

*“On further thought:  
reflections  
on the last two decades”*

A keynote address  
by

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## **Objectives and introduction**

I am honoured to have been invited to give the second keynote address at this conference in Scotland. I propose to offer some modest reflections on the place of Anishinabeg, and Anishinabeg thought, in Canada, based on my experiences in public life and universities in the last two decades. My approach will be to first review, very briefly, some of the national events in which I participated, and then to offer some personal reflections.

I think it is an understatement to observe that the ideas or thoughts of Anishinabeg have not been at the forefront of public debate in our country. The ideas or thoughts of the newcomers still dominate debates on matters of Aboriginal public policy, politics and law. We see signs that support for the harsh conclusions that flow from the ideas of yesterday is diminishing. For example, I hazard the guess that most social scientists today would not subscribe to the views of Marcel Giraud, written about the time I was born, that the folks in my home community are culturally primitive, and morally, physically and intellectually inferior to others.<sup>1</sup>

But the ideas of others about Anishinabeg still seem to dominate. Consider, for example, the persistence of the idea that justified the dispossession of the Americas by Europeans. It is the idea that farmers are better than hunters. Indigenous peoples are primitive and lesser humans, and God has given a mandate to those who till the soil. The mandate is to take the land from the hunters, who only ‘roam’ over it to hunt animals. Farmers are morally better than hunters, and therefore they have a right to take the lands of the hunters. The legal version of the idea declared that the lands of hunters can be taken because they are empty: *terra nullius*. *Terra nullius* is Latin for ‘land belonging to no one’: it is there for the taking. Translated into ordinary language, this means that the land was empty of people who mattered in law. They did not matter because they were hunters, and not farmers.

One might think that Anishinabeg would not subscribe to this idea, and might even resist it. But our people, too, are adopting the language of farmer-superiority, even as they assert the rights of hunters. No one hunts and kills animals for food anymore, at least not in the language that is being adopted everywhere. In Canada, today, in the language of aboriginal rights, Aboriginal hunters harvest moose. They do not hunt and kill them to eat them. Metis organizations, anxious to secure government recognition of hunters’ rights, issue what they call ‘harvester cards’ to members that they would like to see recognized as having hunting rights.

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<sup>1</sup> Giraud is the author of the massive two volume study of the Metis, an indigenous people that emerged in the Canadian West and dominated western political history in the period *circa* 1815-1885. *Le Metis Canadien*, published in Paris in 1943, was published in an English translation in 1985: Marcel Giraud, (G.Woodcock, trans.) *The Metis in the Canadian West* (Edmonton, U of Alberta Press, 1985). For Giraud’s views on my home community, see M. Giraud, “A Note on the Half Breed Problem in Manitoba”, (1937) *The Can. J. of Economics and Political Science* 541. For a recent history and different perspective, see Nicole St-Onge, *Saint-Laurent, Manitoba: Evolving Metis Identities, 1850-1914*. (The Metis of St Laurent (Regina, Canadian Plains Research Centre, University of Regina, 2004)

I conclude from this that, at the rhetorical level at least, the farmers' ideas still rule: Aboriginal hunters can acquire legal rights in the world now ruled by the farmers. However, it is only by metaphorically transforming themselves into farmers that hunters can have rights. Hunters are still morally inferior to farmers.

Today I have adopted the Ojibway or Saulteaux term 'Anishinabeg', to represent all indigenous peoples in Canada, including the Indian people, now often called 'First Nations', especially in academic circles, the Metis, and the Inuit. Together these indigenous peoples are known in Constitutional and other official terms as the 'Aboriginal' peoples of Canada. In my limited experience, the self-naming term used by many indigenous peoples means 'the people' or some variation of that term, such as Innu, Ininewuk, Inuit. This usage also serves to emphasize that indigenous thought is best expressed in indigenous languages. Since I see some Cree friends in this audience, I promise to use 'Eninewuk' in my next speech.

### **Overview of the last two decades.**

My involvement with national Anishinabeg issues starts with the 1984 First Ministers' Conference on Aboriginal Constitutional Reform, the second one of four that were held from 1983 to 1987. Having returned to Canada from an extended stay in Australia, I was a university professor and an advisor to the Metis National Council, one of the four national political representative organizations invited to participate by the Prime Minister, pursuant to his Constitutional obligation to invite the representatives of the Aboriginal peoples to the Conferences.

It may be recalled that the Aboriginal political representatives who had battled with government representatives in the process leading up to the so-called 'patriation' amendments in the *Constitution Act 1982* had been able to secure only the bare affirmation and recognition of 'the existing aboriginal and treaty rights' of the Aboriginal peoples, without any elaboration of what those rights might be or who might be the peoples who had them. In theory, one would expect both those issues to be debated, but of course political reality determined that the aim of the national conferences was to elaborate on the identification of the rights. It will be no surprise to you that none of the political representative organizations ever showed any interest in debating the other question, for reasons that should be obvious. I mention this because the courts are now starting to assume a role in defining the people who have aboriginal rights, and it is not, at first blush, apparent what might be a legitimate judicial role in defining historic political and social communities, or nations, which is what Anishinabeg are. They are not, in other words, mere 'racial groups' united by biological determinism.

The main focus of the Aboriginal organizations had been on an amendment to give explicit recognition to a right of self-government. It is notorious that the FMCs failed to reach agreement on the meaning of the treaty and aboriginal rights clause, s.35 of the *Constitution Act 1982*, and that the Anishinabeg political mood, which was very sombre and disappointed at the termination of the last conference in March 1987, turned bitter a few weeks later when the First Ministers agreed to a constitutional reform package for

Quebec called the 'Meech Lake Accord.' The Accord did not pass, and I was in the Manitoba Legislature three years later to witness an historic event as Elijah Harper whispered 'no' to the request of the Speaker for the consensus necessary to table the legislation that was needed to pass the Accord in Manitoba, a step essential to national ratification.

I did not think about it at the time, but on further thought, it was apparent that the influence of Aboriginal people and Aboriginal issues had come a long way since Prime Minister Pierre Trudeau had uttered his own 'no' to the recognition of the treaties in the late 1960s. Not only had the courts decided in the *Calder* case that there was such a thing as aboriginal rights, but the political action of Aboriginal people had secured significant concessions on Constitutional recognition of those rights, and now Aboriginal people in political office were starting to push the levers of political influence.

But these were the levers that stopped, rather than moved change, and things changed for the worse with the violence at Oka and the Mercier bridge in Montreal in what was called the 'hot summer' of 1990. The confrontation between some Mohawk people and the police and then the army was televised into the living rooms of Canadians, and was a source of trauma to Aboriginal people across the country. Particularly traumatic was the sight of Montrealers stoning cars in which the passengers were Mohawk elders, women and children as they crossed the Mercier bridge, even as the police stood by and watched.

I did not think about it at the time, but on further thought, I believe that the last time the Canadian army had been called to fight Aboriginal people was at Batoche in 1885, and that it had been Honore Mercier, the Quebec Premier, who had railed against the actions of the government of John Macdonald. Today, the Honore Mercier bridge spans the St Lawrence River and Seaway and links the island of Montreal with Mohawk Territory on the South Shore. History sometimes has an interesting way of knocking on the door of our conscience and national consciousness.

By 1990, the Conservative government of Brian Mulroney, which had expended all of its credibility with Aboriginal people, was looking desperately for political solutions to a mounting crisis in handling Aboriginal policy. The Prime Minister turned to the time-honoured tactic of a policy advisory commission, and appointed the late and then retired Chief Justice of the Supreme Court of Canada, the Honourable Brian Dickson, to advise him on the mandate and membership of the Commission. I was one of seven commissioners, and one of four Aboriginal commissioners, appointed in the fall of 1991, to the *Royal Commission on Aboriginal Peoples*, which had a comprehensive, sixteen-point mandate to advise the federal government on all aspects of policy pertaining to Aboriginal people.

National attempts at Constitutional reform continued, and the early work of the Commission included analysis of the constitutional basis for the right of self-government of Aboriginal peoples, an argument that, we were told, influenced the political acceptance of self-government in the new Constitutional reform package called the *Charlottetown Accord*. This Accord included some very significant clauses for Aboriginal peoples,

including not only the recognition of the right of self-government, but also the idea of special representation on the Supreme Court of Canada, an issue that is currently being hotly contested in some circles. Even though the *Accord* failed to pass a necessary national referendum for ratification, it still stands as the high water mark of the political recognition of Aboriginal self-government in Canada.

The Royal Commission completed its work in 1995, but by that time the Mulroney Conservatives had lost power and been replaced by the Chretien Liberals, who lost no time in turning a cold shoulder to the Mulroney-appointed Commission. It took a year to translate the nearly 4000 page final report into French, and it was published by the government in November, 1996. Next year it will already be ten years since that event, and I am currently involved in plans with the College of Law at the University of Saskatchewan to host a conference, in November 2006, on the topic of the influence of the Commission on legal and policy developments.

It was early January 1998 when the federal government publicized what it called its response to the RCAP report. It struck at least some observers as rather weak that the government policy response was silent on the Commission's call for fundamental change in a detailed twenty year plan, and a Constitutional vision of a 'nation-to-nation' treaty relationship. The Prime Minister did not attend the government's public announcement, sending instead his Minister of Indian Affairs to issue a statement of regret for past actions, and to announce a \$350 million Aboriginal Healing Fund to address 'the legacy of physical and sexual abuse' at Indian residential schools. There was to be no public inquiry, and no money for publicity about these abuses, as the Commission had proposed. Instead, the money would finance 'community projects', but not litigation. The true rule in Aboriginal policy, according to the newspaper headlines following the release of the RCAP's final report, is this: 'let us buy peace at the cheapest price'.

One of the legacies of the RCAP is its complete record of the transcripts of the public hearings which were held in some one hundred communities across Canada. The hard copies of the reports of the Commission are long out of print, the government not having accepted the RCAP recommendation to make copies widely available, and to reprint as demand indicated. However, a private distributor, Libraxus, distributes a CD-ROM which contains all the reports, some of the commissioned research papers, and records of all the public hearings. The CD has a search capacity that allows the researcher to gain access, for example, to all that was said by Elders on the subject of creation stories. At least one book, by Tim Schouls, has based its primary research in that source.

I served as one of the appointed founding directors of the *Aboriginal Healing Foundation*, until my subsequent appointment to Manitoba's *Aboriginal Justice Implementation Commission* (AJIC), in late 1999. The so-called *Aboriginal Justice Inquiry*, which had reported in 1991, had a dual role, serving as a policy advisory commission to the province, and also conducting a judicial inquiry into the deaths of two Aboriginal people, Helen Betty Osborne, a young Cree woman who was killed by 'white' men in The Pas, Manitoba, and J.J. Harper, a northern Cree, also, who died on the streets of Winnipeg following a scuffle with an armed police officer. A Conservative

government had replaced the New Democratic Party (NDP) government that had appointed the commission by the time it reported, and there was little government support for its approach. When the NDP was returned to power in 1999, it fulfilled an election promise by appointing the AJIC to advise it on implementation of the report of its old commission. Although the government officially stated that it accepted all the recommendations of the Commission when it issued its final report in June 2001, a number of key recommendations remain outstanding. The reasons behind this lie well beyond the scope of my immediate purposes.

In January this year, I chaired a conference in Saskatoon. It focused on the reports of two commissions whose reports were published by the government of Saskatchewan in the year 2004. One was a policy advisory commission on reform of the criminal justice system in respect to its application to Aboriginal people; the other was an inquiry into one of the freezing deaths of Aboriginal men in Saskatoon in which it was alleged the city police had been involved.<sup>2</sup> We at the university organized with the National Film Board to open our conference with the launch of the NFB's national tour of Tasha Hubbard's film on the freezing deaths, called '*Two Worlds Colliding*.'

In retrospect, and on further thought, what good are these commissions? They are certainly very popular with the Canadian public, a call going out for a commission of inquiry anytime, it seems, that an adequate explanation is not forthcoming for any social ill, real or perceived. Royal commissions, no longer the creature of Royal prerogative, but authorized by legislation, and put into effect by an order of the government of the day, have examined Aboriginal policy since the first half of the 17<sup>th</sup> century in colonial North America and later Canada.

Commissions can be useful to governments, who can use them to delay action while appearing to be doing something, and also appearing to do the right thing by asking for the views of an impartial body on any difficult matter. Commissions no doubt come up with good policy ideas and recommendations, although that is what a professional civil service is expected to be able to do. No doubt the public hearings that give an airing to citizen complaints have a cathartic effect, but that can be balanced off by the social angst which can accompany commission findings that society is not as benign as citizens might like to believe it to be. As one newspaper commentator put it when people began to react against some of the evidence of problems in the system in Manitoba being unearthed by the AJI; 'the commission is holding up a mirror to society, and society does not like what it sees.'

Where a commission recommends fundamental change, as the RCAP did, there are special considerations. Fundamental change, never an easy political task, needs much more than a commission's word to happen. There is a hard kernel of wisdom in the term 'reform', often found in the names of commissions and legal review bodies: a thing is 'reformed' only by maintaining the integrity of its core or substance. For the large, national policy advisory commissions like the RCAP, perhaps the measure of their worth is

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<sup>2</sup> A summary of the conference proceedings will appear in the August 2005 issue of the *Saskatchewan Law Review*.

whether, and how, they influence the way that people *think* about the subject matter of their mandate. The RCAP and other commissions have, I trust, provided a means for the thoughts of Anishinabeg to influence Canadian debate.

In the last two decades, indigenous people have also become increasingly significant participants in international political and legal developments. That work is reflected, in part, in the declaration by the United Nations' General Assembly, of a Second Decade for Indigenous People starting in 2005. At the same time, international and regional developments, such as the work of the *Inter-American Commission on Human Rights*, and decisions of the *Inter-American Court of Human Rights*, have provided some measure of support for principles that recognize and respect the interests and rights of indigenous peoples. In relation to Canada specifically, three UN treaty bodies that supervise performance of state obligations under international human rights treaties, have, since 1998, expressly criticized Canada for failing to implement the final report of the RCAP, citing in particular, *inter alia*, failures of domestic self-government policies to implement the international right of self-determination, and the continuation of Canada's extinguishment policy in relation to land rights in treaty negotiations with First Nations. The establishment of the UN advisory body to the Economic and Social Council (ECOSO), the Permanent Forum on Indigenous Issues, which is meeting in New York for the fourth time this month, is usually cited as the most significant accomplishment of the first Decade.

Without a doubt, the most significant disappointment of the First Decade, at least from the perspective of the indigenous peoples (IP), is the failure of the UN to adopt the *Declaration on the Rights of Indigenous People*. The Declaration stalled in the political *Commission on Human Rights* after being approved by its expert subsidiary sub-commission. The *Sub Commission on the Promotion and Protection of Human Rights* had accepted the document drafted by the *Working Group on Indigenous Populations*(WGIP), which had been created by the *Sub-Commission*, and which has been meeting annually in Geneva in late July since the early 1980s, when the WGIP began its work of reviewing developments and developing international standards relating to indigenous peoples.

The mandate of the WGIP, which sees the largest gatherings of IP from around the world each year, numbering well over a thousand, is currently under siege at the UN, but the good news is that the mandate of the CHR Working Group, which has been 'elaborating' the text of the said UN Declaration, has just been renewed by the CHR in its meetings in April this year. It is regrettable that one of the states that is leading those who have set their face firmly against the international recognition of our human rights in the UN Declaration, is the United Kingdom and the government of Tony Blair, which elsewhere describes itself as a champion of human rights in the European Union.

State practice around the world, in the last two decades, is more and more inclined towards the recognition and protection of the rights and interests of IP. This development does not appear to be easily reversible, and seems bound to continue to influence the

development of international standards that require states to have respect for the rights, the interests, and the ideas, of indigenous peoples.

Indigenous NGOs from Canada, of which there are several, have been particularly active in these UN forums. They have made laudable contributions to developments, while receiving much appreciated support from other NGOs, including church-based organizations and others such as *Amnesty International* and the Montreal-based *International Centre for Human Rights and Democratic Development*.

Working cooperatively towards a common goal with indigenous people from around the world is not without its challenges, but I can cite a particularly remarkable insight that seems to be widely shared by indigenous people, and that has had a salutary effect on our work. I refer to the concept of *consensus*, and its application to deliberations and agreement within the indigenous caucus. Time and again we have been reminded that reaching consensus is never only a matter of counting numbers, nor even reaching the stage where no one party objects to a particular proposal. Consensus is a dynamic process. The parties must have time to discuss the issues, and the time to work on the art of persuasion. Consensual decisions of this kind are more difficult to reach, and take more time, but such agreement, once reached, is on a surer foundation and more likely to be respected, than one reached over the objections of some participants. In this case, the ideals of human rights standards and the ideas of indigenous peoples seem to match perfectly.

### **Philosophical and political challenges**

It is generally accepted that it was European thought that has informed the philosophical, religious, political and legal thinking behind the formation and development of Canada as a modern state and constitutional entity. The goal of this conference, as I understand it, has been to examine the other body of thought, the North American indigenous thought, and to consider its place in the contemporary and future life of Canada.<sup>3</sup>

In the time available to me, I propose only to comment briefly on the matters, first, of language, the vehicle for transmission of ideas, second, on the role of the universities, which are the usual suspects in any project involving the dissemination of thought, and finally, on the thoughts that are now being marshaled against the recognition of a more substantial place for the Anishinabeg in Canada. The focus will be on those who oppose the Canadian duty of making good on the Constitutional promise of 1982, in which the collective rights of the historic North American nations were recognized and affirmed.

I start with some brief background context. Although of much more recent vintage, the European thoughts have been backed by political and economic power that has

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<sup>3</sup> The author has offered a view about the place of Aboriginal peoples in a just vision of Canada: Chartrand, Paul L.A.H. "Aboriginal Self-Government: Towards a Vision of Canada as a North American Multinational Country", in Jill Oakes and Rick Riewe, ed., *Issues in the North*, Occasional publication Number 41, (Winnipeg. Canadian Circumpolar Institute and Department of Native Studies, University of Manitoba, 1997).

marginalized the Anishinabeg, as is well known. In these circumstances, there has been little opportunity to expose the ideas behind political action, since there has been relatively little political action by Anishinabeg that has engaged other Canadians.

The recent era of influence of thinking by Aboriginal people, after the end of the historic takeover which involved the western and northern treaties, probably starts at the end of the Second World War, with returning veterans who called for changes to the subservient status of their people.

Historic shifts that affected the place of Anishinabeg in Canada, occurred in the two decades following the war. First was the spread of the welfare state administration to all parts of Canada, complete with its human rights abuses and forced relocations. This change coincided with the further depletion of food and fur-bearing animals, and we saw more and more Aboriginal individuals and families moving to the cities in search of employment or a better life. This movement, in turn, boosted political activity and organization, and we saw the birth of the precursors of the now prominent national Aboriginal political organizations in the late 1960s and in the 1970s. The presence of large numbers of Aboriginal people in the towns and cities of Canada, where they can engage directly in political relations with others, is a fairly recent development. An increased access to formal education, and the ability to speak English, have been important factors. All the leaders now are very well spoken in English, and some of the younger ones have no non-English accent, or in fact, may use English as their first language.

The converse of this increasing ability to speak English, and French where that is spoken, has been the decreasing ability to speak North American languages. At least two official reports in the last two decades, have concluded that only three North American languages stand a long-term chance of survival: Inuktitut, Ojibwe, and Cree. If we accept that North American ideas are best transmitted in North American languages, the prospects for North American thought are not particularly bright. It seems evident that these languages can not all survive as the language of commerce or of daily domestic life. But that should not spell the end of them.

Languages also have a role in the transmission of ideas, and in ceremony. Latin survived as an important language of ceremony for centuries after its death in the kitchen and in the market place. As an outsider looking in, I am dismayed by the apparent lack of focus on these important functions of language, and equally dismayed by sincere, but perhaps doomed, attempts to teach dying languages to children while ignoring the role of the universities and ceremonial life.

Further thought on the state of North American languages allows me to pause to emphasize just one of the striking differences between the case of immigrants, and the case of the Anishinabeg, or, putting it another way, the case of minority cultures as opposed to the case of North American cultures. If an immigrant language dies, it survives in its homeland. If a North American language dies, it dies absolutely.

Even before the languages died, we found the European languages of the takeover, replacing the North American names for the places on the land. The names of places and features of the land reflected the history, and the culture, of the people. They have been erased now. A few years ago, the Grand Council of the Crees brought the attention of the United Nations to a particular naming project by the province of Quebec. This was in a WGIP meeting, and is an example of the WGIP mandate to review developments, in addition to its role in standard-setting, exemplified by its development of the *Declaration*. The Grand Council explained that Quebec flooded the lands of the Cree to build a hydro electric dam. The tops of the former mountains became islands in a vast lake. The new islands were given the names of French Canadian literary figures, standing there, high and dry, on flooded Cree lands. On further thought, it seems that humans, like animals, like to put their mark on the land they control within their political territory.

We might give some further thought to institutionalizing the use of North American languages in the universities as the language of ideas. It is up to Anishinabeg to decide on ceremonial usages. A good dialogue might also begin by allowing the North Americans to teach the Europeans how to read the land.

### **Universities**

I have mentioned the recent move to the cities by the Anishinabeg. It is in the towns and cities of Canada that one finds the seats of political power and influence, which is where ultimately the Anishinabeg would like to have their influence felt, so that the Anishinabeg interests can be justly represented and protected.

One finds there, too, the universities, the institutions that have a traditional role in generating and disseminating ideas. The universities, and the governments, and the political parties, have all had to face the new Anishinabeg presence. The influx of Anishinabeg in the urban areas has led to a great questioning: Who are these people, and what do they want? And this conference is evidence of another question which has emerged: ‘What are they thinking?’

In the universities, we now find a very few Anishinabeg scholars, and increasing numbers of Anishinabeg students. Everyone agrees that we must pay attention to the ideas of the North American peoples; the idea is found in many places, including in the recent report of the UN *Special Rapporteur on the Rights and Freedoms of Indigenous Peoples*. So it appears certain that much more will be said and written about the subject in the near future, and by both indigenous scholars and other scholars.

There seems to be an incredibly large amount of work that has already been published about North American thought by others than Anishinabeg, and it appears to be of variable quality. One of the best starting points for anyone interested in seeing what is uniquely ‘North American’ in philosophy, is Russel Barsh’s excellent “*The Nature and Spirit of North American Political Systems*”.<sup>4</sup>

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<sup>4</sup> (1986) *American Indian Quarterly* 181-198.

I have noticed that some of the published work is somewhat intemperate or infelicitous in tone and in language. I would put into this category the general usage of terms like ‘Eurocentric’ when used to excoriate those who do not agree with the writer’s view, although I may be wrong in seeing this as overly general and accusatory. I assume that if an idea is Eurocentric, then perhaps a competing one is Abocentric, and I doubt this is the best way to conduct a useful and respectful dialogue.

Many university dwellers make it plain what is their ideological orientation or philosophical orientation. Without commenting on the merits of ideological dedication on the part of university professors, it can be observed that such revelation at least helps in the sense that it is easier for the reader to know what is to be the conclusion on any particular topic. This is particularly the case for the reactionaries who oppose the recognition of Anishinabeg rights. Their intellectual stock in trade seems to be the ‘thesis of the perverse effect’, and, more recently, the device of putting themselves in the position of the voices on the margins of justice, by labeling emergent ideas they do not like as ‘orthodoxy’. On the other hand, we have those, equally zealous, who champion the cause of the Anishinabeg under the banner of their preferred ideology, with little or no regard to how the ideas that inform the ideology might be viewed by Anishinabeg themselves. Finally, we have a liberal use of global terms such as ‘colonisation’ and ‘decolonisation’, which have been used by so many people to mean so many different things in so many factual contexts, that they have come to mean relatively little.

A further thought is that too much seems to be made of the concept of culture. Michael Asch and others have shown that the Supreme Court’s use of the idea is not good. I leave questions of social science for others to decide, but I am not convinced of the merit of cultural comparison, in which some commentators have indulged. It must be a saint who can avoid picking the better traits of one’s side and the worse traits of the other side, as is done every day when debating the merits of one’s favourite football, or baseball, or hockey team. As far as Anishinabeg interests are concerned, the guiding principle is that North American peoples are equally entitled to determine for themselves what constitutes their particular culture at any particular time.

Now that we have a few Anishinabeg scholars in the universities, they are venturing to inquire into many interesting fields. Val Napoleon, for example, is interested in exploring the elements of an Anishinabeg legal theory. Looking at the present dialogue in the field of legal theory, she exclaimed in her usual eloquent way: “From the outside looking in, the discourse appears dense, unrelenting, and extraordinarily complicated.”<sup>5</sup>

It is not surprising that one of the issues on which there has been an interesting and useful exchange of ideas is on the relationship between humans, or Anishinabeg, and the land. I am reminded here of an anecdote told to me recently by Maria Campbell, one of the leading Aboriginal authors and university scholars in Canada, and someone with some ancestors from Scotland. Some years ago, she was bemoaning, in conversation with an Elder, how the land had been taken away from us. ‘Well, I suppose so, if you look at it that way...’ was the Elder’s response. Here, the idea makes all the difference. The land

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<sup>5</sup> In a draft paper in the author’s possession.

can not be taken away. It is there. It still belongs to us, and we belong to it. That same idea, shared amongst the Aboriginal peoples of the prairie region, has been the subject of the attention of anthropologists such as Bruce Rigsby in Australia, who explains how the Aboriginal peoples in north Queensland and Northern Territory ‘share the same spirit stuff’ with the land. They know this to be so. The people and the land share an inalienable relationship. The people and the land belong together in an inalienable relationship that is not severable, and that can not be replaced. This seems to be the import, too, of Val Napoleon’s comment that ‘human powers are fused with the powers of the land’.

Like others, I assume, I found the new ideas in the universities to be quite seductive initially. The various ideologies can be attractive to young, impressionable people, especially if they have been taught that their people are worthless, and have no ideas or history that matter.<sup>6</sup> In the last two decades, however, I have been stunned by the power of the ideas of indigenous peoples in various places, and by the similarities in the world views of Anishinabeg in places as distant from one another as the Canadian prairies and northeastern Arnhem Land in Australia, where the Yolgnu philosophy and culture stretches continuously in that place over 50,000 years. I think that it is time for Anishinabeg to look inside for inspiration; inside our own philosophies and our own histories.

There are difficulties standing in the way of happy and efficient progress in conducting and publicizing scholarly work about indigenous thought. I list some of those that emerge from my own experience, and which appear to require further thought.

1. Who ought to be consulted outside the universities?
2. Who ought to be consulted within the universities?
3. The difficulty experienced by some Aboriginal scholars to maintain their equanimity and carry on useful and respectful discussions about Aboriginal issues, perhaps because they have let hurt and resentment scar and embitter them. Listeners are usually frozen into non-response in such cases.
4. The imperative for non-indigenous scholars to appreciate that they must learn how to behave with indigenous people, who may have different values, and different perceptions of how to act respectfully and professionally.
5. The relative incapacity of universities, which operate by committees, to set reasonable research standards for dealing with indigenous people and indigenous scholars.
6. The relative incapacity of universities to understand the requirements of ethical research in indigenous communities.
7. The relative incapacity of universities and the national research funding institutions to assist research and publication by indigenous scholars.

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<sup>6</sup> I satirize the works that have treated my own people in this way, in “*An Absolutely Uncritical Look at What has been Written about the Metis*” a banquet speech given at a conference in 1985, and published only recently in Roger Neil, ed. *Voice of the Drum: Indigenous Education and Culture* (Brandon, Kingfisher Publications, 2000)227. The editors of the volume in which the conference papers were published did not want to publish my speech. They thought it did not fit with the papers given by the non-Anishinabeg scholars at the conference. Perhaps they wanted to protect them from my observations?

These challenges require attention. There is a need for a national Aboriginal research ethics body, to define the research standards and to identify the research worth doing, and the scholars who can do it. This is the kind of suggestion that has been made in the USA by Vine Deloria. It is also the approach that has been discussed in the newly established national *First Nations Governance Centre* in Canada. Once Anishinabeg people acquire political control over their resources and their own institutions, there will be changes. This is the challenge to the universities.

### **Aboriginal perspective in the courts**

This being an interdisciplinary conference, I will make only a few brief comments about indigenous thought in the courts and in legal development in Canada. According to the Supreme Court of Canada, the development of the doctrine of aboriginal rights requires that the judges take into account what is called ‘the Aboriginal perspective’. What that means is far from clear to me, and in the meantime I will be devoting my energies to finding out if the courts will be willing to apply to the case of the Aboriginal peoples the same ideas it has been developing for others in what it calls ‘fundamental principles’ of the constitution. These principles are characterized by the fact they do not originate in the text of the Constitution, and there is a contentious debate on the question whether they are drawn from judicial principle or, as some accuse, from preferred personal values and ideas of the judges.

### **Digging in: the language and ideas of reaction**

The first challenge is the refusal of those in political authority to recognize the implications of the Constitutional affirmation and recognition of the collective rights of the Aboriginal peoples of Canada. This is true whether the Liberals or the Conservatives hold power. One technique that is used is to blur the distinction between aboriginal rights and citizenship rights. The former are collective rights and the latter are, of course, individual rights. By appealing to the well known classical ideals of equal citizenship, where all individuals are equal in dignity and worth for purposes of the state, the issue of distinct rights that inhere in groups and that are collective in nature and whose origins lie in historical experience, is sidestepped.

This is the stance expressed, for example, some years ago by the Liberal politician, Stephane Dion, in his refusal to accept the collective rights of the Anishinabe.<sup>7</sup> The greater political win for the Liberals is to keep the lid on Quebec separatism, but this will not be stated for fear of offending Quebec politicians, who are much more politically influential than Aboriginal politicians. If one viewed this denial as a dispassionate constitutional democrat, it would be disconcerting to see such a blatant disregard by a Minister of the Crown for Constitutional rights. It should concern everyone in Canada, whenever any Constitutional rights are circumvented by a government in power, whether

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<sup>7</sup> Dion is recorded as having stated that “...Aboriginal peoples should be treated as individuals within sovereign Canadian institutions” in Joseph F. Fletcher, *Ideas in Action: Essays on Politics and Law in Honour of Peter Russell*, (Toronto, U of Toronto Press, 1999) at pages 114-115.

you like Anishinabeg or not. Everyone has preferred rights in the Constitution: let them trample their rights today, but you could be the Anishinabeg of tomorrow.

The aboriginal rights and treaty rights are a result of Canadian historical experience. Treaty rights were the subject of historical political negotiations. It is evident that the negotiations recognized the collective nature of the interests at stake, and the political character of the groups with whose representatives the colonial and Canadian officials dealt with. It should be evident to everyone that the treaty rights guaranteed in the Constitution recognize the same group, history-based rights.

The focus of Conservative attacks is often the character of the rights-bearing group itself. In this clumsy sleight of hand, Anishinabeg are incorrectly described as ‘races’, rather than historic peoples, as the Constitution provides. The ostensible goal is to open up the floodgates to recently arrived immigrant groups who have no historic treaties or Crown relations to remember or worry about. Let us have a multiculturalism policy for all; let no one race call for its own government. That was the recent call in the *National Post* of Jim Prentice, the Conservative party’s Aboriginal affairs critic, protesting against the Tlicho treaty agreement that aimed to let the Tlicho into Canada by securing their consent to the constitutional arrangements they think appropriate for them.<sup>8</sup>

The concept of race has been very useful for those who mount attacks on aboriginal and treaty rights. A ‘race’ is best understood, we are advised by social scientists, as a label pinned upon any human group that is singled out for special political purposes. The political purposes are not always benign.

In Canada, the dialogue on aboriginal and treaty rights is complicated by s.15 of the *Charter of Rights and Freedoms*, which actually constitutionalizes the concept of race, and allows laws and other affirmative actions that discriminate in favour of disadvantaged ‘races’. It is essential for the constitutional lawyer and others concerned with these matters, not to conflate the s.15 group of individuals with the members of the rights-bearing communities recognized in s.35 of the *Constitution Act 1982*. The former are equal citizens with individual citizenship rights protected by s.15. The latter are members of ‘peoples’ with a unique Constitutional status. The peoples have group rights that allow their members to enjoy rights that are not available to all Canadians. Citizenship rights must not be confused with aboriginal rights.

As the RCAP tried to make clear: the Aboriginal peoples of Canada constitute historic nations united, not by biological destiny, but the free will and determination to associate and maintain their existence as social and political communities that are entitled to decide what is the nature of their public interest, and how best to maintain and protect it against the general public interest. This is the essence of the right of self-determination.

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<sup>8</sup> “...Ottawa is creating a Tlicho government that is founded explicitly upon race. This is the opposite of Nunavut, which will eventually achieve provincial status based upon governance structures in which all citizens are equal.” Jim Prentice, *National Post* ‘A Bad Deal for Canada’ Thursday, 9 December, 2004, page A19.

The specious arguments that use ‘race’ and ‘equality of citizenship rights’ to attack aboriginal rights have the effect of masking the essential question, which is the legitimacy of the governing authority of Canada. I am not able to find any solid justification for Canadian rule over Anishinabeg in the moral and political theories that Canadians like to apply to themselves. Yet there is a disquieting tenacity in the approach of those who hang on to false models such as South African apartheid or the American civil rights movement, models that have been effectively debunked, for example, in Will Kymlicka’s work. This suggests to me at least that it is not the idea they value so much as the intended result of its particular application. Any old idea will do if it confuses or convinces the voting public. The collective rights of Aboriginal peoples serve the useful role of allowing peaceful challenges to the legitimacy of Canadian governing authority over them, and ought not to be lightly dismissed.

What does the future hold? How will the principle of consent, which the Supreme Court has identified as a basic principle underpinning legitimate constitutional authority in Canada be applied to Anishinabeg? How will the principle that a constituent unit of Canada, such as a province, can, through a democratic expression of its collective will, require Canada to negotiate with it the constitutional terms to which it will consent? Will it be the case in Canada that only the politically strong can decide what is the nature of their public interest, and that the weak must take what the courts decide and governments etiolate and distribute?

I have heard it stated more than once: the federal government likes to ‘manage’ Aboriginal issues. Peace at the cheapest price. Governments do not do well with long-term planning and the RCAP’s twenty year plan lies on the rocks. Governments are not particularly efficient at what they do, and change is hard to implement. Governments like to reward their friends who get them into power and keep them there, and that does not include Anishinabeg, who get by passed for appointments to public office where their views might influence decisions in public institutions.

There is a need for more Anishinabeg in Parliament and the Legislatures. In the meantime, however, there are signs of an increasing ability of Anishinabeg to take things into their own hands, and to act where governments fail to take action to protect their interests.

Will Anishinabeg thought, in time, have a significant influence on Canadian politics and culture? I do not know, but Anishinabeg thought is expressly included in political forums, such as in the Treaty table in the Saskatchewan forum between the federal government and the First Nations.

It has been my privilege to offer some modest reflections, or further thoughts, about some of the ideas that seem to emerge from circumstances involving Aboriginal peoples in Canada in the last two decades. In offering my further thoughts on these events, I want to emphasize that I subscribe to the school of thought which appreciates the wisdom of uncertainty. Because I am in Scotland I will quote the version of the principle that has been made famous by the words of Oliver Cromwell, in a letter to the General Assembly

of the Church of Scotland in 1650: "I beseech you, in the bowels of Christ, think it possible you may be mistaken."

It was Jacob Bronowski, the brilliant scientist whose thought was the subject of a special BBC programme years ago, who adopted that same phrase in describing his understanding of science and human nature. His words on what he called 'the principle of tolerance' are worth repeating here. If you subscribe to them, then you will find it inevitable to value a discourse with Anishinaabeg about Anishinabeg thought.

Bronowski explains that as the principle of tolerance fixed once and for all the realization that all knowledge is limited, a counter-conception arose with Hitler and other tyrants: a monstrous certainty. "When people believe they have absolute knowledge, with no test in reality... this is how they behave... [referring to the Holocaust] ...science is a very human form of knowledge. We are always on the brink of the known; we always feel forward for what is to be hoped. Every judgment in science stands on the edge of error, and is personal. Science is a tribute to what we can know although we are fallible.' This is where he quotes Cromwell, and then he concludes 'We have to cure ourselves of the itch for absolute knowledge and power. We have to close the distance between the push-button order and the human act. We have to touch people.'"<sup>9</sup>

If there is, as I believe there is, common ground in the approach described by Bronowski, with the approach expressed in the term Gitchee Manitou, or 'the Great Mystery which surrounds us all', according to the thought of the Anishinabeg, then the goals of this conference can be confirmed and applauded.

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<sup>9</sup> Bronowski's narrations were put into book form. The above quotations are from the internet  
<http://ronrecord.com/Quotes/bronowski.html>