



Peter J. Waddel discusses the Oka question

In support of the Mohawk in Oka

“... but it need surprise no one if at least some Mohawk felt that the rule of law, of which we have heard in this committee and elsewhere, had failed them that a part of the land they were claiming was to become a golf course whether they agreed or not.”

Max Yalden, Federal Commissioner of Human Rights, testifying before the House of Commons Committee on Aboriginal Affairs. (Respecting: A Study concerning events at Kanasatake and Kahnawake during the summer of 1990), March 7th, 1991.

Perhaps the most serious problem with regard to land claims, is that the Government of Canada is both an interested party and the final arbiter in the settlement process, a situation normally described as a “conflict of interest.” A neutral third party—a kind of land claims commission of court—with the necessary competence and powers to resolve claims might be one way of resolving such a conflict that the commission has already mentioned.

We are concerned here with that which is right and just, (not politically expedient) the fundamental rights that accrue to men by their birth, not that which is merely lawful.

Because the nature of the law of men is that they are transient, a higher law must exist and does. It is an unwritten law of the maintenance of survival, whether that survival be individual or collective.

It is the nature of man, to desire to protect the birthrights of his culture. (the touchstones of his particular humanity). In all cultures he endeavors to protect the memory of his Elders, and his ancestral heritage, by the preservation of their memory in a way such as a sacred spot, a burial place. This place maintains for him a visible reminder of his history, a link of his past that verifies his present existence and identity.

This concept of right goes back to ancient times. In *Antigone*, the play by Sophocles, Antigone disobeys the King in the name of unwritten, eternal divine laws. She has her brother buried, contrary to the King's orders, because everyone must at all times and in all places honor the dead. This law must be obeyed.

There is an unwritten (universal) law of survival, that flows from the Creator and extends to the individual, the family, and to his cultural and societal “unit”. Whether this unit happens to be within another unit that is politically stronger, is irrelevant. This unwritten law of Nature and survival can be said to “supersede the laws of men”. True and

fundamental justice takes this higher law into account.

Sometimes it becomes necessary that the laws of men be “superseded” by the higher laws of fundamental freedom and justice and the right to exist, whether it be as a person or as one society within another.

When that existence is rested on other inalienable rights, such as the right to an identity, the objects of that identity (i.e. land, and a sacred burial site) become precedential. If not, then we are, by omission sanctioning a form of revisionist history making. (a la Orwell/1984 style)

Saint Thomas Aquinas saw right as the object of justice hence justice is determined by rights, not vice versa. John Locke writes that, “certain rights are natural conditions of the state of Nature including the right to equality, pursuant to which no one is subject to the political power of any other person. (or society)

For Locke, The Government becomes the trustee of political power and thus its essential duty is the safeguarding of the rights of its individual citizens. Failure to meet its (the government's obligations would result in the government forfeiting its political power, and the mandate to protect rights will return to the people in a state of nature.

Thomas Jefferson and others, in framing the Declaration of Independence (forming the basis for the American Constitutional model) in 1776, used these words:

We hold these truths to be self evident, that all men are created equal, they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of happiness.

These truths and rights, would obviously include the right of cultural survival, the right within a state to be free to pursue life and happiness within the context of one's own historical background. As long as it does not interfere with the equal fundamental rights of the others.

In The Declaration of the Rights of Man and of Citizens, which evolved out of the thinking of Locke, Rousseau, Montesquieu and others; there is a listing of 17 articles of human rights. These include the rights of “liberty, private property, the inviolability of the person, and the right to resist oppression”.

The true measure of a free and just society is that it accepts at least some measure of responsibility and tolerance for traditions and institutions foreign to its own. A true democracy retains a flexibility and a willingness to adapt to evolutionary change as it occurs. If it does not, it will find itself digging its own grave.