attempt to uncover and discuss this inequity. It will follow the lead of Mary Ellen Turpel who has effectively raised questions regarding the cultural hegemony of legal discourse in general, and the Charter of Rights and Freedoms in particular.[19] In her article, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" Turpel conducts a critical analysis of legal and constitutional discourse to demonstrate that there remains a lack of meaningful consideration of the values and perspectives of "others", especially Aboriginal peoples.

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[17]See: Asch, Michael & Patrick Macklem, "Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*" (1991) XXIX:2 Alta L.R. 498-517;Barsh, Russel Lawrence & James Youngblood Henderson, "The Supreme Court's *Van der Peet* Trilogy: Native Imperialism and Ropes of Sand" (1997) 42 McGill L.J. 993-1009;
Bell, Catherine, "New Directions in the Law of Aboriginal Rights" (1998) 77 The Canadian Bar Review;
Kulchyski, Peter, ed., *Unjust Relations: Aboriginal Rights in Canadian Courts* (Toronto: Oxford University Press, 1994); Morse, Bradford W., ed., *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1991)

[18]See Danley, John. R., "Liberalism, Aboriginal Rights and Cultural Minorities" (1991) 20 Philosophy and Public Affairs, 168-185; Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Spaulding, Richard, "Peoples as national minorities: A review of Will Kymlicka's arguments for Aboriginal rights from a self-determination perspective" (1997) 47:1 U. of T. Law Journal.

[19]Turpel, Mary Ellen, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" in Devlin, Richard. ed. *Canadian Perspectives on Legal Theory* (Toronto:Emond Montgomery Publications Limited, 1991).

"The rights paradigm and interpretative context of Canadian constitutional law is so unreceptive to cultural differences that, as a result, it is oppressively hegemonic in its perception of its own cultural authority."[20]

While acknowledging cultural differences is the first step towards mutual recognition and respect, it is necessary to extend these efforts to a search for common ground. What will become evident is that despite the enormity and profundity of the differences in world views, it is possible to locate some *common goals* in these two philosophic traditions. It is hoped that by recognizing, identifying, and discussing these divergent but co-existing world views, one can make an effort to devise how they might co-exist in a more respectful and mutually beneficial manner.

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[20]Ibid. at 527.

3. Anishinaabe Tradition

> We have something they do not know about -- we have our teachings, our value systems, our attitudes, our clan systems, and on and on... Let's educate them... We are different. We have a different perspective on life and all creation... We have different and wonderful teachings to share that are simple to live by, reasonable, sensible, for the good of all within the community, full of respect.
>
> -Merle Assance-Beedie
> Orillia, Ontario
> 14 May 1993[21]

The Anishinaabek Gift of Vision

It is a legitimate exercise to examine the philosophical bases of societies and the purported principles and values which underlay social structures. In terms of mainstream Canadian political culture, much academic writing has been devoted to the identification of the appropriate values of Canadian society.[22] However, there has been a lack of meaningful consideration of the philosophical bases of the founding societies of the territory -- namely, the indigenous nations occupying the area now known as Canada.

Because of the diversity of the indigenous nations and communities, it is necessary in a limited study such as this to focus upon only one of these groups. This study will focus upon the traditions of the Anishinaabe people.[23] While the traditional values and philosophical perspectives of the Anishinaabek remain intact, they continue to exist in varying degrees of practice across different communities. Undoubtedly, there has been

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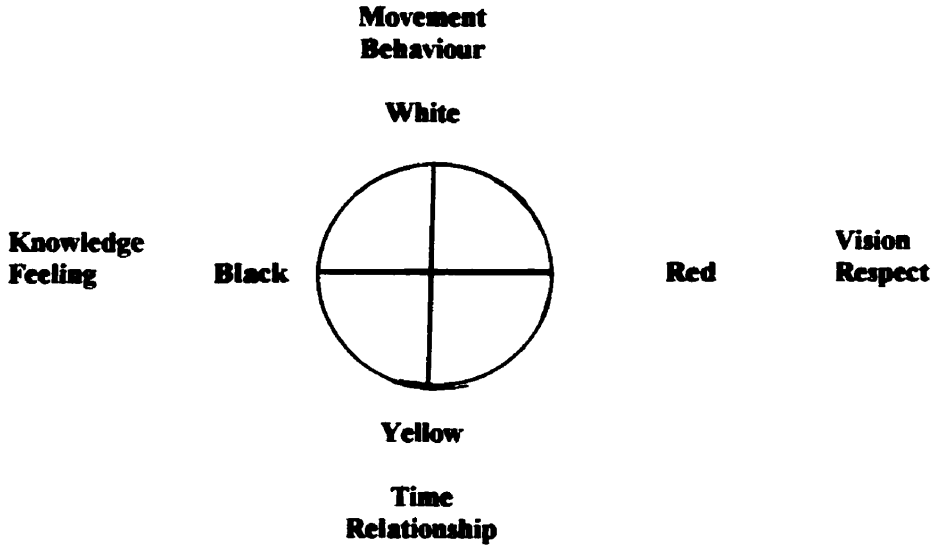
[21]Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples: Volume 4* (Ottawa: Minister of Supply and Services, 1996) at 1.

[22] See Cairns, Alan C., *Reconfigurations: Canadian Citizenship & Constitutional Change*. ed. Douglas E. Williams (Toronto: McClelland & Stewart Inc., 1995); Laselva, Samuel V., *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal & Kingston: McGill-Queen's University Press, 1996); Lenihan et. al. *Canada: Reclaiming the Middle Ground.* (Montreal: IRPP, 1994); Webber, Jeremy, *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (Montreal & Kingston: McGill-Queen's University Press, 1994).

[23]See note 9.

influence upon the Anishinaabe world view by the experience of contact and interaction with different groups of people. This is a truism for all cultures; none remain static or frozen within a particular time frame. Nonetheless, this study will take as an underlying premise that it is still possible to discuss a vibrant Anishinaabe world view, and to outline some of the underlying values of that world view which continue to manifest themselves today.

Anishinaabe people characterize their particular world view as emerging as a gift from the Creator. This teaching is transmitted through a pedagogical tool called the medicine wheel, which is symbolically represented as a circle that is quartered with two lines.



Source: Dumont, James. "Justice and Aboriginal People," in Canada. Royal Commission on Aboriginal Peoples. *Aboriginal People and the Justice System* (Ottawa: Minister of Supply and Services, 1993) at 53.

The four directions or points on this wheel represent, among other things, the four colours of human beings. According to this typology, each of these four colours -- red, white, black, and yellow, were granted gifts from the Creator. Those from the Red direction,

Aboriginal peoples, have been endowed with the gift of "Vision". "This is both his special way of 'seeing the world' as an Aboriginal person, and the capacity for holistic or total vision."[24] This vision entails the ability to recognize the interrelatedness of all that is; a holistic vision which has been characterized as the ability to see three-hundred-and-sixty degrees or in a circular vision, rather than the linear type of vision that is said to characterize the white direction. Numerous anthropological and ethnological studies have recognized this concept as central to the Aboriginal world view.[25]

Again it should be stressed that this differs profoundly from most non-Aboriginal cultures. While Anishinaabe people talk of the interrelatedness of all, due to their particular ethnometaphysical understandings of the world, this may include "other-than-human persons" or spiritual beings in their social relations. When Anishinaabe people talk of the interrelatedness of all, this extends to everything in the universe; that is everything in the *Anishinaabe* universe.

Basil Johnston, an Anishinaabe ethnographer, explains for example the existence of *manitous*, which refers to the spirits infused by Kitche-manitou (the Creator) in varying degrees into beings and objects. He explains how "Kitch-manitou infuses everything and everyone with manitou-like attributes and principles that imparted growth, healing, character, individuality, and identity... Men and women felt the presence of the manitous all around them."[26] This spiritual and supernatural essence also exists in objects which,

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[24]Dumont, James. "Justice and Aboriginal People," in Royal Commission on Aboriginal Peoples. *Aboriginal People and the Justice System*. (Ottawa: Minister of Supply and Services, 1993) at 23.

[25]See Hallowell, Irving, *The Ojibwa of Berens River, Manitoba: Ethnography into History* (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1992); Johnston, Basil, *Ojibwe Heritage*. (Toronto: McClelland & Stewart Inc., 1976); Sioui, Georges, *For an Amerindian Autohistory* (Kingston/Montreal: McGill-Queens University Press, 1992).

[26]Johnston, Basil, *The Manitous: The Spiritual World of the Ojibway* (Toronto: Key Porter Books Limited, 1995) at xx-xxi.

from a Western world view, would be considered inanimate. For example, certain stones are attributed manitou-like characteristics.[27] Further, plants, animals and seemingly "inanimate" objects such as the sun, moon or earth are referred to according to familial relations: "brother wolf", "father sun", "grandmother moon", and "mother earth".

It is necessary to the well-being of individuals and communities to have good relations with the manitous; the spirit world forms a crucial part of the social relations of the Anishinaabek. This particular world view is reflected in the behaviour and conduct of the Anishinaabek.

> ... at the level of individual behaviour, the interaction of the Ojibwa with certain kinds of plants and animals in everyday life is so structured culturally that individuals act as if they were dealing with persons who both understand what is being said to them and have volitional capacities as well.[28]

Stemming from this ability to see the interrelatedness of all -- including plants, animals, insects, human beings, the manitous and so on, comes a profound *respect* for all within the circle of life. Dumont defines this respect as "an honouring of the harmonious interconnectedness of all of life which is a relationship that is reciprocal and interpersonal".[29] This leads to a desire to live in *harmony* with all. The strong value placed upon the values of harmony and balance translate into certain conduct and beliefs. For example, illness is attributed to a lack of balance in either the physical, spiritual, emotional

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[27]Dickason, Olive, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1992) at 80.

[28]Hallowell, Irving, "Ojibwa Ontology, Behaviour, and World View," *Teachings from the American Earth: Indian Religion and Philosophy*. eds. T. Tedlock & B. Tedlock. (New York: Liveright Press, 1992) at 160.

[29]Dumont, James. "Justice and Aboriginal People," in Royal Commission on Aboriginal Peoples, *Aboriginal Peoples and the Justice System* (Ottawa: Minister of Supply and Services Canada, 1993) at 27.

or mental aspects of the individual. Reciprocity is also key in this conception of harmony and balance. For example, when picking plants for medicinal purposes, Anishinaabe people consider it proper to first lay down an offering of tobacco in thanksgiving to Mother Earth and the family of plants for what is being taken away.

This understanding of the interrelatedness of all, and the resulting respect for that circle of life, leads to a special relationship to the land. This is near universal to indigenous people around the world. Anishinaabe people feel a tremendous connection to the land. It is believed that the Creator gave the land in sacred trust to all living beings; this includes plants and animals as well as human beings. In the Anishinaabe world view, human beings are not masters of the universe with everything for their use and exploitation. The Anishinaabek understand themselves to be the "youngest brother" in creation. This means that other parts of creation, such as the plant life, could continue to live without us, as could the animal world. We, as human beings however, could not continue without these other parts of creation. This humility and respect leads to a strong belief in the responsibility to be caretakers of Mother Earth.

This stewardship relationship to the land precluded property ownership as it is understood by Eurocanadians.[30] Johnston explains how the Earth is our mother; as in human families, a mother may have several children however she nourishes and cares for them all. All of her children are entitled to her gifts. Just as no one child can claim more

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[30]One must be careful not to overstate or over generalize this point. Anishinaabe families had their own trap lines, usually passed through generations to family members. See Hallowell, Irving A., *The Ojibwa of Berens River, Manitoba: Ethnography into History* (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1992) at 44-46. Also in negotiation of treaties for their territory, it was clear that the Anishinaabek expressed ownership over their territory, and expected the economic benefits from resource extraction of their lands to go to their own people. See Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples: Vol. 1.* Ottawa: Minister of Supply and Services Canada, 1996 at 165-167; also Dickason, Olive, *Canada's First Nations: A History of the Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart Inc., 1992) at 254.

than any of the other siblings from their mother, so too can no person demand more for himself or herself from our Mother Earth than for others. "The principle of equal entitlement precludes private ownership... No man can possess his mother; no man can own the earth".[31]

In sum, the Anishinaabe vision entails a holistic understanding of the interrelatedness of all. This understanding leads one to respect all within the circle of life, and to value harmony, balance and reciprocity. These values manifest themselves time and again in behaviour and social relations of the Anishinaabek.

The Anishinaabe Individual

Where does the human individual fit into this world view? What are the responsibilities to be borne by each individual? Do these infringe on the individual's freedom to fulfil his or her individual capacities? In responding to these questions, a certain paradox seems to emerge: for while there is indeed a strong tie to community and an important value placed upon honouring responsibilities to family and community, in the Anishinaabe world view, the individual remains sacrosanct. In terms of roles and responsibilities of the individual, the Anishinaabek maintain utmost respect for freedom and autonomy. A manifestation of this belief has been termed by the late Dr. Clare Brant as "the ethic of non-interference". This concept describes how, because of the strong belief in the autonomous will of individuals, many Aboriginal people are loathe to confront people, or even to give advice. "To interfere or even comment on...[other's] behaviour is considered rude".[32]

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[31]Johnston, Basil, *Ojibwe Heritage* (Toronto: McClelland & Stewart Inc., 1976) at 25.

[32]Ross, Rupert, *Dancing with a Ghost:Exploring Indian Reality* (Markham: Reed Books Canada, 1992) at

This concept is reflected in the behaviour and social structures of the Anishinaabek. In education for example, Elders relate the oral teachings through stories. These stories are seemingly simple, but have many layers of meanings and insights. They are almost always left open-ended, without a defined "moral to the story" to conclude its meaning. It is felt that each individual must interpret and extract particular knowledge on their own volition, and according to their own gifts and understanding at that time. This precludes any imposition upon individual will.

This is key to Anishinaabe life. The process of self-actualization, or what Couture calls "being-becoming"[33], is extremely important to the Anishinaabek and is reflected in their social and cultural structures. Ermine expresses this as a concern for the inner journey for knowledge and insights into existence, as opposed to the Western scientific quest for knowledge in the outer world. As Ermine discusses, there are social institutions in place which aid individuals to seek out their personal visions, thus to fulfil their individual capacities. Seeking a personal vision, sweat lodge ceremonies, fasting, naming ceremonies, are all a part of being-becoming.

> The greatest legacy of our ancestors is in what they discovered within individuals of tribal communities. "Mamatowisowin" is the capacity to connect to the life force that makes anything and everything possible. The recording of ancestral pioneering expeditions and *associated structures* helped individuals hone their self-development by developing "mamatowisowin" through dreams, visions, and prayer. The culture of the Aboriginal recognized and affirmed the spiritual through practical applications of inner-space discoveries.[34] [emphasis added]

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[33]Couture, Joseph. "Traditional Native Thinking, Feeling and Learning," in Friesen, John W. , ed., *The Cultural Maze* (Calgary: Detselig Enterprises Ltd., 1991) at 7.

[34]Ermine, Willie, "Aboriginal Epistemology," in Marie Battiste & Jean Barman, eds. *First Nations Education in Canada: The Circle Unfolds* (Vancouver: University of B.C. Press, 1995) at 110.

Thus the community life reflects a profound respect for the individual, and the importance of the individual to seek out his or her own path.

As Hallowell explains, this respect for individual will was also reflected in the strong emphasis on self-reliance and moral responsibility, and the reliance on inner controls rather than outer coercion.

> Correlated with this system of sanctions was the absence of any organized superordinate modes of social control... There was no council of elders or any forum in which judgement could be passed upon the conduct of adults. No institutionalized means existed for the public adjudication of disputes or conflicts of any kind. [35]

That is not to say that the Anishinaabek lacked a system of governance; nor that they subscribe to an anarchist philosophy. Rather, their system of governance reflects the strong ties of kinship, and the close connection to the natural world.

Much of the knowledge of the Anishinaabek emerges from their connection to the natural world -- in this case, they turn to the natural world for knowledge regarding the appropriate way to structure their society. The clan system is a key element in Anishinaabe societal structure. Clans are represented by totems, usually a bird, animal or fish, whose behaviours, mannerism and general characteristics are reflected by certain families. Each clan has a certain social responsibility. Benton-Banai provides the following teaching of the seven original o-do-i-daym-i-wug (clans)[36]:

Ah-ji-jawk (Crane) - chieftanship
Mahng (Loon) - chieftanship
Gi-goon (Fish) - intellectuals
Mu-kwa (Bear) - police and herbal medicine people
Wa-bi-zha-shi (Martin) - warriors

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[35]Hallowell, Irving A., *The Ojibwa of Berens River, Manitoba: Ethnography into History.* (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1992) at 93.

[36]Benton-Banai, Edward, *The Mishomis Book: The Voice of the Ojibway* (Wisconsin: Indian Country Communication Inc., 1988) at 74.

Wa-wa-shesh-she (Deer) - gentle people
Be-nays (Bird) - spiritual leaders

This system provided cohesion among the largely autonomous families and communities, as well as providing identity and responsibility for individuals.[37] Clan affiliation is extremely important to the identity of the individual. Johnston describes how one's totem, or "dodaem", traditionally would be the primary way to identify oneself to strangers. Further:

> the evidence is strong that the term "dodaem" comes from the same root as do "dodum" and "dodosh". "Dodum" means to do or fulfil, while "Dodosh" literally means breast, that from which milk, or food, or sustenance is drawn. Dodaem may mean "that from which I draw my purpose, meaning, and being.[38]

While the largely autonomous families and communities of the Anishinaabek shared a language and a common cultural heritage, there was little sense of tribal unity across their wide expanse of territory. The system of clan affiliation provided the necessary cohesion. For example, Johnston and Hallowell both describe how it traditionally was common practice to treat any member of same clan as immediate family, even if biologically, there was no relation between persons.[39]

The workings of the clan system are integral to the traditions of governance. For example, as Johnston explains, positions of leadership traditionally were chosen only according to circumstance and need; positions were neither permanent nor constant. The leader's limited power would lie only in his ability to persuade others to follow. Leaders lacked any coercive power, and the position could be withdrawn simply by

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[37]Johnston, Basil, *Ojibwa Heritage* (Toronto: McClelland & Stewart Inc., 1976) at 72-73.
[38]*Ibid.* at 61.
[39]See Johnston, Basil, *Ojibwa Heritage* (Toronto: McClelland & Stewart Inc. 1976) at 59-60; and Hallowell, Irving A., *The Ojibwa of Berens River, Manitoba: Ethnography into History* (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1992) at 50-51.

non-compliance on the part of the extremely autonomous individuals and families. Johnston explains how the Anishinaabek turn to birds for their knowledge of the role of leaders. Birds require leaders only intermittently (seasonally), and different species follow different leaders to the same destination. "The safety and autonomy of the species is best served by following diverse paths in small units". [40] It is because of this that leaders are generally chosen from the bird clan.

Because of this particular world view, it is impossible to have a strong hierarchy of authority in place; the autonomy of the Anishinaabe individual and community is too great. Johnston explains why he believes the Anishinaabek cherish this freedom and autonomy:

> ...despite the traditional communal spirit and mode of life, the Anishinaube people championed and upheld the importance of individuality and personal independence on the promise that the more self-reliant and free the individual, the stronger and better the well-being of the community.[41]

In summary, stemming from their particular world view, Anishinaabe people understand the interrelatedness of all, and their place within that harmonious whole. This gift was given to them by the Creator, and a natural law emerges which:

> gives direction to individuals in fulfilling their responsibilities as stewards of the earth, and by extension, other human beings. The law tells people of how to conduct themselves in relation with one another, and with the rest of creation.[42]

Anishinaabe world view involves a sense of responsibility to community, and a particular understanding of the role and responsibility of the individual in society.

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[40]Ibid. p. 62

[41]Johnston, Basil, *The Manitous: The Spiritual World of the Ojibway* (Toronto: Key Porter Books Limited, 1995) at xix.

[42]Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples: Volume 2. Part 1.* (Ottawa: Minister of Supply and Services Canada, 1996) at 120.

Discussions of this type often come down to some very basic philosophical questions: what is the proper role of the state? An even more basic questions arises: What is human nature? Rupert Ross has reached the conclusion that in terms of the basic human nature, Aboriginal people would "define their role not within anything remotely like the doctrine of original sin, but within another diametrically opposed doctrine ... the doctrine of original sanctity". [43] From his experience with Aboriginal peoples and especially the role of Elders, Ross has come to believe that Aboriginal people sustain a belief in the inherent goodness of all human beings. Elders, in treating those charged with criminal offences, make deliberate attempts to improve the self-esteem of the "offenders", reminding them of their potential for goodness and their capacity to move towards self-fulfilment. This is based on a constant emphasis on respect for others, and for oneself.

The human condition as understood by Anishinaabe people is the pursuit of the good life or *bimaadziwin* based upon a respect of the interrelatedness of all of creation. That is not to say that a life based upon harmony and reciprocity is easily achieved; it is part of a journey to self-fulfilment. Perhaps Ross' theory of "original sanctity" is an overstatement. Anishinaabe people do not put forth the idealistic vision of co-operative and selfless beings (which seems counter-intuitive to today's sensibilities). Rather the Anishinaabe philosophy seems to encompass the idea that most human beings try to do their best, but often make mistakes. This is reflected in the character of Nanabush, one of the manitous which figures largely in the Anishinaabe oral teachings. Nanabush is part spirit and part man. Like humans, Nanabush can be good, and wise; however he can also be cruel, foolish or ridiculous, very much reflecting the human condition. Benton-Banai

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[43]Ross, Rupert, *Dancing with a Ghost:Exploring Indian Reality* (Markham: Reed Books Canada, 1992) at 169.

teaches that we all have "twins"; as in nature, within everything there is the potential for good and bad. For example, fire can provide warmth, however it also contains the power for destruction.[44] Taking this lesson from nature, the Anishinaabek recognize the complexity of the human condition, and structure their society based upon this understanding.

Anishinaabe and other indigenous societies honour the journey to self-fulfilment; this is key to Anishinaabek community life. Ceremonies such as the vision quest, prayers and ceremonies, and the relating of teachings, all reflect the importance of this journey to the Anishinaabek.

> The Anishnabeg's society was based upon what he considered to be his basic rights; his relationships upon the preservation of his personal growth to grow in soul-spirit and in accordance with the world.[45]

It is apparent that Anishinaabe traditions of governance are premised upon a particular world view which reflects a certain ethnometaphysical understanding. The individual remains paramount, but due to understandings of the universe, this individual is seen to be embedded within a harmonious and interrelated whole, leading to strong emphasis on the values of harmony and reciprocity.

This Anishinaabe world view is now in coexistence with a people who espouse the principles of a liberal tradition, a philosophy which also respects the moral equality of individuals. If both Anishinaabe and liberal philosophical traditions share a belief in the paramountcy of the individual, where do these philosophies diverge?

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[44]Benton-Banai, Edward, *The Mishomis Book:The Voice of the Ojibway* (Wisconsin: Indian Country Communication Inc., 1988) at 17.
[45]Johnston, Basil. *Ojibway Heritage* (Toronto: McClelland & Stewart Inc., 1976) at 79.

4. Liberal Tradition

Historical Roots of Liberalism

Canada has characterized itself as a liberal democracy, dedicated to the equality of individuals and the protection of fundamental rights and freedoms. Liberal democratic principles were further entrenched in Canadian political culture sixteen years ago under the leadership of Pierre Elliot Trudeau, a self-proclaimed humanist liberal dedicated to the pursuit of the "just society", with the patriation of the Canadian constitution and the addition of the Charter of Rights and Freedoms. Much of this discourse about "rights" and "democracy" is now taken by most Canadians to be self-evident and natural; however, it is necessary to examine the premises upon which Canadian political structures and institutions operate. Now that the Anishinaabe perspective has been outlined, it is useful to examine the philosophical basis of liberalism, and to question its underlying values and assumptions.

Liberalism emerged in it's first forms in seventeenth century Europe. Classical liberals devised an individualistic view of society in response to religious and civil wars, and the emergence of new forces of commercial capitalism within a hierarchically structured feudal society.[46] To break from the traditional constraints of the feudal system, liberal political philosophy began to "approach people, not as members of traditional communities with duties and rights set by birth, but as individuals responsible for their own destiny and making their own success or failure by their own efforts".[47] Key to this new individualism was a belief in the moral equality of individuals: "part of the idea of

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[46]Tully, James, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993) at 10.

[47]Qualter, Terence, *Conflicting Political Ideas in Liberal Democracies* (Terence H. Qualter, 1992) at 28.

being moral equals is the claim that none of us is inherently subordinate to the will of others, none of us comes into the world as the property of another, or as their subject".[48]

In this formulation, each individual has "rights" which are natural attributes of human beings by virtue of their moral equality. In the classical liberal sense, rights are essentially "negative" rights; that is, they allow individuals to prevent the state from interfering with certain aspects of their personal freedom. "Rights place a kind of fence around the individual, creating a 'sphere of privacy' within which all individuals have an equal right to pursue their personal interests as they see fit".[49] Because liberal theory "grew up" with the new forces of capitalism, these rights and freedoms are often equated with the tenets of free market capitalism.[50]

By mid-nineteenth century, some liberals, such as John Stuart Mill, began to reject certain aspects of classical liberalism. As Lenihan explains: "Reformers established a link between individual freedom and social equality. The liberal state must be more than a *protector* of individual freedom; it must also be a *promoter* of it".[51] From this commitment to social equality emerged a conception of liberalism as no longer committed solely to the freedom of individuals to compete according to market rules, but rather to form a society which "strives to ensure that all of its members are equally free to realize their capabilities".[52] Therefore, from the early foundation of classical liberalism developed the current liberal democratic philosophy which remains committed to the paramountcy of the

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[48]Kymlicka, Will, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990) at 60.

[49]Lenihan, D.G. et. al., *Canada: Reclaiming the Middle Ground* (Montreal: IRPP, 1994) at 16.

[50]MacPherson, C.B., *The Life and Times of Liberal Democracy* (Oxford: Oxford University Press, 1977) at 2.

[51]Lenihan et. al., *Canada: Reclaiming the Middle Ground* (Montreal: IRPP, 1994) at 16.

[52]Macpherson, C.B., *The Life and Times of Liberal Democracy* (Oxford: Oxford University Press, 1977) at 1.

individual, but also extends this commitment to social equality. This includes justification for values which promote responsibility to the community, including for example, various elements of the welfare state.

A third form of liberalism, "cultural pluralism" has emerged in the late 20th century.[53] This contemporary form of liberal theory, such as that of Kymlicka, highly values each individual's freedom to choose and pursue their own conceptions of the "good life". Like theorists before him, Kymlicka recognizes the importance of creating an environment within which individuals are free to fulfil their own personal capacities; key to the environment for meaningful individual freedom and human well-being are community and culture. This is a particularly important question in contemporary Canadian society, as its population becomes more ethnically and linguistically diverse, and as it promotes a policy of multiculturalism. The right to membership in cultural or linguistic communities and the broader questions of minority rights has come to form a substantial part of the liberal framework.[54]

Liberalism has undergone several transformations, and the term has now come to encompass a wide range of ideas. It is evident, however, that throughout the development of the liberal philosophy, there is a consistent ethnometaphysical understanding. This can be called the Western world view, which indicates the way in which eurocentric society understands and relates to the universe. In terms of the place of the individual, liberal philosophers have understood individuals as self-sufficient property-owning beings, who come together in social relation only out of rational recognition of potential for mutual

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[53]Lenihan et. al., *Canada: Reclaiming the Middle Ground* (Montreal: IRPP, 1994) at 16.

[54] see Kymlicka, Will., *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

advantage.[55] This is reflected in the "social contract" theory used by classical liberals to explain the foundations of societal organizations and the proper role of the state. The foundations of classical liberalism continue to have important impacts upon contemporary theory, evident in the continued use of social contract theory in recent theoretical works, such as that by John Rawls.

Social Contract Theory

Classical liberal thought presupposed a particular conception of the individual -- human beings are characterized as naturally selfish, acquisitive and competitive. Further, an inherent and universal human attribute is the desire to acquire more property. In sharp contrast to Anishinaabe world view, under a liberal schema the right of property is named as a fundamental right of all human beings.[56] Given this characterization of the nature of human beings, the question then becomes: why would self-interested and competitive individuals form societies and submit to forms of governance?

Early liberal thinkers utilized a "social contract" theory to explain the proper relationship between the individual and the state. This involved imagining a "state of nature" in which there was no societal structure -- only equal, self-sustaining and autonomous human beings. The theorists could then contemplate what type of society these autonomous individuals would create. Classical liberals believed that governments and other social relations would be created by these egoistic and acquisitive individuals because they are rational enough to see the potential for individual gratification in co-operative endeavour.

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[55]Taylor, Charles. "Atomism", in Avineri, Shlomo & Avner de-Shalit. eds., *Communitarianism and Individualism*. (Oxford: Oxford University Press, 1992) at 32.

[56]Locke, John, *Two Treatises* student's edition. (Cambridge, England: University Press, 1988).

Thomas Hobbes, a seventeenth century political philosopher, likened the state of nature among these competitive men as the "war of everyman against everyman", in a condition in which there is "continual fear, and danger of violent death; And the life of man, solitary, poore, nasty, brutish and short".[57] In this conception then, governments are formed because individuals in the society have ceded certain powers to the state for their protection from other self-interested individuals. Likewise, in Locke's theoretical works, he argued that people enter into 'civil society' for the "negatively conceived purpose" of protecting their interest or claim to private property against random attack by other persons.[58] However, the state can interfere and structure the pursuit of the individuals' interests only to the degree to which it reflects the will of the individuals. In this way, society is conceived as an artificial creation of autonomous individuals which is subordinate to their will. Theorists such as Locke and Hobbes did not put the "state of nature" and "social contract" forward as historical fact, but rather as tools to understand the proper organization of society.

Macpherson has characterized the seventeenth century foundations of liberalism, and its conception of human nature and the individual's place within society, as the political theory of "possessive individualism". He has devised seven propositions which summarize the assumptions which comprise possessive individualism. They are:

> (i) What makes a man human is freedom from dependence on the will of others.
> (ii) Freedom from dependence on others means freedom from any relations with others except those relations which the individual enters voluntarily with a view to his own interest.

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[57]Hobbes, Thomas, *Leviathan* (Oxford England: Oxford University Press, 1991) at 25.

[58]Turpel, Mary Ellen. "Aboriginal Peoples and the Canadian Charter: Interpretative Monopolies, Cultural Differences," in Devlin, Richard F. ed., *Canadian Perspectives on Legal Theory.* (Toronto: Emond Montgomery Publications Limited, 1991) at 509.

> (iii) The individual is essentially the proprietor of his own person and capacities, for which he owes nothing to society.
> (iv) Although the individual cannot alienate the whole of his property in his own person, he may alienate his capacity to labour.
> (v) Human society consists of a series of market relations,.
> (vi) Since freedom from the will of others is what makes a man human, each individual's freedom can rightfully be limited only by such obligations and rules as are necessary to secure the same freedom for others.
> (vii) Political society is a human contrivance for the protection of the individual's property in his person and goods, and (therefore) for the maintenance of orderly relations of exchange between individuals regarded as proprietors of themselves[59].

Macpherson's characterization of "possessive individualism" clarifies the classical liberal view of human nature and society. The discussion of the social contract theory in this thesis is likewise meant to elucidate liberal beliefs of human nature, the proper role of the state and the proper role of the individual. It will become evident that contemporary liberal theorists continue to be impacted by these conceptions inherited from their classical liberal precursors.

Currently, contemporary liberal philosophers are developing theories which reflect a commitment to the notion of social equality, yet these theorists are working upon these foundations of classical liberalism which are premised upon the belief in a selfish, competitive, acquisitive human nature. It is apparent that it is a struggle for contemporary liberal theorists to achieve a justification for social equality measures given the foundational ethnometaphysical understandings inherited from classical liberalism.

In 1971, John Rawls wrote an extremely influential piece entitled *A Theory of Justice*, which reflected contemporary liberalism's commitment to social equality. Since Rawls's work has "altered the premises and principles of contemporary liberal theory"[60]

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[59]Macpherson, C.B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962) at 263-264.
[60]Gutmannm Amy, "Communitarian Critics of Liberalism," in Avineri, Shlomo & Avner de-Shalit eds.,

and numerous theorists have presented their arguments against those of Rawls, it is useful to outline his arguments. Further, the principles of justice which are devised, and the theoretical device used to reach these principles, reveal some of the difficulties which contemporary liberal philosophers face in justifying commitment to community values using an ideology of strict individualism.

In this work, Rawls aims to devise the principles "which are to assign basic rights and duties and to determine the division of social benefits"; these principles would accord with what he calls "justice as fairness".[61] Rawls concludes that the two principles of justice are: equal liberties for all, and social and economic equalities are to be arranged so that they are to the greatest benefit to the least advantaged members of society (difference principle).

He devises these two principles according to two arguments: an intuitive argument, and through the use of a social contract theory, in the tradition of Locke, Rousseau and Kant. The first argument deals with how generally we can all intuitively recognize the value in equality of opportunity. The difference principle emerges because Rawls puts forth that it is not only necessary to remove social inequalities, but we must also take into account the fact that people are impacted by natural inequalities. Since distribution of natural talents is arbitrary, it is unfair that individuals alone benefit from their natural talents. The benefits which emerge due to natural endowments should work to the advantage of those who are less fortunate in the "natural lottery".

The second part of his argument has received the most attention. The social contract agreement proposes an "original position" under which individuals would enter a

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Communitarianism and Individualism (Oxford: Oxford University Press, 1992) at 121.

[61]Rawls, John, *A Theory of Justice* (Cambridge: The Belknap Press of Harvard University Press, 1971).

"veil of ignorance". This veil of ignorance would strip persons of knowledge of their social class, natural attributes and in general, their conceptions of the good. Without an idea of their ends, these individuals would be in a position to devise the principles of justice which would regulate society fairly. Since individuals would be stripped of their particular desires and "conceptions of the good", this has been called the "unencumbered self", an entity which is able to participate in pure reason.

Rawls has been criticized, particularly by communitarians, for characterizing the individual in overly abstract terms. Again the question of ethnometaphysics enters the debate. Sandel, for example, faults Rawls for his conception of the person, or the "unencumbered self".[62] Sandel does not believe that individuals are able to distance themselves from their own ends as they are asked to do in the original position. He disagrees with Rawls's notion that there is a distinction between the values I have, and the person I am. The unencumbered self violates our deepest self-understandings and self-perceptions. We view ourselves as being "thick with particular traits", as opposed to the "ultimately thin figure" of ourselves standing at a distance from our ends. Further, communal values are not merely attributes which we may have, but rather are constitutive of our identity. In that way, the self is socially embedded.

Kymlicka believes that Sandel misunderstands the liberal notion of the self.[63] Liberals do not propose that the self may not have any ends, but rather that is not necessary that any particular ends must always be given. Kymlicka accuses Sandel and other communitarians of not allowing meaningful re-examination of social roles, and an

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[62]Sandel, Michael, "The Procedural Republic and the Unencumbered Self," in Avineri, Shlomo & Avner de-Shalit eds., *Communitarianism and Individualism* (Oxford: Oxford University Press, 1992) at 12-28.
[63]Kymlicka, Will, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990).

opportunity to deliberate between different "encumbered selves". He disagrees with the promotion of self-discovery within a social context as a replacement for free judgement of what is truly valuable in life. Kymlicka believes that it is necessary for individuals to be capable of examining different ends, and able to reject those which have no value; to discourage this through the politics of the common good is an unjustified restriction on self-determination.

According to Kymlicka, for communitarians, it makes no sense to say an end "has no value for me, since there is no 'me' standing behind them, no self prior to these constitutive attachments".[64] Further, Kymlicka states that it is not really important to consider if this original position is psychologically possible or historically feasible; its usefulness lies in that it may act as a "device for teasing out the implications of certain moral premises concerning people's moral equality".[65]

However what must be recognized is that Rawls's principles of justice, and the theoretical device he employs to justify these principles, are themselves based upon a particular conception of the good. Rawls admits that he "rigs" the original position to yield principles in accordance with his intuitions regarding justice. He states that when employing this social contract argument, if a situation does not coincide with our intuitions then we are able to go back and alter the conditions of the original position. He calls this "reflective equilibrium".[66] Therefore, Rawls is proposing that we work backwards -- we first should decide what our principles of justice are, and then adjust the

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[64]Ibid. at 215.
[65]Ibid. at 60.
[66]Rawls, John, *A Theory of Justice* (Cambridge: The Belknap Press of Harvard University Press, 1971) at 25.

original position to coincide with our intuitions. These intuitions are based upon liberal conceptions born of a particular world view and ethnometaphysical understanding.

Other questions arise. What would compel people to act according to the principles that Rawls has devised? Certainly, there is no reason according to liberal ideas for one to agree to the difference principle. It is evident that the difference principle is actually a principle of sharing. Indeed Kymlicka points out that "combined with the veil of ignorance, rational self-interest achieves the same purpose as benevolence".[67] Rawls states that it is reasonable to comply with these principles because this is what free and rational people would agree to under fair circumstances. Rawls makes far-reaching assumptions; for example, he begins from the premise that individuals under the original position would seek to maximize their social primary goods (income, wealth, rights etc.). The accumulation of wealth and "rights" emerge from a very particular ethnometaphysical or culture-specific understanding of the world. Rawls can only achieve his principles of justice by stripping individuals of their own ends and desires; and then to instil in them the morals which he espouses as a liberal. This is very similar to the "state of nature" devised by Hobbes, which equally endows individuals with particular traits and beliefs. Macpherson calls this characterization "Market man", which seventeenth century philosophers devised as universal and unchanging.[68]

It seems that Rawls, along with other contemporary liberal theorists are struggling in their efforts to justify concepts, such as sharing, utilizing their individualist premises. When Kymlicka states that it is not really important to establish whether or not the original

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[67]Kymlicka, Will, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990) at 64.

[68]MacPherson, C.B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962) at 29.

position is metaphysically possible, he is side-stepping the important issue of identifying the assumptions upon which liberalism is founded; that is, in a belief in the self-sufficiency of autonomous and self-interested individuals and an ordering of the world according to property relations and the marketplace.

It is clear that the underlying assumptions and beliefs of liberal theory differ sharply from the Anishinaabe world view. More will be said about this and the consequences of the collision of these two divergent world views later; for now it is sufficient to recognize the ethnometaphysical foundations of liberalism to go on to discuss how this theory has influenced Canadian public philosophy.

Canadian Liberalism

Ronald Manzer has explored the apparent theoretical assumptions upon which public policies have been based in Canada, in order to interpret the political ideas and beliefs that appear to be implicit in them.[69] He outlines the competing interpretations of the historical development of Canadian public philosophy.[70] It has been argued that this public philosophy has emerged from competing political ideaologies, for example, as an "ideological dualism of French-Catholic conservatism and English liberalism", as "an antagonistic symbiosis of conservatism, liberalism and socialism", and finally as an "alliance between liberal belief in private property and market capitalism and conservative

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[69]Manzer, Ronald, *Public Policies and Political Development in Canada* (Toronto: University of Toronto Press, 1985).

[70] According to Manzer:"A public philosophy implies the existence of a set of political ideas and beliefs that enjoy widespread acceptance in a political community and serve as principles to guide and justify governmental decisions" at 13. A public philosophy may be formed by the conflict and compromise of proponets of various political ideologies. Political ideology may be defined as: "a doctrine or set of ideas that purports to provide a comprehensive explanation of political arrangements...it is explicitly or implicitly expresses some conception of basic human needs and establishes a priority of their satisfaction by collective action." at 9.

belief in elitism, inequality and deference".[71] While he acknowledges the influences of various political ideologies such as conservatism and socialism, Manzer concludes that it has been liberal democratic theory which has been the most influential in Canadian history. His thesis is that Canadian public philosophy has evolved from a relatively uncomplicated political doctrine "shaping a simple pioneering society" to a highly fragmented public philosophy of an advanced industrial society, which has "at its core a fundamental contradiction between economic and ethical *liberalism*."[72]

Likewise, Lenihan, Robertson and Tasse discuss the influence of liberal theory upon Canada since Confederation, as it has been embedded in Canada's inheritance from Britain, including the common law system, in the "unwritten" constitution, and within the political tradition of parliamentary government.[73] The authors identify a turning point with the passage of Prime Minister Diefenbaker's Bill of Rights in 1960, and the constitutional rounds which followed, leading ultimately to the entrenchment of a charter of rights when the Constitution was patriated in 1982. It was at this time that Canada's commitment to liberalism, which had existed since Canada's formation, came to the forefront of public discussion, as the Charter "gave liberalism a new legal standing and a new kind of moral authority among the people".[74]

Because Canadian political discourse has taken place largely within the paradigm of liberal democratic theory, challenges by other political ideologies have not resulted in any serious or fundamental questioning of the underlying assumptions of liberalism. As a

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[71] *Ibid.* at 19.
[72] *Ibid.* at 19.
[73] Lenihan et. al., *Canada: Reclaiming the Middle Ground* (Montreal: IRPP, 1994) at 23-25.
[74] *Ibid.* at 25.

result of this, the principles of liberalism have come to be regarded by Canadians as self-evident and natural. This includes the rights paradigm.

Indeed, this rights paradigm has come to encompass an important part of how Canadians see themselves – as a liberal democratic society dedicated to the equality of individuals and the protection of fundamental rights and freedoms. It is believed that within a liberal democracy, individuals are free to make their own choices, without undue imposition by the state, to pursue what they believe to be necessary to live the "good life".

Canadians tend to discuss their rights hierarchically. Hunt and Bartholomew, in their examination of the "conceptual muddles" which they say are likely to beset the contested nature of rights discourse, explain the different types of rights.[75] The authors have identified four different ways that rights are discussed:

> "legal rights" (rights recognized and potentially protected, by litigation), "constitutional rights" (rights recognized and potentially protected, by litigation appealing to express constitutional provisions), "moral rights" (rights-talk placed within moral discourse) and, finally, "rights claims" (claims or demands advanced by social interests or movements involving an aspiration to convert a moral right to into a legal or constitutional right).

What is clear from this typology is that rights discourse is most often associated with law; legal discourse and rights discourse are woven together, and largely inseparable. Even if one does choose to discuss rights in a broad manner, utilizing moral justifications, this discussion will tend to lead to the need for some sort of legal protection of the right.

As Turpel outlines, the conceptual basis of rights analysis in notions of property and exclusive ownership forms "the cornerstone of the idea of rights in Anglo-American

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[75]Bartholomew, Amy & Alan Hunt, "What's Wrong with Rights?" (1990) 9:1 Law and Inequality. at 6-8.

law".[76] She demonstrates this point by quoting the Supreme Court's use of "property rights metaphors" to explain the rights questions surrounding the issue of abortion:

> 'Thus rights guaranteed in the Charter erect around each individual, metaphorically speaking, an invisible fence over which the state will not be allowed to trespass. The role of the courts is to map out, piece by piece, the parameters of that fence.' [Turpel states:] The metaphors of the fence, mappings, and trespassings are so property-specific and exclusionary in character that they can only be construed as symptoms of acute Locke-jaw.[77]

This rights paradigm has become even more firmly entrenched into Canadian political culture since 1982 with the patriation of the constitution, and the addition of the Canadian Charter of Rights and Freedoms. This has spawned a new political discourse based on an egalitarian approach to individual liberal rights.

The rights paradigm has come to form part of a worldwide discourse, evidenced by the recent 50th anniversary of the Universal Declaration of Human Rights. It is commonly believed that the protection of rights within a liberal democracy, along with a capitalist market economy, will lead to a high standard of living. It is often stated that free markets and open trade in fact lead to better protection of human rights. John Ralston Saul, recognizes *(albeit* critically) this Canadian tendency to link freedom with capitalism:

> The Liberal government in Canada declared in its 1995 foreign policy statement -- as if it were an obvious truth -- that 'human rights tend to be best protected by those societies that are open to trade, financial flows, population movements, information and ideas about freedom and human dignity.' Again this is demonstrably inaccurate. Many dictatorships are open to trade, financial flows and population movement. But above all, note again the preposterous order, with freedom tacked on the tail end of a long list designed to describe the protection of human rights.[78]

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[76]Turpel, Mary Ellen. "Aboriginal Peoples and the Canadian Charter: Interpretative Monopolies, Cultural Differences," in Devlin, Richard F. ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery Publications Limited, 1991) at 509.

[77]Ibid. p. 509.

[78]Saul, John Ralston, *The Unconscious Civilization* (Concord, Ontario: Anansi Press Limited, 1995) at 63.

While the rights paradigm has become an important factor internationally, Canadians in particular struggle domestically with the concept of "group rights". As an increasingly ethnically and linguistically diverse country, Canada attempts to accommodate different groups, such as francophones, visible minorities, and Aboriginal peoples, and their "group rights", into this liberal framework. The policy of multiculturalism is one indication of efforts to accommodate the group rights of minorities, and manage diversity. Most often, Aboriginal rights are discussed within the dichotomy of individual versus collective rights, and Aboriginal peoples are regarded as one of the minority groups which requires "accommodation" by the majority. Aboriginal peoples are often characterized as a "special minority", such as Kymlicka's characterization of First Nations as national units, with special claim to protection from outside influences.[79]

Now that the world views of these two groups have been examined in relative isolation of each other, it is necessary to look to the development of their relationships, and how the different ethnometaphysical understandings of these two groups have been manifested in the relationship. This will be done through an examination of the concept of Aboriginal rights.

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[79]Kymlicka, Will., *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995)

5. Historical Overview of the Relationship

Historical interpretation may lead to different conclusions about contemporary situations, and as such, any attempt to understand the current and future relationships between Aboriginal and non-Aboriginal peoples must be rooted within a broad historical framework. The RCAP has devised a specific historical methodology to examine the relations between Aboriginal and non-Aboriginal Canadians.[80] In keeping with Aboriginal perspectives, the Commission has attempted to structure their analysis according to a cycle. They have divided the historical relationship into stages: separate worlds, contact and cooperation, displacement and assimilation, and negotiation and renewal. This analysis will focus upon the final two stages, in which the concept of Aboriginal rights gained prominence in Canadian legal and political discourse; however a brief review of the early relationship will be included as background information.

The concept of Aboriginal rights has been chosen as the focus of this historical examination because its evolution in Canadian law and politics vividly demonstrates how the differing world views of Aboriginal and non-Aboriginal peoples have impacted upon their relations. This examination of Aboriginal rights discourse will demonstrate how seemingly innocuous concepts and practices can contribute to the assimilation and degradation of unique Aboriginal cultures and beliefs, a process which Kulchyski has termed "totalization".[81] For many Canadians, the goodness of protecting rights is taken to be self-evident and this paradigm remains unquestioned; however this analysis will

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[80]Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples: Volume 1* (Ottawa: Minister of Supply and Services Canada, 1996) at 32-40.

[81]Kulchyski, Peter. "Aboriginal People and Hegemony in Canada," (1995) Journal of Canadian Studies 30:1 at 62.

demonstrate that the use of rights discourse in relation to Aboriginal peoples requires fundamental questioning and critical analysis.

As the RCAP sets out, for several centuries societies in the Americas and in Europe existed in isolation of each other, in "separate worlds". When European newcomers first arrived in North America, they encountered several diverse Aboriginal nations, each with its own culture, set of laws, and system of government. The early relations between the Europeans and Indigenous nations were marked by military and economic alliances which developed on a nation-to-nation basis in a mutually dependent relationship. "These nations entered into relations with incoming European nations on a basis of equality and mutual respect... an attitude which persisted long into the period of colonization.[82]

After the defeat of the French as a colonial power, the British issued the *Royal Proclamation of 1763*. Among its main purposes was the articulation of the basic principles governing the Crown's relations with Indian nations. The preamble states:

> And whereas it is just and reasonable and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.[83]

The proclamation sets out that the British Crown would be the sole party able to form land agreements with Aboriginal peoples, and that any unceded land would remain for the use of the "Indian nations". Aboriginal peoples point to the recognition of "Indian

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[82]Canada. Royal Commission on Aboriginal Peoples, *The Right of Aboriginal Self-Government* (Ottawa: Minister of Supply and Services Canada, 1992) at 9.

[83]*ctd. in* Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples: Volume* 1 (Ottawa: Minister of Supply and Services Canada, 1996) at 116.

Nations" as sovereign entities able to deal with the British Crown by way of treaty and agreement. The protocol for settling these land agreements is also outlined, as the *Royal Proclamation* sets out that these agreements be conducted in "public meetings". On this basis, a period of treaty negotiations ensued from the 1770's to the 1920's during which time several treaties were negotiated and signed between First Nations and government officials.

The Anishinaabek root their relations with the British Crown to the *Treaty of Niagara 1764*, which was negotiated between 24 representatives of Anishinaabe nations and Sir William Johnson, the Superintendent-General of Indian Affairs, acting as representative of the Crown. Johnson called the council to inform the Anishinaabe people of the *Royal Proclamation of 1763*. The resulting relationship with the Crown of Great Britain has been described as a silver Covenant Chain. It is a relation of mutual friendship and protection.

> The nature of the Covenant Chain is that of a compact, like a political union in which the participating nations are like links of a chain. Each link retains its identity, as each nation continues to conduct its internal affairs. The purpose of making the Chain, as of any compact between nations, is to create the strength and protection that flow from unity in a common purpose.[84]

Upon this basis, the Anishinaabek entered into treaty arrangements with colonial and Canadian governments during both the pre-Confederation and post-Confederation periods.

Needless to say, many of the treaty obligations were not upheld or honoured by the Crown. Unfortunately while these treaties were considered by the Aboriginal signatories as sacred agreements between partners designed to ensure peaceful

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[84] *From the Anishinabek (the Ojibway, Ottawa, Potowatomi, Delaware and Algonquin Nations) to the Parliament of the Dominion of Canada:* November 1980. Northern Social Research Information Service, at 8.

co-existence, colonial and Canadian government officials were seeking the cession and surrender of Aboriginal territory. As Aboriginal nations decreased in importance as military and economic allies, they soon came to be regarded as impediments or obstacles to the settlement and economic endeavours of non-Aboriginal people. This part of the cycle has been coined by RCAP as "displacement and assimilation".

This stage can be outlined through an examination of the treatment of Aboriginal title and rights in Canadian law and politics. In this discussion, Aboriginal rights will be used in the broadest manner to encompass all of those rights which are associated with "aboriginality". This includes: title to land and resources, political rights, hunting and fishing rights, and treaty rights.

The first legal case dealing with Aboriginal rights in a definitive way dealt extensively with the *Royal Proclamation of 1763* and its implications. *St. Catherine's Milling and Lumber Company 1888*[85] involved a dispute between the Canadian federal government and the Ontario provincial government over the jurisdiction to grant timber cutting rights to a private company. The federal government had obtained the area of land through Treaty 3, which was negotiated with a group of Anishinaabe people. The federal government argued that prior to the treaty the Anishinaabek had full title to the area. As such, through the treaty agreement, the land rightfully fell under the jurisdiction of the federal government. The province argued that prior to the treaty, the land was Crown land, in which case the treaty only served to extinguish any outstanding interest in the land which the Anishinaabe people may have had. Therefore, the area fell under provincial jurisdiction according to the provisions of the *British North America Act 1867*.

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[85] *St. Catherine's Milling and Lumber C. v. R.* (1888), 14 A.C. 46 (P.C.)

After a lengthy discussion of the *Royal Proclamation of 1763*, the Judicial Committee of the Privy Council ruled that the land rightfully fell under the jurisdiction of the Province of Ontario. The courts had determined that while the Indians may have had an interest in the land, this did not amount to fee simple property ownership. Ultimately, the underlying title rested with the Crown, and the Indians' interest in the land was "a personal and usufructuary right dependent upon the good will of the sovereign." "Usufruct means the right to use something owned by someone else, as long as that use does not destroy that thing or interfere with the rightful ownership."[86]

It is telling that none of the Anishinaabe people who were a party to the treaty negotiations, nor any other Aboriginal representative, were present. This ruling has had long standing implications for Aboriginal people and their rights, and continues to set the parameters of the discussion of Aboriginal title.

The importance of the *St. Catherine's Milling and Lumber Co.* case to the legal definition of "Aboriginal title" lies in its contention that underlying title to the land vested in the Crown. The concept of Crown title is an extremely important one in the perspective of the Canadian government and the Canadian legal system. It may be stated that the Canadian legal system has relied on the myth of the Crown title as an underlying concept to justify the courts actions of defining and delimiting Aboriginal rights. Generally speaking, Canadian jurisprudence accepts the position that the colonial acquisition of Canada was based on discovery and therefore underlying title vests in the Crown. As a

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[86]Kulchyski, Peter, *Unjust Relations: Aboriginal Rights in Canadian Courts* (Oxford: Oxford University Press, 1994).

result, "Aboriginal title can be extinguished by the Crown absent Native consent and absent any compensatory obligation". [87]

This perspective is based in the settlement thesis.[88] Settlement is one of the accepted justifications for the assertion of sovereignty on unoccupied lands. If the lands were occupied, as was North America, the settlement thesis is justified by the view that settlers were superior to the original inhabitants, who were too "primitive" to possess sovereignty. "It is precisely this view of the settlement thesis that lies behind the view that Aboriginal peoples' sovereignty was extinguished by the assertion of sovereignty by the Crown".[89]

It is the settlement thesis which lies behind the Court's position on the contingent nature of Aboriginal rights. In this formulation, the *Royal Proclamation of 1763* gave Aboriginal people their Aboriginal title, and it existed only at the will of the Crown. The legitimacy of the Crown to unilaterally extinguish Aboriginal title to the land is never questioned in the domestic legal system. However, to accept that the Crown is able to unilaterally extinguish Aboriginal title simply by "discovering" a territory:

> can only be supported by a belief in the inherent superiority of European nations... Absent is any consideration of the possibility that the doctrine of discovery, steeped as it is in notions of native inferiority, is an illegitimate basis for the continued assertion of Canadian sovereignty over the lives of native peoples.[90]

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[87]Macklem, Patrick, "First Nations Self-Government and the Borders of the Canadian Legal Imagination," 36 McGill L.J. 382. at 406.

[88]Asch, Michael & Patrick Macklem, "Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*," (1991) XXIX:2 Alta. L. Rev. at 508-512.

[89]Ibid. p. 511

[90]Macklem, P. "First Nations Self-Government and the Borders of the Canadian Legal Imagination," 36 McGill L.J. 382 at 410.

. The historical development of Aboriginal rights after the *St. Catherine's Milling and Lumber Co.* case is marked by overtly racist rulings. For example, the *Syliboy*[91] case in 1929, which defined the status of treaties in Canadian law at that time, held that a Micmac treaty was a nullity because Indians were "uncivilized and savage". Likewise in the *Sikyea*[92] case, it was argued that the regulations set out in the federal statute *Migratory Birds Convention Act* had effectively extinguished the Aboriginal treaty right to hunt, trap and fish.[93]

This underlying acceptance of the notion of the superiority of Western society over the First Nations which formed the basis of the settlement thesis was equally manifest in colonial and Canadian government policy regarding Aboriginal peoples. This is evidenced by the aggressively assimilationist goals of Indian policy.

The *Indian Act*, legislation which has undergone only minor changes since its inception in 1876, has impacted upon generations of Aboriginal families in profoundly destructive ways. The ultimate goal of Indian policy in Canada was the assimilation of Aboriginal peoples into mainstream Canadian society. Along with the demise of unique Aboriginal languages, customs, and religious beliefs would come an end to the special status of Aboriginal individuals and the obligations owed to them by the federal government. Duncan Campbell Scott, an administrator in the Department of Indian Affairs, stated in 1920 regarding the enfranchisement provisions of the *Indian Act*:

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[91]*Syliboy v. The Queen*, [1929] 1 D.L.R. (1st) 307 (N.S.)

[92]*Sikyea v. The Queen*, [1964] 2 S.C.R. 335, 342

[93]For further discussion, see Sanders, Douglas. "The Supreme Court of Canada and the 'Legal and Political Struggle' Over Indigenous Rights," (1990) XXII:3 Canadian Ethnic Studies.

> ...our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department; that is the whole object of this Bill.[94]

The means to this assimilation were often oppressive and destructive. These measures included: the control of Indian status through involuntary enfranchisement, the use of section 12(1)b which dispossessed many Aboriginal women and their children of Indian status[95]; the outlaw of cultural practices such as the potlatch and sundance; the control of the mobility of Indians as in the "pass system" under which Indian people required permission from the Indian Agent to leave the reserve; the removal of Indian children from their homes for placement in federally-sponsored denominational boarding institutions; and the imposition of the band council governmental system to undermine and displace traditional governance.[96]

Paternalistic attitudes often justified the policy goal of assimilation. Aboriginal peoples were regarded as people in need of protection from the negative influences of mainstream society, and guidance to abandon their traditions. For example, as late as 1930 there was an amendment to the *Indian Act* restricting the use of poolrooms by registered Indians, and it was not until 1960s that all prohibitions on registered Indians' use of liquor were removed.[97]

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[94]D.C Scott *Evidence to Commons Committee to Consider Bill 14* (1920) Public Archives of Canada, record group 10.

[95]Section 12(1)b of the *Indian Act* held that once an Indian woman married any non-status person, she lost her status, as did her children. This was to become a source of much controversy, and effective lobbying on the part of native women led to the amendment Bill C-31 to the *Indian Act* in 1985. Bill C-31 allowed for the reinstatement of Indian status for those women affected by s. 12 (1)b, and their children, albeit with a new 6(2) level of status. See Frideres, James. *Native Peoples in Canada: Contemporary Conflicts* (Scarborough: Prentice-Hall Canada Inc., 1993) at 335-364.

[96]Tobias, John, "Protection, Civilization, Assimilation: An Outline of the History of Canada's Indian Policy," (1976) Vol. VI No. 2 The Western Canadian Journal of Anthropology at 13-30.

[97]Ponting, J. Rick, *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination* (Toronto: McGraw-Hill Ryerson Limited, 1997) at 25.

Indeed the *Indian Acts* have impacted upon the lives of status Indians in Canada in all-pervasive ways. It has been described as:

> ...a cradle-to-grave set of rules, regulations and directives. From the time of birth, when an Indian child must be registered in one of seventeen categories defining who is an "Indian", until the time of death, when the Minister of Indian Affairs acts as executor of the deceased person's estate, our lives are ruled by the Act and the overwhelming bureaucracy that administers it.[98]

For over a century, Aboriginal peoples have been subject to oppressive policies, which are not only demoralizing and demeaning to them as persons, but truly destructive to the physical, mental, emotional and spiritual health of individuals, families, communities and nations. Generations of Aboriginal peoples have endured systematic attacks on their cultures, languages, and customs.

What about the rights of Aboriginal people through this era? As Ponting explains, to the policy makers at this time, rights (such as the political right to vote and the right to organize) were associated with enfranchisement. Enfranchisement in this context refers to the provisions in the *Indian Acts* which allowed for adequately "assimilated" Indian individuals to surrender their Indian status to become full Canadian citizens. The rights of citizenry were therefore held out as incentives for Indians to abandon their "aboriginality" for assimilation. On the other hand, "aboriginal rights" which may have been:

> imbedded in the *Indian Act* and the treaties...were seen more as transitory means of protection than as inalienable rights as we perceive such today. According to that line of thought, these lesser rights could be justifiably trimmed away when they were no longer needed as a means of protection.[99]

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[98]Mercredi, Ovide & Mary Ellen Turpel, *Into the Rapids: Navigating the Future of First Nations* (Toronto: Penguin Books Canada Ltd., 1993) at 81.

[99]Ponting, Rick J., *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination* (Toronto: McGraw-Hill Limited, 1997) at 29.

After the Second World War, Canadian attitudes towards Aboriginal people began to change. The contribution of Aboriginal people to the war effort, coupled with a world-wide consciousness of the horrors of "institutionalized racism and barbarity" led to an examination of the *Indian Acts*.[100] As a result, amendments which removed some of the more openly oppressive measures were made to the *Indian Act* in 1951. However the overall assimilative purpose remained.

The policy goal of Aboriginal assimilation culminated in 1969 when Jean Chretien, then Minister of Indian Affairs, presented the *Statement of the Government of Canada on Indian Policy*, commonly referred to as the "White Paper", to the House of Commons. The crux of this White Paper was found in its conclusion that it was the separate status of Indians that kept them from "full social, economic and political participation in Canadian life."[101] The solution was to finally legislate away the special status of Aboriginal people. The White Paper proposed that the *Indian Act* be repealed, that the provincial governments assume responsibility for Aboriginal people, and that the Department of Indian Affairs and Northern Development be phased out. The justification for these measures was couched in terms of the values of a liberal democratic society based on individualism and meritocracy. However, while espousing the virtues of a free and equal society, the Government of Canada would also be relieved of its responsibilities to the original people, imbedded in the *Indian Acts* and the treaties. Harold Cardinal dubbed it "a thinly veiled attempt at cultural genocide".[102]

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[100]Miller, J.R., *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989) at 220-221.

[101]Canada. Department of Indian Affairs and Northern Development. *Statement of the Government of Canada on Indian Policy* (Ottawa: Minister of Supply and Services, 1969).

[102]Cardinal, Harold, *The Unjust Society* (Toronto: M.G. Hurtig Ltd., 1969) at 2.

This policy proposal met fierce opposition from Aboriginal peoples across the country and was eventually shelved. Ironically, the proposal aimed at the extinction of "Indians" actually provided the impetus for political activism for the protection of Aboriginal rights on a national scale.[103] It was at this time apparent that the relations between Aboriginal and non-Aboriginal Canadians had entered a new era, which the RCAP has dubbed *negotiation and renewal*.

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[103]Miller, J.R., *Skyscrapers Hide the Heavens:A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989) at 232.

6. "Aboriginal Rights"

Historical evolution of Aboriginal rights since 1969

The relationship between Aboriginal and non-Aboriginal peoples changed rapidly in the post-White Paper period. This section will explore the evolution of Aboriginal rights in the courts, and the related developments in the sphere of Canadian politics.

In 1973, a major turning point was achieved in the Canadian legal system through the *Calder* case.[104] This case dealt with the Nisga'a title claim in which they maintained the position that they held Aboriginal title to their traditional territory, and that this title had not been terminated. The Nisga'a and their ancestors had been occupying and using the land from time immemorial. Although they lost the case on a technicality, six members of the Supreme Court acknowledged for the first time an existence of Aboriginal title which was independent of executive and legislative action. The judges split as to whether this Aboriginal title continued to exist. This case deeply impacted the federal government's policy towards the land question, leading to a policy framework to deal with Indian treaty and "land claims" issues, which, previous to this case, the federal government would not even acknowledge.[105]

Calder was meaningful to the legal definition of Aboriginal title, as it recognized the possibility that title may not be based upon a royal prerogative such as that contained within the *Royal Proclamation of 1763*, but might actually derive from Aboriginal use and occupancy of the land from time immemorial. Nonetheless, even in this formulation, Aboriginal title continues to exist only at common law, and can be extinguished by

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[104]*Calder v. A.G.B.C.* [1973] S.C.R. 313.

[105]Canada. Royal Commission on Aboriginal Peoples. *Treaty Making in the Spirit of Co-existence: An Alternative to Extinguishment* (Ottawa: Minister of Supply and Services, 1995) at 36-37.

legislation or legal precedent. For example, in the *Guerin* case of 1984, it was determined that the legal nature of the Musqueam Indian Band's interest in their land could be described as "a pre-existing legal right not created by the *Royal Proclamation*, by s. 18(1) of the *Indian Act*, or by any other executive order or legislative provision."[106] Thus it would appear that the court had adopted the inherent rights approach to Aboriginal land rights.

> Although aboriginal rights in *Guerin* were conceived as not contingent upon the exercise of legislative or executive authority, they nonetheless existed only at common law. Common law aboriginal rights were...always subject to regulation or extinguishment by the appropriate legislative authority.[107]

The authority to regulate or extinguish Aboriginal rights at common law results from the court's acceptance of the sovereign authority of the Canadian state over the First Nations. The court's apparent initial acceptance of the inherent rights approach is thus essentially meaningless.

However, the courts began to recognize the rights of Aboriginal peoples as a unique challenge to the Canadian legal system. In *Guerin*, it was determined that the Indian interest in land can be characterized as *sui generis*: "the notion that Aboriginal rights do not necessarily correspond to rights comprehensible or recognizable at common law.[108] *Guerin* was also integral in defining the role of the federal government with respect to Aboriginal peoples. It was ruled that the Crown owes a fiduciary obligation to

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[106]*Guerin v. The Queen* [1984] 2 S.C.R. 335.

[107]Asch, Michael & Patrick Macklem, "Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*," (1991) XXIX:2 Alta L.R. at 503.

[108]Rotman, Leonard Ian, *Parellel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada* (Toronto: University of Toronto Press, 1996) at 248-249.

the Aboriginal peoples of Canada which is similar to, but not the same as, a trust relationship.

Other cases have dealt with the nature and scope of Aboriginal rights. *Simon* states that treaty rights are to be given "a fair, large and liberal construction in favour of Indians".[109] Likewise, *Nowegijick* states that "treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians".[110] Other rulings have not been so favourable. *Bear Island Foundation* 1984 has held that Indian interests in land which include the use of the "fruits of the soil do not include the use of the soil itself".[111] In an extremely paternalistic and ethnocentric ruling, the *Baker Lake*[112] case set out the criteria of when common law occupancy-based Aboriginal title may be claimed in a certain territory; the criteria included, for example, establishing that the Aboriginal nation constituted an "organized society".

The legal status of Aboriginal rights was to undergo a major step in its evolution in the early 1980's along with the efforts of Prime Minister Pierre Trudeau to patriate Canada's constitution. Trudeau aimed to patriate the *British North America Act* along with the inclusion of a Charter of Rights and Freedoms. Aboriginal people seized this opportunity to be involved in the constitutional developments, as Aboriginal organizations began to utilize the tools of political activism in an organized effort which was sparked by the White Paper of 1969.

In 1982, due to the active and effective lobbying on the part of Aboriginal organizations, "existing Aboriginal and treaty rights" were entrenched in section 35 of the

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[109]*Simon v. The Queen.* [1986] 24 D.L.R. (4th) 390 (S.C.C.)
[110]*Nowegijick v. The Queen.* [1983], 144 D.L.R. (3d) 193 (S.C.C.)
[111]*A.G. Ont. v. Bear Island Foundation* [1991] 2 S.C.R. 570
[112]*Baker Lake (Hamlet) v. Minister of Indian Affairs and Northern Development*, [1980] 1 F.C. 518 (T.D.)

Constitution Act, 1982.[113] In addition, section 25 ensures that Aboriginal rights are not adversely affected by the equality provisions of the Charter of Rights and Freedoms. The inclusion of the term "existing" is extremely important to the legal standing of Aboriginal rights: "if there was no recognition of aboriginal and treaty rights in Canadian law before then section 35 had 'recognized and affirmed' nothing."[114] The final section dealing with Aboriginal rights is section 37. This section required the government to convene additional constitutional conferences to deal with issues of Aboriginal rights and that future First Ministers' meetings be held to deal with these issues.

Although Aboriginal rights were "recognized and affirmed", the scope and content of these rights were not constitutionally defined in 1982. There has been no agreement among Canadian political leaders and Aboriginal representatives on the content of section 35 Aboriginal rights. The *Sparrow* case of 1990 is an important development in the legal standing of Aboriginal rights. It is an extremely influential case, not only vis-à-vis Canadian domestic law but also in the international sphere, and is an excellent example of the courts' ambiguity towards the nature of Aboriginal rights.

The *Sparrow* case dealt with the Musqueam Indian band's assertion of their fishing rights. The courts accepted that fishing was to be viewed as an Aboriginal right because it is an integral part of Musqueam life. It was ruled that this right is inherent, in that it is not contingent upon the exercise of legislative or executive authority. However, the courts went on to unquestioningly accept the sovereignty of the Crown and its ability to extinguish Aboriginal rights. They set up a strict common law test to justify the

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[113]Frideres, James S., *Native Peoples in Canada: Contemporary Conflicts*. 4th ed. (Scarborough: Prentice Hall Canada Inc., 1993) at 320-330.

[114]Sanders, Douglas, "The Supreme Court of Canada and the 'Legal and Political Struggle' Over Indigenous Rights," (1990) XXII:3 Canadian Ethnic Studies at 125.

extinguishment of Aboriginal rights protected under section 35, placing heavy onus on the Crown to prove extinguishment. Therefore, while the courts appear committed to the acceptance of the inherency of Aboriginal rights, this is "ultimately rendered fragile and tentative by the courts' subsequent embrace of the competing contingent rights approach and the Courts unquestioned acceptance of Canadian sovereignty".[115]

While much of the development of the concept of Aboriginal rights has occurred within the courts, it is also apparent that Aboriginal people have become a force to be reckoned in the constitutional discussions of Canada. Elijah Harper, and his role in the defeat of the Meech Lake Accord in the Manitoba Legislature, sent a message to Canadians that any constitutional reform required the participation of Aboriginal representatives. And indeed, when the next round of constitutional-reform discussions began in 1992, Aboriginal representatives were invited to participate. This was a major breakthrough for Aboriginal peoples. As Turpel states:

> The invitation of Aboriginal representatives to the constitutional-reform discussions in 1992 is a precedent that will stand for years to come. Aboriginal peoples were excluded in the discussions leading up to the passage of the British North America Act; they were excluded during the 1981 negotiations, as well as during the Meech Lake round.[116]

Although the Accord was eventually defeated in a nation-wide referendum, the participation of Aboriginal representatives, and the elements which were successfully negotiated by Aboriginal leaders will stand as an important benchmark for some time. Among other things, the Charlottetown Accord proposed: the entrenchment of a provision

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[115]Asch, Michael and Patrick Macklem. "Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*," (1991) XXIX:2 Alta. L.R.. at 508.

[116]Turpel, Mary Ellen. "The Charlottetown Discord and Aboriginal Peoples' Struggle for Fundamental Political Change," in McRoberts, Kenneth & Patrick Monahan. eds. *The Charlottetown Accord, the Referendum, and the Future of Canada* (Toronto: University of Toronto Press Incorporated, 1993) at 121.

that recognized the inherent right of self-government; a provision requiring that treaty rights be interpreted in a "just, broad and liberal manner taking into account the spirit and intent of the treaties"; and, a commitment for devising a formula for Aboriginal consent in the constitutional amending formula.[117] For the time being, however, it is widely accepted that constitutional discussions in Canada have been abandoned. Canadians have experienced constitutional reform "fatigue", and it is unlikely that national unity issues will be dealt with utilizing a constitutional reform strategy any time soon, barring a serious and immediate threat of Quebec secession.

While the participation of Aboriginal leaders in the latest round of constitutional talks seemed to signal a new era for the treatment of Aboriginal rights, the evolution of this concept in the courts continues to be a "roll of the die" endeavour for Aboriginal peoples choosing the litigation route. For those who felt that the constitutional developments would relegate overtly racist court rulings regarding Aboriginal peoples to the dustbin of history, a rude awakening was experienced in 1991. Chief Justice McEachern passed down the *Delgamuukw*[118] decision which rejected the claim of the Gitskan and Wet'suwet'en people to 57 000 square kilometres of their traditional lands in northern British Columbia. The Gitskan and Wet'suwet'en traditional territory had never been ceded by treaty, nor was it taken by military conquest.

The decision reached by Chief Justice McEachren was shocking to many in its blatant expression of racist assumptions. In actuality, this case explicitly states what is essentially implicit in most of the case law surrounding Aboriginal rights. The

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[117]Ibid. pp.125-131.

[118]*Delgamuukw v. British Columbia* (1991), 79 D.L.R. (4th) 185 (B.C.S.C)

Delgamuukw case provides the most comprehensive synopsis of the racist assumptions upon which the courts operate when dealing with Aboriginal peoples.

McEachren C.J. denied the existence of Aboriginal rights of ownership and jurisdiction. He ruled that the rights which Aboriginal people possess are those of sustenance, which are a continuing burden on the Crown. The Indians have the right to unoccupied lands for traditional purposes subject to provincial regulation. McEachren C.J. justified this ruling on the basis of the settlement thesis. "It is part of the law of nations, which has become a part of common law, that the discovery and occupation of this continent by European nations, or occupation and settlement, gave rise to the right of sovereignty."[119] The settlement thesis can only be justified by an acceptance of the inferiority of Aboriginal nations to the colonizers. McEachren C.J. openly reveals his belief in the inferior nature of Aboriginal nations. He concludes that pre contact life was "nasty, brutish and short," and characterizes the lives of the Gitskan and Wet'suwet'en people as a "primitive existence" devoid of "written languages, horses and wheeled vehicles."[120]

The Gitskan and Wet'suwet'en people were criticized by some legal experts for their legal strategy of seeking recognition of ownership and jurisdiction over their territory.[121] It is apparent that since very little area of British Columbia is covered by treaty arrangements, this is a very controversial issue. The courts would be reluctant to set what they perceive to be such a dangerous precedent. However, the Gitskan and

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[119] *Delgamuukw et al v. the Queen*, Reasons for Judgement, Smithers Registry No. 0843. The Honourable Chief Justice Allan McEachren. 8 March 1991.

[120] *Ibid.*

[121] Kellock Burton H. & Fiona C.M. Anderson, "A Theory of Aboriginal Rights," in Cassidy, Frank ed., *Aboriginal Title in British Columbia: Delgamuukw v. The Queen* (Lantzville: Oolichan Books, 1992) at 97-112.

Wet'suwet'en people accomplished their goal of putting the Canadian legal system on trial, and forcing an exposition of the underlying assumptions about Aboriginal peoples which have coloured the discourse surrounding Aboriginal rights in the courts.[122]

The *Delgamuukw* case reached the Supreme Court of Canada, and its ruling was rendered in 1997. However, the Supreme Court's ruling was based upon a change in legal strategy of the Gitskan and Wet'suwet'en people from their original case; the original claim for "ownership" and "jurisdiction" over their territory was transformed into an Aboriginal title claim.

The Supreme Court of Canada's decision was seen as a favourable one in that it recognized the validity of Aboriginal oral history as evidence. In the opinion of Chief Justice Lamer, McEachren C.J. erred at trial by giving oral histories no independent weight. Chief Justice Lamer stated that the *sui generis* nature of Aboriginal rights demands, "unique treatment of evidence which accords due weight to the perspective of Aboriginal peoples."[123] He further states: "Canadian courts must come to terms with oral histories of Aboriginal societies, which, for many Aboriginal nations is the only record of their past."[124] Chief Justice McEachren's dismissal of the oral history evidence so affected his findings of facts that Chief Justice Lamer concludes that a new trial is warranted.

The case also significantly impacts upon issues of continuity, justification and extinguishment of Aboriginal rights.[125] The Court states that the purpose of section 35(1)

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[122]Cassidy, Frank. ed. *Aboriginal Title in British Columbia: Delgamuukw v. The Queen* (Lantzville: Oolichan Books, 1992) at 10.

[123]*Delgamuukw v. British* Columbia, [1997] S.C.R. 1010 at para. 81.

[124]*Ibid.* at para. 84.

[125]See: Bell, Catherine Bell, "New Directions in the law of Aboriginal Rights" (1998) 77 The Canadian Bar Review at 56-63.

"is to reconcile the prior presence of aboriginal peoples with the assertion of Crown sovereignty".[126] As such, constitutionally recognized Aboriginal rights are not absolute, and may be infringed by the federal and provincial governments. According to the Supreme Court, infringement is justified if it :

> (1) furthers a compelling and substantial legislative objective and (2) is consistent with the special fiduciary relationship between the Crown and the aboriginal peoples. The development of agriculture, forestry, mining and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, and the building of infrastructure and the settlement of foreign populations to support those aims, are objectives consistent with this purpose.[127]

Lamer C.J. has stated that the fiduciary relationship "between the Crown and aboriginal peoples may be satisfied by the involvement of aboriginal peoples in decisions taken with respect to their lands." There is "always a duty of consultation" and "fair compensation will ordinarily be required when aboriginal title is infringed."[128]

The Court's attempts to "reconcile" the prior occupation of North America by Aboriginal peoples with the "assertion of Crown sovereignty" takes much for granted. As discussed above, it is the settlement thesis which forms the basis of Crown title in Canada. Settlement is one of the accepted justifications for the assertion of sovereignty on unoccupied lands. If the lands were occupied, as was North America, the settlement thesis is justified by the view that settlers were superior to the original inhabitants, who were too "primitive" to possess sovereignty.[129] The Supreme Courts unquestioned acceptance of the assertion of Crown sovereignty, and their own legitimacy to define and delimit

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[126]*Ibid.* at para. 165.
[127]*Ibid.* para. 165.
[128]*Ibid.* para. 168.
[129]Macklem, P. "First Nations Self-Government and the Borders of the Canadian Legal Imagination," 36 McGill L.J. 382.

Aboriginal title and rights, reflects an implicit acceptance of many aspects of Chief Justice McEachren's explicit discussion in the original case.

The legal development of Aboriginal rights has also been deeply affected by the Supreme Court's ruling in *R. v. Van der Peet*[130]. Dorothy Van der Peet, a member of the Sto:lo Nation, was prosecuted for selling ten salmon for $50.00 in violation of s.27(5) of the *British Columbia Fishery (General) Regulations*. She maintained that the regulation infringed upon her constitutionally protected Aboriginal right to sell fish. The progression of this case through the provincial courts of British Columbia to the Supreme Court of Canada resulted in the test for the existence of Aboriginal rights, as set out in *Sparrow*, to be substantially modified.

Under the *Sparrow* decision, the courts had established a strict common law test to justify the extinguishment of Aboriginal rights protected under section 35 of the *Constitution Act, 1982*, placing heavy onus on the Crown to prove extinguishment. Under this test, the proponent of an Aboriginal right to engage in some activity had to demonstrate that the activity was practised aboriginally and was never properly extinguished. *Van der Peet* has narrowed the scope of Aboriginal rights; under the new test, proponents of an Aboriginal right must also establish that the practice forms "a central and significant part of the society's culture"[131], and must not have existed in the past "simply as an incident" to other cultural elements or merely as a response to European influences.[132] As Bell states:

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[130]*R. v. Van der Peet* [1996] 2 S.C.R. 507, 4 C.N.L.R. 177

[131]*Ibid.* at 553, 564.

[132]Barsh, Russel Lawrence & James Youngblood Henderson, "The Supreme Court's *Van der Peet* Trilogy: Native Imperialism and Ropes of Sand" (1997) 42 McGill L.J. at 997.

> If the activity seeking rights protection has become integral due to European influence, regardless of the centrality of the activity to the contemporary Sto:lo Nation or the exercise of that activity for a substantial and continuous period of time, it is not Aboriginal in the eyes of the majority of the Supreme Court. The integral test is further refined by defining "integral" as "central" to an Aboriginal society or that which makes Aboriginal societies distinctive.[133]

Under this test, it is the role of the courts to measure what is "central" to Aboriginal culture, as opposed to merely "incidental". In this case, little attention was given to the Sto:lo perspective of what is of central significance to them. One may seriously question the ability of non-Aboriginal judges to decipher what is central to an Aboriginal culture; one may also seriously question the court's characterization of culture as a list of static elements, which may be defined as integral or incidental. As Barsh and Henderson state:

> Making any such distinction presumes that cultural elements can exist independently of one another, so that the loss of one element does not compromise the perpetuation or enjoyment of the others. This presumption of independence is, in and of itself, utterly incompatible with Aboriginal philosophies which tend to regard all human activity (and indeed all of existence) as inextricably *inter*-dependent...Centrality is a judicial fiction, an especially slippery slope, and undermines Aboriginal societies by exposing their purportedly "incidental" elements to judicial excision notwithstanding section 35 of the *Constitution Act, 1982*.[134]

Due to the limited nature of this study, it is not possible to include all of the developments with regard to the concept of Aboriginal rights. Policy developments such as the federal government's inherent rights policy[135], the extinguishment policy of the land claims process[136], as well as numerous other court rulings could have been included in this

[133]Bell, Catherine Bell, "New Directions in the law of Aboriginal Rights" (1998) 77 The Canadian Bar Review at 46-47.

[134]Barsh, Russel Lawrence & James Youngblood Henderson, "The Supreme Court's *Van der Peet* Trilogy: Native Imperialism and Ropes of Sand" (1997) 42 McGill L.J. at 1001.

[135]Canada. Department of Indian Affairs and Northern Development, *Federal Policy Guide: Aboriginal Self-Government - The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government.* (Ottawa: Minister of Public Works and Government Services Canada, 1995). http://www.inac.gc.ca/pubs/selfgov/policy.html (29 June 1998).

[136]For a discussion of "extinguishment" policy, see: Canada. Royal Commission on Aboriginal Peoples.

analysis. It is hoped, however, that this general overview outlining some of the stages of evolution of this concept will provide enough background information to conduct a critical analysis of the use of the rights paradigm when discussing issues impacting Aboriginal peoples. It is to this analysis which we now turn.

Dangers of using the rights paradigm

Throughout the analysis of the evolution of the concept of Aboriginal rights, it remains clear that in the Canadian political and legal systems, there remains a lack of meaningful consideration of Aboriginal world views. Aboriginal people, when participating in these systems, have been forced to translate their philosophies and conceptions into mainstream legal and political discourse. Many feel that the adoption of the language of rights by Aboriginal people is a tacit legitimation of an imposed political and legal system whose philosophical underpinnings are markedly different from Aboriginal world views. Therefore, while it may be said that considerable strides have been made in terms of bringing Aboriginal issues to the Canadian national agenda utilizing the discourse of Aboriginal rights, one must critically examine the effects of these developments. Objections to the use of the rights paradigm exist on several levels.

For example, Turpel makes a particularly poignant observation when she reveals the reasons why Aboriginal-European relations were historically placed within the context of rights. According to the European (Christian) ideas of "discovery", the conceptualization of Aboriginal cultures has been in terms of European legal/moral categories. This has included the notion of rights -- "the 'right' to property, or the 'right'

Treaty-Making in the Spirit of Co-existence: An Alternative to Extinguishment (Ottawa: Minister of Supply and Services, 1995).

to have the Christian faith put before Aboriginal peoples".[137] Therefore, it has been the rights paradigm which has been used to justify the dispossession of Aboriginal peoples of their territories in the first place.

One might also turn to the racist undertones which continue to colour legal decisions regarding Aboriginal peoples. As has been demonstrated, it has been the settlement thesis which has provided the basis of Crown title in Canada. Therefore it is apparent that the Canadian legal system continues to operate from a foundation based upon the belief in the inherent inferiority of Aboriginal peoples. To believe otherwise would call Canadian sovereignty into question; something that the Canadian government and the Supreme Court of this country cannot or will not acknowledge.

> As relative newcomers to the scene, the governments have arrogated themselves to the right to determine what is and what is not an aboriginal right, and the legal system under which any actions will be heard. Their own title, and their own rights in Canada, are considered absolute, and thus are not open to discussion.[138]

It must be pointed out that Aboriginal people have not been involved in the production of the terms which are used to discuss their rights. Indeed the legal discourse surrounding Aboriginal rights in the courts is controlled and produced by a certain group of people. Milavanovic in his study of a critical semiotic approach to law, explains how the content of linguistic forms (that which is established through a political process) is selectively established, supporting dominant understandings of the world (reification).[139]

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[137]Turpel, Mary Ellen, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" in Devlin, Richard. ed. *Canadian Perspectives on Legal* Theory (Toronto:Emond Montgomery Publications Limited, 1991) at 519.

[138]Ahenakew, David, "Aboriginal Title and Aboriginal Rights: the Impossible and Unnecessary Task of Identification and Definition" in Boldt, Menno & J. Anthony Long, eds., *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) at 28.

[139]Milavanovic, Dragon. "A Semiotic Perspective in the Sociology of Law," in *A Primer in the Sociology of Law* (New York: Harrow, 1988).

Control of the establishment of the juridical linguistic systems lends to the maintenance of a cultural hegemony. Generally, transformations of Aboriginal concepts into legal terms, which are controlled by the dominant group, tend to support the status quo. It is apparent that seemingly capricious terms such as "existing", "extinguishment", "*sui generis*", "usufructuary rights" and "fiduciary obligation" have come to dominate the discourse and have severe implications for a group of people not involved in their production. The perspectives of Aboriginal people have not been adequately included in the legal discourse surrounding Aboriginal issues.

Put simply, Aboriginal rights, and the particular world views and perspectives by which Aboriginal people construct this concept, must be "cut out" to fit the cubby-holes of the legal system which were developed without any meaningful consideration of Aboriginal differences. "Defendants before the court contribute to their own continued oppression by the unquestioned use of the juridic language form".[140] Aboriginal peoples' use of legal concepts to express their particular viewpoints shapes the context in which their statements are made, leading to a justification of their situation in relation to the dominant society.[141]

Mary Ellen Turpel also raises fundamental questions regarding the use of the courts in the struggle against the effects of colonialism. In particular she notes that there has been a glaring absence of a "cultural imperative" surrounding constitutionalism and legal discourse. By this, she means that there has been no meaningful consideration of the differences between Aboriginal groups and the mainstream Canadian society. Due to this

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[140] Ibid. p. 128.

[141] West, Douglas A. "Epistemological Dependency and Native Peoples: An Essay on the Future of Native/Non-Native Relations in Canada" (1995) XV:2 The Canadian Journal of Native Studies at 280.

lack of consideration, one is able to call into question the "general epistemological problems with legal knowledge, reasoning and decision-making."[142] Particularly, Turpel points out that the courts have maintained a cultural hegemony and an interpretive monopoly in the practice of writing and 'interpreting' the law for all Canadians, simply by the fact that they do so within a particular eurocentric conceptual framework.

Turpel raises fundamental questions about the appropriateness of the rights paradigm in the pursuit of Aboriginal goals and aspirations. The discourse surrounding rights is based in a European conception of individual property ownership, which, as discussed above, is foreign to Aboriginal peoples. She cautions Aboriginal leaders, as have others[143], against the wholesale adoption of Eurocanadian concepts in the struggles against the effects of colonialism. The use of the language of Aboriginal rights leads to a tacit legitimation of the rights paradigm, which was defined by a Canadian legal system whose processes and philosophical underpinnings reflect a different cultural system.

It is clear that if the rights paradigm is rooted in European notions of property ownership, these foundations are incommensurable with Aboriginal peoples' notions of their relationship with the land, a relationship which is holistic and spiritual. As outlined in an earlier section, Aboriginal peoples tend to regard their relationship to the land as one of stewardship. Their holistic understanding of the interrelatedness of all who share this

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[142]Turpel, Mary Ellen. "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences," in Devlin, Richard, ed., *Canadian Perspectives on Legal* Theory (Toronto: Emond Montgomery Publications Limited, 1991).

[143] Boldt and Long caution against the appropriation of European-Western concepts, such as "sovereignty" to express Aboriginal political goals, noting the danger of inadvertently reconstructing Aboriginal notions to conform to these concepts. See Boldt, Menno & J. Anthony Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians" (1984) XVII:3 Canadian Journal of Political Science at 537-554.

Mother Earth encompasses animal life, plant life, as well as the past and future generations. Canadian law does not have the capacity to relate these notions.

> The Aboriginal notion of land rights encompasses both a notion of time as occupation (past, present and future) and a notion of spiritual occupation. Both of these notions of Aboriginal occupation challenge the individualization of the common law system of property ownership. In other words, the Aboriginal understanding of the relationship to the land incorporates both ideas of individual rights and responsibilities as well as collective rights and responsibilities.[144]

The Charter of Rights and Freedoms has compounded the role of the rights paradigm within the political culture of Canada, as well as increasing the importance of the courts. The Charter, and the role of the courts as adjudicator of the meaning of these entrenched rights has "engendered a new form of legalized politics".[145] It is argued that the judiciary is not really well suited for this function since in many ways it is unrepresentative and undemocratic. These arguments are made even more salient for Aboriginal peoples as the courts define and delimit the scope and content of their entrenched rights, in light of the judiciary's historical treatment of these rights. As Henderson states: "The rule of law cannot cure aboriginal injuries if it itself is the disease".[146]

Canadians tend to have a penchant for the courts, as they place credence in their perceived role as a means to truth and justice. It remains the practice that Aboriginal rights are discussed in terms of law, as legal scholars attempt to sort out the courts'

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[144]Monture-Angus, Patricia A. "The Familiar Face of Colonial Oppression: An Examination of Canadian Law and Judicial Decision Making," Report submitted to the Royal Commission on Aboriginal Peoples. *RCAP Notes.* (1994) at 9.

[145]Seidle, F. Leslie. ed., *Equity and Community: the charter, interest advocacy and representation* (Ottawa: The Institute for Research on Public Policy, 1993) at iv.

[146]Henderson, James Youngblood, "The Doctrine of Aboriginal Rights in Western Legal Tradition" in Boldt, Menno & J. Anthony Long, eds., *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) at 28.

interpretations of the elements of Aboriginal rights. There are weaknesses to this focus upon the legal system to justify the existence of the concept of Aboriginal rights. Macklem explains the weaknesses of a positivist approach to justifying the legitimacy of Aboriginal rights. First of all, a positivist approach tends to obscure normative concerns, and law becomes justified by the fact that it is law. Further, there is an assumption of a degree of determinacy which, on many occasions, does not exist. Lastly, one is trapped into thinking that the right in question does not or should not exist if it cannot be justified by reference to legal sources.[147] This is to overlook important features of the Canadian legal system, which recognizes a variety of sources of laws, both written and unwritten, statutory and customary.[148] Further it is apparent that seeking positivist legal justifications for Aboriginal rights is inadequate, given the fact that much of the law dealing with Aboriginal people has emerged from racist assumptions and complete disregard for Aboriginal differences.

There has emerged an uneasiness among Canadians resulting from the Charter of Rights and Freedoms in its inclusion of individual rights and collective or group rights. Undoubtedly, the patriation of the Constitution, and the addition of the Charter of Rights and Freedoms has had a profound effect upon the political culture of Canada. There has been an empowerment of certain collective groups, now called "Charter Canadians".[149] These groups have achieved a more active participation in the constitutional discourse of

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[147]Macklem, Patrick, "Normative Dimensions of the Right of Aboriginal Self-Government" in Canada. Royal Commission on Aboriginal Peoples. *Aboriginal Self-Government: Legal and Constitutional Issues* (Ottawa: Minister of Supply and Services, 1995) at 1-54.

[148]Canada. Royal Commission on Aboriginal Peoples. *Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution* (Ottawa: Minister of Supply and Services Canada, 1993) at 8.

[149]Cairns, Alan C., *Charter Versus Federalism: The Dilemmas of Constitutional Reform* (Montreal: McGill-Queen's University Press, 1992).

this country, thus undermining the traditional operation of executive federalism. Cairns states:

> ...federalism itself has lost relative status in the Constitution as an organizing principle. The Constitution is now also about women, aboriginals, multicultural groups, equality, affirmative action, the disabled, a variety of rights and so on... the constitution is... via the Charter a possession of the citizenry who accordingly should be participants in constitution-making.[150]

As was demonstrated by the Meech Lake and the Charlottetown Accord, Canadians have come to reject an elite accommodation approach to constitutional discourse. There is an increased expectation about inclusion in constitutional debate.

Thus, Aboriginal issues have come to be included in the constitutional discourse as representing only one of the concerns of a group of "Charter Canadians", or as members of the "Court Party".[151] This has led to the effect that much of the debate which surrounds Aboriginal rights in Canada focuses upon the apparent divergence of provisions in the Constitution which recognize both individual and collective rights. While collective identities may have been empowered through inclusion in constitutional discourse, there appears to be a backlash against any perceived "special treatment" of collective groups. Canadians appear less inclined to accommodate those groups in society who call for "special recognition", like Aboriginal peoples and the Quebecois. For example, Gibson took issue with the RCAP's embrace of "separate government for native people":

> ...for the here and now, the reality is that this prescription will not fly with the Canadian electorate, who are ever more convinced that *equal* is the way to go, whether talking about "distinct society" or native rights. At the same time, the Charter has made Canadians increasingly individualistic.

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[150]Ibid. p. 68.

[151]Morton, F.L., "The Charter and Canada Outside Quebec," in McRoberts, Kenneth, ed., *Beyond Quebec: Taking Stock of Canada* (Montreal-Kingston: McGill-Queen's University Press, 1995) at 93-116.

> The insistence of the commission [RCAP] on collective rights and the collectivist approach of underlying aboriginal traditions don't fit with that.[152]

The construction of the argument as "individual rights versus group rights" is compelling to many Canadians. This is supported by the propagation of a particular conception of equality in a liberal tradition. For many, individual rights of the liberal tradition are inimical to collective rights claims of specific groups. For example, Schwartz contends that: "Liberal individualism is a more coherent, more egalitarian, more easily acceptable, political philosophy than history-based groupism".[153]

This portrayal of the shortcomings of "history-based groupism" and "race-based governments" ignores the inherency of Aboriginal rights. The courts and the government are not granting rights to an arbitrarily chosen group of people; they are recognizing the existing inherent rights of the original occupants of this land. The characterization of Aboriginal rights as "history based groupism" roots the source of these rights as historical oppression; the rights of Aboriginal people flow from the Creator, and their occupation of this land from time immemorial and pre-exist contact with European newcomers.

Further, the adoption of the mechanism of the Charter of Rights and Freedoms requires First Nations to abandon many of the philosophical views integral to their Aboriginal cultures; however, this cannot simply be framed in terms of individualism versus communitarianism. As has been demonstrated, Aboriginal world views encompass principles which reflect a profound respect for individual will and autonomy. The Charter

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[152]Gibson, Gordon, "Where the aboriginal report takes a wrong turn," *The Globe and Mail* (26 November 1996) A8.

[153]Schwartz, Bryan. "Individuals, Groups and Canadian Statecraft," in Devlin, Richard, ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery Limited, 1991) at 41.

of Rights and Freedoms, however, emerging as it does from a particular cultural context, involves the adoption of *practices* which run counter to Aboriginal perspectives.

Ovide Mercredi, former National Chief of the Assembly of First Nations, explains opposition by many First Nations to the adoption of the Charter.[154] He states that this does not stem from opposition to individual rights, but rather to the imposition of inappropriate mechanisms and institutions. The Charter was not created with Aboriginal input, and does not reflect many of the Aboriginal values, customs, and aspirations which form the basis of Aboriginal social structures. For example, Charter guarantees for legal counsel for accused persons within the adversarial justice system may be inconsistent with the traditional methods of dispute resolution which some Aboriginal communities may wish to implement, such as healing circles. Further, Mercredi discusses First Nations governance based upon a band council system, in emulation of European-style, democratically elected governments. This system emerges from a Western tradition that is inconsistent with the traditional methods of governance according to clan systems or hereditary systems.

In short, opposition to the application of the Charter upon Aboriginal governments arises from objections to the imposition of inappropriate *structures* and outside controls upon Aboriginal communities. As Kymlicka explains:

> They [Indian leaders] endorse the principles, but object to the particular institutions and procedures that the larger society has established to enforce these principles... What they object to is the claim that their self-governing decisions should be subject to the federal courts of the dominant society -- courts which historically, have accepted and legitimized the colonization and the dispossession of Indians peoples and lands.[155]

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[154]Mercredi, Ovide & Mary Ellen Turpel, *Into the Rapids: Navigating the Future of First Nations* (Toronto: Penguin Books Canada Ltd., 1993) at 96-106.

[155]Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford

For most Canadians, it is accepted as a matter of fact that the maintenance of their well-being lies in the protection of individual rights through a mechanism such as the Charter of Rights and Freedoms. It is confusing to suggest that the imposition of an individual rights paradigm might actually threaten the way of life of a section of society, and threaten their existence as distinct peoples. However, as Kulchyski points out:

> A system that presents itself as benign and nurturing to those inside of it, as a liberal democracy based on principles of individual rights and equalities, appears totalitarian to those, such as Aboriginal peoples, who experience its limits, its totalizing edges, who experience it as the process of totalization.[156]

The inclusion of Aboriginal rights in the constitution of Canada has had far reaching impacts on the manner in which Aboriginal issues are discussed in this country. On the one hand, the entrenchment of Aboriginal and treaty rights has provided Aboriginal peoples with more legal protection and political clout in dealing with the Canadian government and the effects of colonialism. On the other hand, when utilizing this discourse, Aboriginal leaders are necessarily "buying into" many of the principles of the particular cultural context from which rights discourse emerges.

However, for now, it is apparent that Aboriginal peoples will continue to use the rights paradigm to advance their interests. For example, *The Anishinaabek Declaration* of the Union of Ontario Indians, places strong emphasis upon rights. Some of the fifteen stated principles of the *Declaration* are listed here:

1. We are Nations. We have always been Nations.
2. As Nations, we have inherent rights which we have never given up.
3. We have the right to our own forms of government.

University Press, 1995) at 40.

[156]Kulchyski, Peter, "Aboriginal Peoples and Hegemony in Canada"(1995) 30:1 Journal of Canadian Studies at 62.

4. We have the right to determine our own citizens.
5. We have the right of self-determination...
8. We wish to remain within Canada, but within a revised constitutional framework...
10. The rights of Indians Nations as Nations must be entrenched and protected in the Canadian Constitution. These rights include Aboriginal rights...
12. Our treaty rights must be entrenched and protected in the Canadian Constitution...
15. Neither the federal government of Canada nor any provincial government shall unilaterally affect the rights of our Nations or our citizens.[157]

It is evident that this translation of Aboriginal perspectives into Canadian legal terms is often troublesome, and leads to misunderstandings. Why do Aboriginal peoples continue to participate in this discourse? It is evident that the use of rights discourse is a "conciliatory" move, at least to a certain extent, on the part of Aboriginal peoples. As Morito discusses, their use of the legal language is for the most part, not substantive, in the sense that it indicates wholesale acceptance of terms, but rather indicates a strategic move.[158] Aboriginal peoples advance their interests in these terms because it has enabled them to effectively table their "claims", and it certainly is evident that this strategy has worked in terms bringing their concerns to the country's constitutional agenda. Therefore, it is evident that the inevitable litigation that goes along with this strategy will continue to be a feature of Aboriginal-Canadian government relations. This is unfortunate, as litigation is inherently adversarial, and it frames the relationship as a "win-lose" situation for Aboriginal peoples and Canadians. However, Aboriginal peoples must use litigation to advance their interests due to a lack of political will on the part of Canadian decision-makers to deal with their concerns.

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[157]http://www.anishinabek.ca/uoi/declarat.htm, accessed July 3, 1998

[158]Morito, Bruce, "Aboriginal Right: A Conciliatory Concept" (1996) Vol. 13 No.2 Journal of Applied Philosophy.

There is a need for Aboriginal perspectives to play a larger role in shaping the discourse surrounding issues which affect them in both the legal and political spheres. Aboriginal peoples must continue to struggle against the totalization or assimilation of their values, and Canadians must become better educated, and more respectful of the nations of Aboriginal peoples with whom they co-exist.

7. Where these traditions diverge

It is not a particularly provocative contention to claim that Aboriginal and non-Aboriginal peoples have differing perspectives, and that it is their divergent understandings which have led to many of the difficulties plaguing their relations. However, often these differences are understated or dismissed, and not taken seriously enough to lead to fundamental questioning of the structures which define their relationships. This study has been an attempt to examine the extent of these differences, and to discuss how this manifests itself in the legal and political life of Canada. This discussion has put forward the idea that the disputes and difficulties in communication between Aboriginal and non-Aborignal peoples are not merely competing interests for land and resources, but rather are a result of divergent world views. As previously discussed, these groups experience reality in a different way; they have divergent ethnometaphysical understandings.

Many studies have examined the impact of cultural differences: Rupert Ross, Jerry Mander, Vine Deloria, James Dumont, Murray Sinclair, and J. Rick Ponting have studied and contrasted Aboriginal cultural values regarding education, spirituality, governance, and the justice system, with the values of mainstream Canadians. This study has focused upon the divergent understandings of the philosophical bases of society: what is human nature? what are the roles and responsibilities of individuals? what is the proper relationship between the individual and the community?

It is evident that the particular cultural context from which liberal ideas emerge become cogent when these ideas are contrasted to the Anishinaabe world view, and what the Anishinaabek feel that they know intuitively. In sum, whereas liberals imagine

individuals to be autonomous and competitive beings who enter into social relations only out of a rational recognition for mutual benefit, Anishinaabe world view conceives the individual as being embedded within a harmonious and interrelated whole. For the Anishinaabek, who remain dedicated to individual will and personal autonomy, there is value in recognizing what is good for the community. In this way, the will of the individual is concomitant with the will of the community. In Anishinaabe world view, there is no such thing as an "abstract" individual in the tradition of liberal thought; we are born into creation with particular roles and responsibilities. The basic proposition is that the individual is not just a competitive being, alone, isolated and surrounded by other autonomous beings; rather, each share with others in the circle of creation.

The differences between these world views are starkly evident in the notions of individual property ownership. This concept of individual property ownership is embedded in the economic, political and social structures of Canada. For example, the tenets of individual property ownership have come to dominate the discourse to describe what are essentially abstract principles, such as rights. In fact, one may note the connection between "rights" and individual property ownership on different levels. On one level, the ownership of property has played a significant role in determining the rights of certain members of society, as in property requirements for the exercise of the political right to vote. On a broader level, abstract principles such as the human right to life or the political right to freedom of expression are often described in terms of exclusive property ownership, as providing a protective fence or a "sphere of privacy" around the individual, which can only be infringed upon if the individual is disrupting another individual's "sphere of privacy".

This Western understanding of property ownership contradicts Anishinaabe recognition of equality within the circle of life: one cannot own a tree, or an animal, or another person's labour. Perhaps it is because Anishinaabe people include other beings into their vision of equality that there exists such a gap between the two world views. The belief in harmony and reciprocity precludes certain activities; for example respect for the interrelatedness of the whole may lead one to recognize the intrinsic value of a forest, rather than its exploitative potential.

Property ownership, as it is understood by liberals, is a foreign and destructive concept to the Anishinaabe world view. Anishinaabe social life does include some element of individual property ownership; for example, certain families will exercise "ownership" over trapping lines, which are passed on through generations.[159] However, there is a cultural imperative which advocates sharing with the entire community, and there is no encouragement for accumulation. For the Anishinaabek, greed is the "monster" embodied by the evil manitou of Anishinaabe stories, the Weendigo. The Weendigo is a horrifying cannibal with an insatiable appetite. The Anishinaabek, who live with the presence of manitous, recognize the Weendigo as an entity to be feared and avoided. Basil Johnston explains the Weendigo, and its relation to human beings:

> As long as men and women put the well-being of their families and communities ahead of their own self-interests by respecting the rights of animals who dwelt as their cotenants on Mother Earth, offering tobacco and chants to Mother Earth and Kitch-Manitou as signs of gratitude and good will, and attempting to fulfil and live out their dreams and visions, they would instinctively know how to live in harmony and balance and have nothing to fear of the Weendigo. If all men and women lived in moderation, the Weendigo and his brothers and sisters would starve and die out.

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[159]Hallowell, A. Irving, *The Ojibwa of Berens River, Manitoba: Ethnography into History* (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1992).

> But such is not the case. Human beings are just a little too inclined to self-indulgence, at times a shade too intemperate, for even the spectre of the Weendigo to frighten them into deference. At root is selfishness, regarded by the Anishinaubae people as the *worst human shortcoming*.[160] [emphasis added]

It is clear that accumulation is not one of the central tenets of living *biimaadziwin*, the "good life". Rather, emphasis is on sharing and living in harmony and reciprocity within the interrelated whole. Sharing is named as one of the four fundamental values of the Anishinaabe tradition, along with honesty, kindness and strength. Again these are expressed as the four points on the medicine wheel, as discussed in section three of this study.

One may say that in the same way that the concept of individual property ownership pervades the economic, political and social life of Western society, so too does spiritualism pervade every aspect of the lives of the Anishinaabek. For example, it is common for gatherings, such as feasts, committee meetings or pow wows, to begin with a thanksgiving prayer and a smudge ceremony. The smudge ceremony involves smouldering a medicinal plant, usually sweetgrass or sage. Participants take turns making cleansing motions with the smoke, bringing it over their heads, and their bodies. This is done to "cleanse" the participants of any negative feelings they may be carrying. Often the smudge is offered to everyone in the room, not just the "leaders". Again, the world view of the Anishinaabek is apparent in the everyday behaviour of individuals and communities. There is constant acknowledgement of the spiritual life; this is in strong contrast to the Western ways, which advocates a strict separation between religion and state.

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[160]Johnston, Basil, *The Manitous: The Spiritual World of the Ojibway* (Toronto: Key Porter Books Limited, 1995) at 223.

> Where the European-based view of the metaphysical remains grounded in a specifically defined *rationalism* and supported by the *scientific method*, Aboriginal views share the feature of being enmeshed in mythological and spiritual beliefs. Aboriginal world views throughout the Americas generally share the theme that life is circular and governed by spiritual beginnings, spirit-centred reality and spiritual vision and destiny. None of the activities of most Aboriginal people today are carried out without the acknowledged primary place of the spiritual aspect of "self" and the spiritualization of reality. No actions are carried out independently of spirit-influence, nor are they separate from a collective whole. For most Aboriginal people today, as in the past, the *spirit* is the motivator of the individual and of the collective, and is central to the understanding of the culture and history of the people.[161]

Within the Anishinaabe tradition, there is strong emphasis placed upon the good of the community, and no strong concern for dividing the land and resources among individuals for exclusive use and ownership. This way of life is generally characterized as collectivism and communal property ownership. As a result, quite often Aboriginal world views are characterized as communitarian, and as rejecting the individualistic nature of liberalism. This is a superficial characterization. While it is true that Aboriginal people respect communal values, as has been demonstrated, in this conception the individual remains sacrosanct. More importantly, one of the most essential divergences occurs around the fact that Anishinaabe people include other spiritual beings in their idea of community; whereas communitarians do not appear to share in this part of the ethnometaphysical view. Charles Taylor, a communitarian, states:

> From this view we can see the answer to [the] question... why do we ascribe these rights to men and not to animals, rocks or trees... is quite straightforward. It is because men and women are the beings who exhibit certain capacities which are *worthy of respect*.[162] [emphasis added]

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[161]Dumont, James, "Justice and Aboriginal People" in Canada. Royal Commission on Aboriginal Peoples. *Aboriginal Peoples and the Justice System* (Ottawa: Minister of Supply and Services, 1993) at 9.

[162]Taylor, Charles, "Atomism" in Avineri, Shlomo & Avner de-Shalit, eds., *Communitarianism and Individualism* (Oxford: Oxford University Press, 1992) at 33.

In the Western model, human beings are the masters of creation, and are superior to other elements of creation. Particularly, in a liberal conception, the human individual is the only unit of moral worth. By sharp contrast, in the Anishinaabek formulation, *all* -- including plants, animals, manitous -- are units of moral worth.

Anishinaabe world view has led to a focus upon the values of harmony, reciprocity and sharing, as opposed to liberalism's focus upon competition and accumulation. This is not to say that Anishinaabe ways of life are superior in the areas of sharing and caring, but it must be acknowledged that what drives the current Western economic system are these ideas of individual property ownership, competition and accumulation. Indeed some have even discussed the "superiority" of this system of individual property ownership and entrepeneurship over the collectivism of communal societies, because "individualist cultures with private property rights produce abundant material wealth, while collectivist cultures don't".[163]

As Overholt and Calcott conclude in their study of ethnometaphysics: "no culture's world is privileged in respect to truth".[164] It is not the purpose of this study to moralize regarding actions taken under the auspices of the liberal tradition, but rather to compare and contrast the differing but coexistent world views. It is evident that these differing ways of approaching the universe are reflected in how we structure society. In terms of relations between Anishinaabe people and Canadian liberal democrats, while certainly they have influenced each other, both continue to undermine each other's differences. It is evident that communication remains difficult.

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[163]Selick, Karen, "'Praising a 'superior' culture" *The Ottawa Citizen* (30 June 1998) A9.

[164]Overholt, Thomas W. & J. Baird Callicott, *Clothed-in-Fur and Other Tales: An Introduction to an Ojibwa World View* (Washington: University Press of America, Inc., 1982) at 10.

While recognizing these differences is the first step, it is necessary to accept the fact that Aboriginal and non-Aboriginal peoples are co-existing, and most likely will continue to do so. As such, it is necessary for Aboriginal and non-Aboriginal peoples to attempt to identify some commonalities between the philosophies and goals of both peoples to reflect a respect for shared foundations. These cultures can impact each other in positive ways.

8. Search for Common Ground

It goes without saying that non-Aboriginal people have made a permanent home here in Canada. It is equally obvious that Aboriginal peoples are going to hold strong to their unique beliefs and cultures; they have endured 150 years of relentless, systematic attack upon their lands, languages, beliefs, ways of life, and cultures. In addition to the normal pressures of cross-cultural contact and the resulting stresses placed upon "old" ways, generations of Aboriginal peoples have been subject to aggressive government policies aimed at their assimilation. Throughout all of this, Aboriginal peoples have persevered to maintain some cultural integrity and a continuing awareness of themselves as unique peoples. The question then becomes: how are these two groups to co-exist in the new era of renegotiation and renewal?

This thesis has set out to discuss the divergence of the worldviews of Aboriginal and non-Aboriginal peoples, exemplified through a comparative analysis of Anishinaabe and liberal philosophic traditions, in an effort to counter the claims that Aboriginal cultures do not differ in any significant way from mainstream Canada. Now that some of the differences have been firmly established, this study will turn to a search for commonalties between these groups. What is evident is that despite the enormity and profundity of the differences in world views, it is possible to locate some *common goals* in these two philosophic traditions.

It is evident that both Anishinaabe and liberal philosophies are committed to providing an environment within which one can pursue the "good life". Both liberal and Anishinaabe world views advocate individual fulfilment through achievement of personal capacities. In the Anishinaabe conception of the interrelatedness of all comes the

understanding that one must seek a place within creation in a spirit of harmony and balance, respecting others as well as oneself. This respect involves honouring the freedom and autonomy of all individuals.

> The central goal of life for the Ojibwa is expressed in the term *pimaadaziwin*, life in the fullest sense, life in the sense of longevity, health and freedom from misfortune. This goal cannot be achieved without the effective help and co-operation of *both* human and other-than-human persons, as well as by one's own personal efforts [165]

Likewise, liberalism deliberates on the "good life". Key to Kymlicka's message, for example, is that we be able to deliberate and choose among competing notions and values of what we consider to be integral to this "good life".[166]

Both of these philosophies operate upon a respect for individual will and equality. Often this element of Aboriginal cultures is ignored, as too often Aboriginal societies are superficially characterized as lacking the individualism of contemporary liberal democratic theory. In the languid efforts to fit Aboriginal world views within the Western ways of thinking, communal property ownership translates into "the tragedy of the commons"; respect for community life translates into "collectivism" and "subjugation to the group"; the spiritual aspects of Aboriginal life translate into "mysticism" and "adherence to ritual" and; respect for other parts of creation translates into "pantheism".[167] Aboriginal philosophies are far more complicated than Western dichotomies will allow. While it has been demonstrated that Anishinaabe peoples have profound respect for individual will, the

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[165]Hallowell, A. Irving. "Ojibwa Ontology, Behaviour, and World View," *Teachings from the American Earth: Indian Religion and Philosophy.* eds. T. Tedlock & B. Tedlock. New York: Liveright Press, 1992. p. 171

[166]Kymlicka, Will. *Liberalism, Community and Culture.* Oxford: Oxford University Press, 1989. p.13

[167]Selick, Karen, "Praising a 'superior' culture" *The Ottawa Citizen* (30 June 1998) A9.

dichotomy of communitarianism and individualism continues to characterize the discussion of Aboriginal world views.

It is a major concern of liberal thinkers that in collectivities, such as Aboriginal communities, there may not be proper respect for the rights and freedoms of individuals. There is a fear that Aboriginal self-government could lead to First Nations' governments oppressing their own people. There is much contention regarding whether the Charter of Rights and Freedoms should apply to Native communities as they begin to exercise their right to self-determination through self-government arrangements. For example, much of this concern regarding the threat to individual rights has to do with First Nation's citizenship, or band membership. Most pervasive has been the effect of section 12(1)b of the *Indian Act*. This section stripped generations of Aboriginal women, and their children, of Indian status. It held that if a status Indian woman married a non-Indian man, she and her children would become non-status. However, if a status Indian man married a non-Indian woman, not only was his status unaffected, but his non-Indian wife and her children became status Indians through section 11(1)f of the *Act*.[168] Due to the effective lobbying efforts of Aboriginal women, section 12(1)b of the *Indian Act* was proclaimed discriminatory, and some of the women who were affected were reinstated through Bill C-31, an amendment to the *Indian Act* put into place in 1985.[169]

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[168]Krosenbrink-Gelissen, Lilianne Ernestine, "The Native Women's Association of Canada" in Frideres, James S., *Native Peoples in Canada: Contemporary Conflicts* (Scarborough: Prentice Hall Canada Inc., 1993) at 358.

[169]The effectiveness of the Bill C-31 to stop the discrimination and rectify past injustices is questionable. While some of the women affected were reinstated, it may be said that the effect of this discrimination was only passed to future generations. The children of those reinstated by Bill-C-31 have a 6(2) category of Indian status. The 6(2) person cannot transmit status to his or her children unless the partner is a status Indian. This has been coined "the second-generation cut-off". See: Weaver, Sally, "First Nations Women and Government Policy, 1970-92: Discrimination and Conflict" in Burt, Sandra *et al*,. eds., *Changing Patterns: Women in Canada* (Toronto: McClelland & Stewart, 1993) at 117.

During the lobbying efforts of these Aboriginal women to end this discriminatory practice, opposition arose. Unfortunately, this came not only from the federal government, but also from leadership in their own communities, as well as the influential Indian organization, the National Indian Brotherhood (precursor to the Assembly of First Nations). Opposition to the reinstatement of these women was rooted in a concern regarding an influx of potentially thousands of reinstated band members back to their reserve communities. It was felt that the already scarce resources available to First Nations would not be able to handle the numbers of returning members.[170]

The legacy of this internal conflict has led Native women to continue to be concerned about discrimination within their own communities. As such, the Native Women's Association of Canada (NWAC) has supported the application of the Charter of Rights and Freedoms to First Nations' governments to ensure the equal treatment of women and men.[171] These guarantees would be in addition to the section 35 Aboriginal rights guarantees in the Constitution regarding gender equality. Amendments resulting from the initial March 1983 First Ministers' Conferences on Aboriginal Rights included the addition of section 35(4), which stated: "Notwithstanding any other provision in this Act, aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."[172] While the NWAC have remained supportive of Aboriginal self-government, it is evident that discrimination continues to be a concern.

Before concluding that Aboriginal communities are ill-suited to protect the individual rights of their own members, it is important to call to mind the root of this

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[170]Ibid. at 98.
[171]*Ibid.* at 93.
[172]*Ibid.* at 110.

problem. The government-imposed system of deciding who is, and who is not, an Indian, and in effect, who is and who is not, allowed to live within First Nation's on-reserve communities, has led to these internal divisions. For example, these discriminatory practices are not there because of ingrained sexism or discriminatory practice within Anishinaabe culture; this has been a colonial and Canadian government-imposed policy for over a century. Within the Anishinaabe culture, there is respect for the equality of all members of the community. Men and women are accorded different responsibilities, however there is recognition of the equality in importance of these roles. Membership in a community would rely on your clan affiliation, not upon an arbitrary government list. The root of the problem does *not* exist within Anishinaabe culture and peoples, however I would put forth that the solutions do.

To quickly jump to the conclusion that collectivist cultures do not respect "rights" of individuals based upon an example such as band membership, is a shallow observation and a superficial characterization. It has largely been the imposition of Western systems of governance and oppressive legislation which has led to a distortion of these principles of individualism and equality within First Nations' communities, rather than anything integral to their cultural traditions.[173] It is not the purpose of this contention to undermine the concerns of Aboriginal women; the challenges which they face both within their communities and in the broader Canadian society are very real. Neither is it to absolve Aboriginal people of their responsibility to work to ensure that community members are treated fairly and justly. What is important to note, however, is the irony at play in these

[173]It has been put forth that discrimination against women did exist in some Aboriginal cultures , such as the Inuit. In sharp contrast, Iroquoian societies operated within a matrilineal system. See: Canada. Royal Commission on Aboriginal Peoples. *Final Report of the Royal Commission on Aboriginal Peoples Vol.2 Part One* (Ottawa: Minister of Supply & Services Canada, 1996) at 122-126. It is apparent that it is impossible to discuss Aboriginal peoples as a homogeneous group.

discussions. The imposition of a foreign, paternalistic, patriarchal system rooted in Western ways, emerging from the Canadian legislature, has led to these discriminatory policies and internal divisions. When discussing the problems which have ensued, questions turn, not, as they should, to the inappropriateness of foreign-imposed systems, but rather to the ability of First Nations' leadership to adequately respect the individual rights of their members.

It has been put forth that respect for individual will and equality exist in both Aboriginal and liberal philosophies. One must be careful not to dismiss these features of Aboriginal societies due to a superficial understanding of Aboriginal cultures. The fact of the matter is that respect for these principles may exist within Aboriginal cultures and societies, however they can be manifested in different ways.

Take for example, the principles of democracy. Lenihan, Tasse and Robertson express optimism in the contention that Aboriginal peoples' beliefs may share some common ground with liberalism regarding the principles of democracy. They note that many native leaders seem genuinely to speak for the people they represent; they take the representativeness of these leaders as an indication of the "consent of the governed", which is necessary for legitimacy in the democratic tradition. However, the authors remain concerned about how to balance respect for the individual with respect for diversity, custom, tradition or culture.

> It is plain that...they [native leaders] have not resolved in a clear and satisfactory way how individual freedom and equality are to be reconciled with the special historical and cultural interests of their communities. This is reflected in the ambivalence of their own political discourse, which often swings back and forth between talk of respect for human rights and passionate professions of faith in traditionalism.[174]

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[174]Lenihan et. al., *Canada: Reclaiming the Middle Ground* (Montreal: IRPP, 1994) at 89.

"Passionate professions of faith in traditionalism" *can* mean a respect for human rights. Due to the limitations of the discourse of the rights paradigm, it often thought that these rights must translate into the adversarial court system and the democratically elected band council, rather than traditional mechanisms of dispute resolution and traditional structures and principles of governance. Liberal thinkers must realize that respect for the individual does not necessarily have to translate into the culturally constituted rights paradigm, and Eurocanadian institutions and mechanisms. Other mechanisms appropriate to another cultural world view may embody these principles.

While much of this discussion has focused upon the divergences of these world views, it would be overly simplistic, if not inaccurate, to attempt to create a stark dichotomy between the world views of these two groups; they have impacted upon each other throughout history. It is often undervalued, but it is evident that Canadians have reaped the benefits of the lands of the Anishinaabek, but have also been the beneficiaries of the rich philosophic traditions of the original peoples of this territory. The argument can be made that the liberal tradition is rooted in early contact experiences of European newcomers with indigenous people in the "New World".[175] The indigenous people encountered by these Europeans at contact operated in egalitarian societies, with paramount respect of individual autonomy and freedom. Undoubtedly, this had dramatic impact on the European newcomers who were coming from a strict hierarchical class

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[175]See: Brandon, William. *New Worlds for Old: Reports from the New World and Their Effect on the Development of Social Thought in Europe 1500-1888.* Ohio: Ohio University Press, 1986; Sioui, Georges. *For an Amerindian Autohistory.* Kingston/Montreal: McGill-Queens University Press, 1992 ; Weatherford, Jack. *Indian Givers: How the Indians of the Americas Transformed the World.* New York: Ballantine Books, 1988.

society. Regarding the principles which underlay the Charter of Rights and Freedoms, the RCAP has stated:

> To some extent at least, these principles can be viewed as the product of cultural fusion, stemming from inter-societal contacts in the villages and forests of North America, with effects that rippled outward into the salons and marketplaces of pre-revolutionary Europe. In interpreting and applying the Charter, we would do well to keep in mind the complimentary ideals of freedom and responsibility that have informed Aboriginal outlooks from ancient times, ideals that have continuing relevance to Canadian society today.[176]

Today, the teachings and values of Aboriginal peoples continue to positively impact upon non-Aboriginal Canadians. There are numerous indications that Canadians continue to embrace some of the knowledge of indigenous societies. Healing or sentencing circles, as methods of imparting healing upon a criminal offender, as opposed to punishment and retribution, are intriguing methods and objectives to those working within the justice system. In the areas of health, Aboriginal peoples have traditionally approached illness in a holistic manner, seeking healing for an individual in not only the physical body, but to explore the mental, spiritual and emotional aspects of their well-being. These approaches to health are gaining popular acceptance among mainstream Canadians. Ancient environmental knowledge of indigenous peoples is finally being reached by modern science; for example, the interrelatedness and interconnectedness of all beings and elements of the ecosystem is now widely accepted. It is evident that Aboriginal and non-Aboriginal peoples are also becoming closer in some developments in political theory.

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[176]Canada. Royal Commission on Aboriginal Peoples. *Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution* (Ottawa: Minister of Supply and Services Canada, 1993) at 40.

It is apparent that liberals have changed many of their early commitments, and the values and principles which they now espouse are becoming more concomitant with the Anishinaabe world view. This is evidenced by some developments of contemporary liberal theory, such as Rawls' theory of justice. Rawls' principle of justice which recognizes the arbitrariness of the distribution of natural talents is a significant deviation from the earlier principles of classical liberalism. In opposition to Macpherson's Market Man of possessive individualism, in Rawls' theory of justice each individual owes something to society for their natural, arbitrarily distributed, talents as they are "common assets of the community".[177] Further, Rawls' difference principle states that benefits gained from these natural talents should accrue to the least advantaged in society. It is apparent that Rawls' difference principle is consistent with what Anishinaabe people would call the principle of sharing. His attempts at justification for this principle through the use of the social contract devised under the "veil of ignorance", demonstrates the struggles which face liberal theorists in their efforts to justify concepts such as distributive justice (sharing) and responsibility to community life within the confines of strict individualism.

Macpherson took on this challenge through his political theory of possessive individualism, in which he attempted to search for an adequate "theory of obligation".[178] As Tully explains, Macpherson deviated from the traditional liberal-socialist debate to conclude that this theory of obligation could be achieved by a shared global effort to prevent world destruction under the threat of atomic warfare. This apparent return to a Hobbesian justification for submission to governance, as all operate under an "equality of

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[177]Tully, James, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993) at 80.

[178]Macpherson, C.B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962) at 83, 271-277.

insecurity", is put forward by Macpherson as an imperative to bind people together and to recognize their obligation to others.

> Given that degree of rationality, the self-interested individual, whatever his possessions, and whatever his attachment to a possessive market society, can see that the relations of the market society must yield to the overriding requirement that, in Overton's words... "humane society, cohabitation or being,... above all earthly things must be maintained."[179]

With the end of the Cold War, the threat of nuclear destruction is less prominent; however it can be stated that the world continues to face global destruction. This threat of destruction now takes the form of pollution of fresh waters, depletion of natural resources, global warming, ozone depletion, air pollution, extinction of animal species, and other effects of the constant pursuit of financial gain by public and private industry around the world. These impacts pose a very real threat to human societies, as well as future generations. The teachings of the Anishinaabek can offer insight into how to counter these effects.

In the Anishinaabe world view, the earth is our Mother, and the sun is our Father; they watch over us during the day. In the night, our Grandmother, the moon, watches over us. As siblings sharing the gifts of our Mother Earth, Father Sun and Grandmother Moon, we cannot demand more for ourselves than for others. These gifts are meant for all beings. For example, the life-giving warmth and light of the sun is a gift that is meant for all beings upon the Earth. Those of us who are responsible for the destruction of the ozone layer, causing the gifts of the sun to become harmful, are violating the principle of responsibility and obligation, to each other.

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[179] *Ibid.* at 277.

In Anishinaabe world view, these responsibilities also extend to other creatures on the earth, as well as past and future generations. It is often said that any decision made in the present generation must look ahead to the impacts upon the seven generations to come. This is in sharp contrast to the short term economic benefits which often drive the financial projects of public and private industry.

An Anishinaabe Elder once pointed out that it is now necessary for us to "elevate what is real". Much of the preoccupation of modern society is focused upon economic gain. Despite the technological developments of the last century, and the priorities accorded to meeting the economic demands of the forces of globalization, the fact remains that it is the Earth which provides us with sustenance, and it is the Earth which must continue to provide for the generations to come. In this age of modern technology, human beings are increasingly losing touch with their connection to Mother Earth. This is leading to a lack of balance.

Anishinaabe prophets of long ago spoke of such a phenomenon. Benton-Banai relates the story of the seven fires prophecy. Seven prophets were sent to the Anishinaabek over many years; each of their prophecies is represented by a fire. These prophets foretold the migration of the Anishinaabek from the East, the coming of the "light skinned race", the grief and suffering to be endured by the Anishinaabek, and finally the resurgence of the sacred ways . A portion is included here:

> The seventh prophet that came to the people long ago was said to be different from the other prophets. He was young and had a strange light in his eyes. He said, "In the time of the Seventh Fire a Osh-ki-bi-ma-di-zeeg' (New People) will emerge. They will retrace their steps to find what was left by the trail... If the New People remain strong in their quest, the Waterdrum of the Midewiwin Lodge will again sound its

> voice. There will be a rebirth of the Anishinaabe nation and a rekindling of old flames. The Sacred Fire will again be lit.
>
> It is at this time that the Light-skinned Race will be given a choice between two roads. If they choose the right road, then the Seventh Fire will light the Eighth and Final Fire -- an eternal Fire of peace, love and brotherhood and sisterhood. If the Light-skinned Race makes the wrong choice of roads, then the destruction which they brought with them in coming to this country will come back to them and cause much suffering and death to all the Earth's people...
>
> If we natural people of the Earth could just wear the face of brotherhood, we might be able to deliver our society from the road to destruction. Could we make the two roads that today represent two clashing world views come together to form that mighty nation? Could a nation be formed that is guided by respect for all living things?
>
> Are we the new people of the Seventh Fire?[180]

Many believe that we have entered the time of the seventh fire; there has been a resurgence of Aboriginal cultures across North America. Benton-Banai describes how many of the Elders of the Midewiwin (a spiritual institution of the Anishinaabek) have concluded that the "roads" which must be chosen are the roads of technology and the roads of spiritualism.

The differences between the Aboriginal and non-Aboriginal world views have been described as a circular, holistic vision as opposed to the linear type of thinking that is said to characterize Western ways. It is apparent that this holistic vision, the ability to see three-hundred-and-sixty degrees, has much to offer to non-Aboriginal peoples.

Indeed, in addition to the Anishinaabe knowledge of the appropriate way to live upon the Earth in a respectful manner, the ideas and insights of Anishinaabe peoples may be adopted by mainstream Canadian society in their efforts to create a free and liberal society which is at the same time devoted to the substantive equality of its citizens. The

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[180]Benton-Banai, Edward, *The Mishomis Book: The Voice of the Ojibway* (Wisconsin: Indian Country Communication Inc., 1988) at 93.

struggles of philosophers to define the values upon which society should be built may be aided by the insights of the Anishinaabek. The most important insight to be offered by Anishinaabe philosophy is who is included within the circle of society. In the liberal conception, individuals are the only units of moral worth. The Anishinaabe tradition might ask: what of future generations? animal and plant life? the spirit world? Canadian political philosophy may do well by extending their conceptions of society to become more inclusive. How are we to conceive society, and the rights and responsibilities to be borne by each individual: as autonomous property owning individuals competing for position in a stratified society, or as individuals each searching for a meaningful place within an interrelated and harmonious whole, sharing with others in the circle of creation?

> Put simply, the Amerindian genius, acknowledging as it does the universal interdependence of all beings, physical and spiritual, tries by every available means to establish intellectual and emotional contact between them, so as to guarantee them -- for they are all "relatives" -- abundance, equality, and therefore, peace. This is the sacred circle of life, which is opposed to the evolutionist conception of the world wherein beings are unequal, and are often negated, jostled, and made obsolete by others who seem adapted to evolution.[181]

The philosophic tradition of the Anishinaabek, honouring as it does the values of harmony, reciprocity, and balance, has much to offer to the present course of Canadian political thought.

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[181]Sioui, Georges E., *For an Amerindian Autohistory: An Essay on the Foundations of a Social Ethic* (Montreal & Kingston: McGill-Queen's University Press, 1992) at xxi.

9. Conclusion

On June 30, 1998, *The Ottawa Citizen*'s editorial page included a column entitled "Praising a 'superior' culture".[182] The author, Karen Selick, argued that cultures which support "individualism, liberty, entrepenuership, realism, liberty and private property" are superior to any cuiture (such as Aboriginal cultures) that supports "collectivism, adherence to ritual, mysticism, subjugation to the group and communal property." She continues to say that:

> What's interesting is that so many people, including many aboriginals, want the physical commodities that individualist cultures produce -- centrally heated houses, indoor plumbing, electrical appliances, snowmobiles etc. -- while spurning the cultural attitudes and practices that created such items. Instead, they endorse a culture of collectivism and communalism which, as history reveals, has never, anywhere in the world, come close to producing the level of material wealth that individualist cultures do.

There are, according to Selick, "sound economic reasons why individualist cultures with private property rights produce abundant material wealth, while collectivist cultures don't." She outlines the "tragedy of the commons." Selick contends that when property is owned communally, everyone has an incentive to use it up quickly, before someone else does. No one bothers to maintain or improve it, because their efforts will simply benefit others. The owner of private property, by contrast, "is motivated to conserve and improve it, knowing he or his children will reap the benefits of his efforts. It is only this process of capital preservation and accumulation that permits a society to advance beyond a mere subsistence lifestyle."

She ends the article by saying that the Supreme Court, through the *Delgamuukw* decision, held that "lands subject to so-called aboriginal title must be held communally and

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[182]Selick, Karen, "Praising a 'superior' culture" *The Ottawa Citizen* (30 June 1998) A9.

can be sold only to the Crown. In other words, it saddled natives in perpetuity with the commons tragedy, and it destroyed any chance for them to benefit from an open market for their lands." Her final word is regarding "corruption on reserves".

I have reproduced a segment of this argument within this study because this short editorial embodies many of the misunderstandings and assumptions which continue to bar non-Aboriginal and Aboriginal people from productive negotiation and mutual respect.

Much of the debate surrounding issues which impact upon Aboriginal peoples are based upon a false dichotomy of individualism versus collectivism reflecting the narrow limitations in Western ways of thinking. While it is true that many Aboriginal societies highly value the community, this is not to say that they subjugate individuals to the group. Among the Anishinaabek for example, while there is high value placed upon the good of the community, contrary to what Western philosophers have coined communitarianism, in this conception the individual remains sacrosanct. This respect for individual will and liberty is reflected in much of the behaviour and practices of the people.

In fact, key to Anishinaabe life is a search for individual fulfilment. Vision quests, fasts, sweatlodges and naming ceremonies, for example, are mechanisms to help the individual in his or her search for their own path in life. This rich philosophical tradition, which aids individuals in their search for personal fulfilment, can hardly be described as "subjugation to the group", or even "mysticism" for that matter.

The author's characterization of "the tragedy of the commons" as opposed to the actions of the "owner of private property" is incredibly ironic. The communal societies of Aboriginal peoples (as she calls them), had lived for thousands of years in North America in a sustainable environment, rich in natural resources (riches which attracted European

newcomers in the first place). Since the imposition of individual property ownership and private interests, the mass destruction and depletion of these resources has been devastating. Little consideration has been paid to the long term effects upon future generations; however the author contends that it is the communal societies who attempt to use up resources quickly, and do not take their children into consideration.

In liberal thinking, the individual is the only unit of moral worth. In classical liberalism, society is conceived as a collection of autonomous, selfish, accumulative, competitive individuals who come together in society only out of rational recognition of potential for mutual benefit. On the contrary, many Aboriginal societies recognize the individual as embedded in an interrelated whole, which includes other human beings, as well as the animals, plant life and water life and everything in the universe. This profound respect for the interrelatedness of all has led Aboriginal peoples to have important insights into the appropriate manner by which human beings should operate on this planet. If mainstream Canada can grasp the concept of economic interdependence when Asian stock markets fall, perhaps they could extend this way of thinking to a broader understanding of the interdependence of all beings sharing this earth.

As Canada struggles to balance the demands of a global economy, with a commitment to some sort of social equality, they should turn to the rich philosophical traditions of the First Nations to attempt to learn how Aboriginal societies managed to maintain a commitment to communal values, while upholding the sanctity of the individual. Equally Canadians should not forget their indebtedness to the philosophical traditions of Native American societies for the principles of equality and freedom which underlay the liberal democratic system. Prior to contact experiences with Aboriginal

peoples, most Europeans operated within strict class systems, such as feudalism, in which individual liberty and equality were non-existent. On the contrary, Aboriginal societies, such as the Anishinaabek, operated in governmental systems in which no individual was the property of another.

Many of the problems in the relationship between Aboriginal and non-Aboriginal peoples in Canada are rooted in an ignorance of each other's differences, and the dismissal of differences as indications of inferiority. One must be careful when denouncing the values and beliefs of different cultures, for one may be deprived of valuable lessons which may be taken from the knowledge and insights of other philosophical traditions.

Bibliography

Ahenakew, David. "Aboriginal Title and Aboriginal Rights: The Impossible and Unnecessary Task of Definition and Identification," in Boldt, Menno & J. Anthony Long, eds., *The Quest for Justice* (Toronto: University of Toronto Press, 1985).

Avineri, Shlomo & Avner de-Shalit, eds., *Communitarianism and Individualism* (Oxford: Oxford University Press, 1992).

Asch, Michael & Patrick Macklem, "Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*" (1991) XXIX:2 Alta L.R. 498-517.

Barsh, Russel Lawrence & James Youngblood Henderson, "The Supreme Court's *Van der Peet* Trilogy: Native Imperialism and Ropes of Sand" (1997) 42 McGill L.J. 993-1009.

Bartholomew, Amy and Alan Hunt. "What's Wrong with Rights?" (1990) 9:1 Law and Inequality.

Bell, Catherine, "New Directions in the Law of Aboriginal Rights" (1998) 77 The Canadian Bar Review.

Benton-Banai, Edward, *The Mishomis Book: The Voice of the Ojibway* (Wisconsin: Indian Country Communication Inc., 1988).

Boldt Menno & J. Anthony Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians" (1984) XVII:3 Canadian Journal of Poltical Science. 537-554.

Boldt, Menno & J. Anthony Long. eds., *The Quest for Justice* (Toronto: University of Toronto Press, 1985).

Bopp, Julie et. al., *The Sacred Tree: Reflections on Native American Spirituality* (Lethbridge: Four Worlds Development Press, 1984).

Brandon, William, *New Worlds for Old: Reports from the New World and Their Effect on the Development of Social Thought in Europe 1500-1888* (Ohio: Ohio University Press, 1986).

Brown, L. Susan, *The Politics of Individualism: Liberalism, Liberal Feminism and Anarchism* (Montreal: Black Rose Books Ltd., 1993).

Cairns, Alan C., *Charter Versus Federalism: The Dilemmas of Constitutional Reform* (Montreal: McGill-Queen's University Press, 1992).

Canada. Department of Indian Affairs and Northern Development. *Statement of the Government of Canada on Indian Policy*. Ottawa: 1969.

Canada. Indian and Northern Affairs Canada. *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Minster of Supply and Services Canada, 1997).

Canada. Royal Commission on Aboriginal Peoples, *Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution (*Ottawa: Minister of Supply and Services Canada, 1993).

Canada. Royal Commission on Aboriginal Peoples. *Treaty-Making in the Spirit of Co-existence: An Alternative to Extinguishment* (Ottawa: Minister of Supply and Services Canada,1995).

Canada. Royal Commission on Aboriginal Peoples. *People to people, nation to nation: Highlights from the report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services Canada, 1996).

Canada. Royal Commission on Aboriginal Peoples. *Final Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services Canada, 1996).

Cardinal, Harold, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: M.G. Hurtig, 1969).

Couture, Joseph. "Traditional Native Thinking, Feeling and Learning," in Friesen, John W. , ed., *The Cultural Maze* (Calgary: Detselig Enterprises Ltd., 1991)

Danley, John. R., "Liberalism, Aboriginal Rights and Cultural Minorities" (1991) 20 Philosophy and Public Affairs, 168-185.

Deleary, Nicholas, *The Midewiwin, an Aboriginal Spiritual Insitution: Symbols of Continuity: A Native Studies Culture-Based Perspective* (M.A. Thesis, Carleton University, 1990).

Devlin, Richard F. ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery Publications Limited, 1991).

Dickason, Olive Patricia, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1992).

Dumont, James, "Journey to Daylight-Land: Through Ojibwa Eyes" in Miller, David R.et. al. eds., *The First Ones: Readings in Indian/Native Studies* (Saskatchewan: Saskatchewan Indian Federated College, 1992).

Dumont, James, "Justice and Aboriginal People," in Canada. Royal Commission on Aboriginal Peoples. *Aboriginal Peoples and the Justice System* (Ottawa: Minister of Supply and Services, 1993).

Ermine, Willie, "Aboriginal Epistemology"in Battiste, Marie & Jean Barman, eds., *First Nations Education in Canada: The Circle Unfolds* (Vancouver: University of B.C. Press, 1995).

Gibson, Gordon, "Where the aboriginal report takes a wrong turn" *The Globe & Mail* (November 26, 1996).

Hallowell, A. Irving, "Ojibwa Ontology, Behaviour, and World View," in T. Tedlock & B. Tedlock, eds., *Teachings from the American Earth: Indian Religion and Philosophy* (New York: Liveright Press, 1992). 141-178.

Hallowell, A. Irving, *The Ojibwa of Berens River, Manitoba: Ethnography into History* (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1992).

Hawkes, David C., *Aboriginal Peoples and Constitutional Reform: What Have We Learned?* (Kingston: Institute of Intergovernmental Relations, 1989).

Hobbes, Thomas, *Leviathan* (Oxford England: Oxford University Press, 1996).

Hutchison, Allan C., *Waiting for Coraf: A Critique of Law and Rights* (Toronto: University of Toronto Press, 1995).

Johnston, Basil, *Ojibway Heritage* (Toronto: McClelland & Stewart Inc., 1976).

Johnston, Basil, *Ojibway Ceremonies* (Toronto: McClelland & Stewart Inc., 1976).

Johnston, Basil, *The Manitous: The Spiritual World of the Ojibway* (Toronto: Key Porter Books Limited, 1995).

Kulchyski, Peter, "Aboriginal Peoples and Hegemony in Canada" (1995) 30:1 Journal of Canadian Studies 60-68.

Kulchyski, Peter, ed., *Unjust Relations: Aboriginal Rights in Canadian Courts* (Toronto: Oxford University Press, 1994).

Kymlicka, Will, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989).

Kymlicka, Will, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990).

Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

Laselva, Samuel V., *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal and Kingston: McGill-Queen's University Press, 1996).

Lenihan, D.G. et. al., *Canada: Reclaiming the Middle Ground* (Montreal: IRPP, 1994).

Little Bear, Leroy et. al. eds., *Pathways to Self-Determination: Canadian Indians and the Canadian State* (Toronto: University of Toronto Press, 1984).

Macklem, Patrick. "First Nations Self-Government and the Borders of the Canadian Legal Imagination," 36 McGill L.J. 382.

Macklem, Patrick. "Normative Dimensions of the Right of Aboriginal Self-Government", in Canada. Royal Commission on Aboriginal Peoples. *Aboriginal Self-Government: Legal and Constitutional Issues* (Ottawa: Minister of Supply and Services, 1995).

Macpherson, C.B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962).

Macpherson, C.B., *The Real World of Democracy* (Oxford: Clarendon Press, 1966).

Macpherson, C.B., *The Life and Times of Liberal Democracy* (Oxford: Oxford University Press, 1977).

Mander, Jerry, *In the Absence of the Sacred: The Failure of Technology & the Survival of the Indian Nations* (San Francisco: Sierra Club Books, 1991).

Manzer, Ronald, *Public Policies and Political Development in Canada* (Toronto: University of Toronto Press, 1985).

McPherson, Dennis H. & J. Douglas Rabb, *Indian from the Inside: A Study in Ethno-Metaphysics* (Lakehead University. Centre for Northern Studies. Occasional Paper #14. 1993).

Mercredi, Ovide & Mary Ellen Turpel, *Into the Rapids: Navigating the Future of First Nations* (Toronto: Penguin Books Canada Ltd., 1993).

Milavanovic, Dragon, "A Semiotic Perspective in the Sociology of Law" in *A Primer in the Sociology of Law* (New York: Harrow, 1988).

Miller, J.R., *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989).

Monture-Angus, Patricia A., "The Familiar Face of Colonial Oppression: An Examination of Canadian Law and Judicial Decision Making" Report submitted to the Royal Commission on Aboriginal Peoples. *RCAP Notes* 1994.

Morito, Bruce, "Aboriginal Right: A Conciliatory Concept" (1996) Vol. 13 No. 2 Journal of Applied Philosophy 123-139.

Morse, Bradford W., ed., *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1991)

Morton, F.L., "The Charter and Canada Outside Quebec," in McRoberts, Kenneth, ed., *Beyond Quebec: Taking Stock of Canada* (Montreal-Kingston: McGill-Queen's University Press, 1995) 95-116.

Overholt, Thomas W. & J. Baird Callicott, *Clothed-in-Fur and Other Tales: An Introduction to an Ojibwa World View* (Washington: University Press of America, Inc., 1982).

Ponting, J. Rick, *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination* (Toronto: McGraw-Hill Ryerson Limited, 1997).

Rawls, John, *Theory of Justice* (Cambridge: The Belknap Press of Harvard University Press, 1971).

Ross, Rupert, *Dancing with a Ghost: Exploring Indian Reality* (Markham: Reed Books Canada, 1992).

Sanders, Douglas. "The Supreme Court of Canada and the 'Legal and Political Struggle' Over Indigenous Rights," (1990) XXII:3 Canadian Ethnic Studies.

Schwartz, Bryan, "Individuals, Groups and Canadian Statecraft" in Devlin, Richard F., ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery Limited, 1991).

Selick, Karen, "Praising a 'superior' culture" *The Ottawa Citizen* (30 June 1998) A9.

Sinclair, Murray, "Aboriginal Peoples and Euro-Canadians: Two World Views" in Hylton, John H., ed., *Aboriginal Self-Government in Canada: Current Trends and Issues* (Saskatoon: Purich Publishing, 1994) 19-33.

Sioui, Georges, *For an Amerindian Autohistory* (Kingston/Montreal: McGill-Queens University Press, 1992).

Spaulding, Richard, "Peoples as national minorities: A review of Will Kymlicka's arguments for Aboriginal rights from a self-determination perspective" (1997) 47:1 U. of T. Law Journal

Spielmann, Roger, *'You're So Fat!': Exploring Ojibwe Discourse* (Toronto: University of Toronto Press Incorporated, 1998).

Tobias, John, "Protection, Civilization, Assimilation: An Outline of the History of Canada's Indian Policy" (1976) VI:2 The Western Canadian Journal of Anthropology.

Tully, James, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980).

Tully, James, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993).

Tully, James, *Strange Multiplicity: Constitutionalism in an age of diversity* (Cambridge: Cambridge University Press, 1995).

Turpel, Mary Ellen, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Difference" in Devlin, Richard F. ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery Publications Limited, 1991) 503-538.

Weatherford, Jack, *Indian Givers: How the Indians of the Americas Transformed the World* (New York: Ballantine Books, 1988).

Webber, Jeremy, *Reimagining Canada: Language, Culture, Community, and the Canadian Cosntitution* (Kingston & Montreal:McGill-Queen's University Press, 1994).

West, Douglas A., "Epistemological Dependency and Native Peoples: An Essay of the Future of Native/Non-Native Relations in Canada" (1995) XV:2 The Canadian Journal of Native Studies.