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HUMAN RIGHTS: PROSPECTS, INSTITUTIONS AND PROCESSES

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PROSPECTS FOR EQUALITY FOR ABORIGINAL PERSONS
AND NATION IN CANADA:
REFLECTIONS ON THE WORK OF THE ROYAL COMMISSION ON ABORIGINAL
PEOPLES.

A PAPER PRESENTED AT THE PANEL:
PROSPECTS FOR HUMAN RIGHTS: EQUALITY

9:00-10:15 A.M.

FRIDAY, OCTOBER 18th

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of social goods of Canada, what conclusions must be drawn from the following accounts?

I was privileged in the course of the public hearings to meet seven women who were present at the signing of Indian treaties. I visited one, over ninety years of age, in her home in a remote northern community. This delightful person, full of humour, kindness and generosity of spirit, lived in a one-room plywood shack without plumbing or central heating, like all the other homes in her community. She offered me no complaints; no entreaties to equality or human rights. I asked her what to tell the government of Canada. "Uphold the treaties" was her reply.

The six others all lived in one Ontario community and one recalled the day she first say a 'White Man'. Their faces were bundles of grandmotherly wrinkles wrapped in modest shawls as they spoke to us in Cree, their only and ancestral language. This is the story told by one of them.

A woman from her village became ill and took a plane

world through the lens of their culture. And when the language dies, it dies absolutely, as Aboriginal languages are doing progressively across this country. There is no core population of indigenous speakers in a motherland over the sea to maintain the language. An indigenous Canadian language dies an equal death with imported languages, with unequal effects.¹

And what did the grandchildren at school in the towns have to say to the Royal Commission? Some of them cried as they told of the burden of being an Aboriginal person in Canada. Wearing their group identity in their physical appearance, they are vulnerable to the racist taunts of every coward who wishes to inflate his own shrunken ego. Descendants of ancient societies in their ancient homelands, they are now rejected in the cities of strangers, their life chances and prospects for happiness dimmed by the unequal respect their identity and circumstances have given them. I recall the the words of the children's teacher who told us she was tired of hearing them say 'I can't'. Is it notions of equality

justify his label of the prison system as 'an Evil Empire....a blasphemy in the face of God.'

There are many stories of injustice and inequality from the hearings of the Commission. Stories of removals of entire communities, of removals of young children to grow up in residential schools designed to obliterate their identity and culture, often breaking their spirit in the exercise. Stories of sombre families watching the coffins of their relatives floating on the new lake formed by the hydro dam; stories of despair and violence, of places where abnormal behaviour has become accepted as normal.

Stories like this are complemented by many stories of courage and tenacity, stories of hope that testify to the capacity to endure and the decency, good humour and generosity of most people in most places.

So far I have been dealing with cases that appeal to notions of individual equality and justice that are well known in Canada. In our hearings the Commission found that these concepts of equality are viewed with suspicion

the right is vested, from political independence to agreed complete assimilation. The regime and corpus of human rights might be expanded to include the values underlying the concept of self-determination, a process that has already begun as 'self-determination' becomes more and more infused with related human rights norms. ² A scholar has proposed that these values would include 'a democratic, participatory political and economic system in which the rights of individuals and the identity of minority communities are protected'.³ In this view self-determination should come to mean not statehood or independence, but the exercise of what might be termed "functional sovereignty".⁴

I suppose that those charged with the making of a political choice under the banner of self-determination have a duty to make their choice in a manner that maximizes the opportunities for their people to maintain their group identity and survive politically and economically. In other words, self-determination must be exercised with its basic goals in mind; it should not be

In the final report on Justice issued ~~released~~ in February 1996 the Commission argued that the Charter of Rights and Freedoms applies to the laws and acts of Aboriginal governments;

There is no question that the Canadian Charter of Rights and Freedoms reflects a particular approach to balancing individual and collective rights. The unmodified application of the Charter to Aboriginal nations might well make development of Aboriginal justice systems that are responsive to the needs of the people difficult is not impossible. Fortunately, we do not have to choose between having the Charter apply to Aboriginal nations in precisely the same way as in the rest of Canada or not having it apply at all. The provisions of the Charter itself, particularly section 25, operating in conjunction with the development of unique Aboriginal charters, means that Aboriginal nations have a degree of flexibility within the provisions of the Constitution Act, 1982 to set their own course in the justice field."7

includes many Aboriginal peoples as well as the more familiar questions about rights that attach to individual persons on account of the respect due to their essential humanity.

It is right to accord respect to different values about how the project of building happy neighbourhoods within distinct nations should be conducted. If large nations have such group rights, surely equality requires the small and weak nations have them too. Canadians are generally supportive of the Golden Rule injunction to treat your neighbour as you would yourself like to be treated. Aboriginal people are challenging Canadians to please consider your neighbour's view on how she would like to be treated.

1. It appears that the Van der Peet test means that Aboriginal languages are protected as aboriginal rights integral to the culture of each Aboriginal people. Quare, whether anything is gained because these are positive rights that require government action to make effective, or whether the courts will interpret them merely as negative rights protected by interference from governmental action.

2. See Hurst Hannum, 'Rethinking Self-Determination' (1993)34 Virginia Journal of International Law, pp.1-69, and S. James Anaya, 'The Capacity of International Law to Advance Ethnic or Nationality