



Australian  
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# 2016 Annual ANU Reconciliation Lecture

9 November 2016

## Reconciliation: Moving through the Post-Colonial Door

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CRICOS Provider No. 00120C



Thank you so much for that very generous introduction, and gilakas'la to everyone here. Thank you so much for inviting me to present the Reconciliation Lecture. And I am very appreciative of the kind introduction, and certainly, Chancellor, I was very pleased to be able to meet with you when you came to Ottawa a couple of months ago, and we had the opportunity to chat a bit about ANU and the lecture.

And I wanted to acknowledge all of the dignitaries in the room, all of the students, all of the indigenous peoples and thank you for coming to - for coming today and I am very pleased to bring greetings on behalf of the Right Honourable Justin Trudeau to all of you and a pleasure to be here as his - as Minister of Justice.

I was very happy to have Auntie Agnes here as well. We certainly welcome individuals to our territories and have the utmost respect for elders. So thank you to Auntie Agnes Shea for welcoming us to the territories of the Ngunnawal people.

I would also like to acknowledge the Aboriginal and Torres Strait Islander communities as the first peoples of Australia and in particular the traditional custodians of the land that we're meeting on today that Auntie Agnes spoke about.

And as I've known and grown to know, the custom here is to acknowledge the elders, past and present and into the future, and we, too, place great value on the wisdom of our elders.

So both here in Australia and Canada, we are pursuing a path of reconciliation, and it is that path of reconciliation that it's so important for us to know who we are and where we come from, and it's the elders' wisdom that guides us in that regard.

So as has been stated, our countries have much in common. Both former British colonies, we are the product of colonialism with all of the resulting losses and harms to indigenous lands, legal and governing systems, languages, cultures and even lives. Our countries are both still coming to terms with our colonial pasts and rooting out colonial attitudes that undermine the modern relationships between the descendants of first peoples and the newcomers. It takes courage and hard work, but our post-colonial countries are stronger and more successful for embracing reconciliation.

Our Prime Minister has said publicly: "That there is no relationship more important to me and to Canada than the one with indigenous peoples." He has tasked all of his ministers to work towards rebuilding a nation-to-nation relationship based on the recognition of rights, respect, cooperation and partnership.

In Canada, there is sometimes little understood transformation occurring as indigenous nations rebuild and move through what I like to call the post-colonial door, reestablishing their institutions of good governance and taking their rightful place within our confederation.

So this afternoon or this evening, I would like to provide some historical, legal and political context and maybe a little bit of personal context to this transformation and speak about what our government is doing in support of the important work of reconciliation and nation rebuilding-critical not only to the future of indigenous peoples, but the future of our great country.

However, first, as is my culture, I would like to introduce myself properly and say something about my own journey that brought me here today. My traditional name is Puglaas. My nation is Kwakwaka'wakw, the Kwak'wala-speaking peoples of northern Vancouver Island. And within my nation, I come from the Musgamagw Tsawataineuk and Laich-kwil-tach tribes. I am from the Eagle Clan.

I come from a matrilineal society. We have hereditary chiefs. And being matrilineal means that descent is traced through the mother and our maternal ancestors. Power and inheritance flows through the mother's line. Hereditary chiefs, always men, are identified from the time that they are born, and they're groomed for leadership. My father, the Hereditary Chief of our clan, his name is Hemas Kla-Lee-Lee-Kla. His name means Number One Amongst the Eagles, the Chief that is always there to help.

He was given his name in a potlatch, which is our traditional form of governance. We still practise our potlatch. It is where our names are passed down or given from generation to generation. It is where our laws are made, disputes settled, people are married, where possessions are redistributed, and so forth. Our potlatch, or in our potlatch, the highest-ranking male leaders are called Hamatsa, or Chiefs.

With rank reflected in positions and names, comes considerable responsibility and obligation. My grandmother's name was Puugladee, the highest ranking name in our clan. Her name means A Good House, a name that she gave to my older sister Kory the same time that I was given my name. My name, Puglaas, means A Woman Born to Noble People. The names were given to us in a naming potlatch in a small community called Gilford Island when I was five years old and my sister six.

Although our chiefs are always men, it is always a woman, a Hiligaxste, who grooms them for leadership, leads them into the Big House and symbolically readies the chief to lead. Hiligaxste means One Who Corrects the Chiefs' Path, a metaphor for life, and in the potlatch symbolised in our rituals where symbolically the power of the Hamatsa is tamed.

I am Hiligaxste myself, and in many ways, my role has carried - or this role has carried into all aspects of my life, including the role I currently serve in. My grandmother certainly raised me to know who I am, to know where I come from and to recognize the rights and responsibilities that our people have in Canada. Both my grandmother and father advocated for and pursued indigenous rights for full inclusion of our peoples in Canada. You might call them activists, and it was in this context that I was raised.

My upbringing, my education, my professional and personal experiences have all shaped my world view and strengthened my determination to achieve reconciliation between all nations in Canada.

For many years, I and many other leaders have worked for change - or to change the laws and policies of Canada's federal government, including the Indian Act, which dates back to 1876. I've always regarded the Indian Act as an enormous impediment on the road to reconciliation, the antithesis of self-government as an expression of self-determination.

It was a point of view that I advocated for as Regional Chief representing British Columbia at the Assembly of First Nations, an organization in our country representing more than 630 First Nations communities, nearly one million people across Canada.

Given my past experience, you might wonder or ask why I would decide to run to be a Member of Parliament for Canada, and to be honest, taking the leap into federal politics was not an easy one for me, nor was the decision taken lightly. I cannot claim to have wanted or had a longstanding desire to be a Member of Parliament, let alone a Minister of

the Crown. However, during my time as Regional Chief for British Columbia, I came to a greater appreciation that indigenous peoples could not get the work done without willing federal and provincial partners. I also realized that new approaches to reconciliation were required.

And then about this time, I met a guy named Justin Trudeau. I met him for the first time about three and a half years ago when he came up to see me in the Yukon. We were in the Yukon for an assembly - for an annual general assembly for the Assembly of First Nations, and he attended one of our working sessions, a working session that I happened to be chairing and where we were dealing with questions of nation rebuilding and of reconciliation.

Afterwards, we sat down and chatted. We talked about the future of Canada, about making Canada even better, and in particular, we talked about his convictions with respect to indigenous peoples. We talked about what we shared in common, including talking about walking in the footsteps of our political fathers, who actually knew each other. His father of course far well - or more well-known than mine. But our then soon-to-be Prime Minister eventually asked me if I would consider running as part of his team in the 2015 federal election.

I did not agree right away, if you can imagine, but eventually came to see my candidacy as a chance to be part of a government whose leader has made a solemn commitment to fundamental change with a vision for true reconciliation with indigenous peoples as a function of an inclusive, just and respectful society.

And now having been appointed Minister of Justice and Attorney General of Canada, essentially the steward of the Canadian justice system, I am responsible for the very laws and policies that so many of us had worked so hard to change.

Even though it seems like - even though it's just been a year and about four or five days since the appointment, I still sometimes have to sit back and reflect, and it still takes a moment to sink in. And I see my appointment-and thank you for your comment, Terry, on my appointment-but I see my appointment not so much as a personal accomplishment, but rather as a symbol of what the appointment represents and how far we've come as a country.

Not so long ago, an indigenous woman like me would not have had - been allowed to vote, let alone run for office or practise as a lawyer. Today, an indigenous woman is the chief law officer of the Crown, and I hope - (applause). Thank you, and I hope and take on this tremendous responsibility with absolute vigour.

That symbolism became even more potent when you consider the history of indigenous peoples in Canada, and we have commonalities in terms of our history between our two countries. And understanding that history is essential to determining the work that is needed today, which I now want to turn to.

So when the fathers of Canadian Confederation came together in 1867 to lay the foundation for Canada, indigenous peoples were not present. They were left out. This, despite the early treaty-making and the many political and military alliances between - or made with indigenous peoples, including those under the auspices of the Royal Proclamation of 1763.

During the time of the Proclamation, the colonial authorities recognized the power of various nations or tribes of Indians and the need to make treaties. The fact that indigenous peoples were left out of Confederation in 1867 as partners has had far-reaching implications for Canada in the tumultuous intervening years. And in many ways, what we're doing today is correcting that mistake.

Before Confederation, some of the tribes in eastern Canada indicated their assent to treaty by presenting wampum to officials of the Crown. The wampum belt-shells on leather, reflecting an understanding that neither group will force their laws, traditions, customs or language on the other, but will co-exist peacefully through mutual recognition. The laws of the tribe in their canoe in the river, symbolized by one row of purple shells, and those of the newcomers in their boat, also symbolized by a row of purple shells. While the two rivers exist side by side, they will never cross.

Unfortunately, after Confederation, Crown policy became one of assimilation, not partnership. While historical treaty-making did continue up to the 1930s, for the governments of the day, the treaties were seen as little more than land surrenders. The legislative tool used to propagate the policy of assimilation-and regardless of whether or not the tribe had a treaty-was the Indian Act, a law that applied to all Indians who, under Canada's Constitution, are the legal responsibility of the federal government. Rather than being citizens or members of a nation or tribes of Indians recognized in the treaty

relationship as symbolized by the wampum belt, under the Indian Act, legally-defined Indians were moved onto reserves, made wards of the state with the government being their trustee.

The Indian Act system of administration partitioned the pre-contact indigenous nations, the 60-plus nations-or peoples, as the term is used and understood in the United Nations Declaration on the Rights of Indigenous Peoples-into 630-plus administrative Indian Act bands living in some 1,000-plus reserve communities.

Indian Act Indians were considered legally incompetent until such time as they enfranchised, becoming full citizens of Canada, at which point they were no longer recognized as indigenous and consequently lost their political voice within their nation, lost access to or ownership of any lands they shared an interest - or shared an interest in on reserves, and so on.

Similarly to Australia, the Indian Act also created residential schools whose purpose, sole purpose, was to take the Indian out of the child. Those schools told children every day that their culture, the culture of their ancestors were inferior. Children were forbidden from speaking their languages and following their cultural practices. Worse, many of them suffered unimaginable abuse in the schools. Some children never came home.

The traumatizing effects of these events have echoed through indigenous communities over the years. Women and girls in particular were left vulnerable through cycles of violence and abuse that carried through generations.

Ironically, even though the policy objective of the Indian Act was to assimilate indigenous peoples, it also discouraged them from participating in Canadian society. I believe it is not an over exaggeration to say that it is one of the most insidious tools ever used to subjugate a peoples.

Thankfully, our world has changed and continues to change. The signs of change point toward a recognition that indigenous peoples are distinct groups within their respective countries with special rights that need to be protected and acted upon. In the modern era, the approach that Canada chose was to expressly recognize and affirm indigenous peoples and their Aboriginal and treaty rights when our Constitution was repatriated from the United Kingdom in 1982.



In Canada, our modern legal system is underpinned by the recognition of fundamental human rights. The Constitution Act of 1982 includes a Charter of Rights and Freedoms as well as specific provisions dealing with Aboriginal rights. In many ways, and I've said this many times, my role as Minister of Justice can be seen as somewhat of an ambassador to the Charter - or for the Charter and to ensure all laws and policies of the state uphold the Charter of Rights and Freedoms.

Today, Aboriginal rights are an important part of our legal framework and shape how the Crown and indigenous peoples manage their relationship moving forward. Including these rights in our Constitution amounted to a promise to indigenous peoples that their presence in Canada and their rights would no longer be denied, that assimilation and marginalisation were colonial relics of the past, and that Canadians were ready to work towards - work together with them to build a better Canada.

Meeting this promise has not come easily, and change did not and has not happened overnight, and there's still much work to be done.

Interestingly, Aboriginal rights were not originally going to be included in the Constitution. However, in the face of considerable legal and political pressure, they eventually were. In fact, at the time of repatriation, some legal advisers to the provinces played down the significance of Section 35, advising their clients that any continuing Aboriginal rights were limited and that they did not need to worry about the implications of the constitutional provisions. For these folks, Section 35 was a so-called empty box that could only be populated at the will of the Crown. In other words, there really were no inherent rights, including the right of self-government, the constitutional division of powers having been fully exhausted as between the federal government and the provincial governments.

At the time of repatriation, some indigenous leaders were not comfortable with Section 35, fearing the domestication of rights or that perhaps the empty-boxers were right. However, the vast majority of indigenous leaders in our country supported Section 35, and for those that had fought so vigorously for it and for the Charter amendments-including my father-it was, of course, anything but an empty box.

One of the provisions of the new Constitution called for a series of constitutional conferences in the early 1980s to set out the scope and the extent of the rights recognized in Section 35, and in particular, the right of self-government. During the constitutional

conferences that ensued, the disconnect between the indigenous views and the government's views was palpable at the negotiating table.

I remember in 1983, as a young girl, watching the conference at school; I was in Grade 6. And my father and our current Prime Minister's father, then Prime Minister Pierre Elliott Trudeau, I watched them go toe to toe. When the negotiations were going nowhere, my father, in his imitable way, told Trudeau Senior, that: "There needs to be some good faith about it and that the exercise now is not about frank and open discussion or understanding an appreciation of the other people's concerns on the basis of respect and dignity. It has now become all of a sudden a question of power and who exercises it."

René Lévesque, then Premier of Quebec, summed it up best when he said later that day: "Behind all of this, what is going on is a political process, a political process that is fundamentally a question of power. One authorized spokesperson of the Aboriginal peoples has already stated the whole thing is about power." Premier Lévesque continued to say: "Power has traditionally been exercised in several classic ways. Probably the most classic example is by force of arms and by the strength of numbers. For example, the dispossession of the Métis during the time of Riel was a crime, which was an abuse of the force of arms backed up by strength of numbers. What alternative is left so a group can realize a civilized solution? It means accumulating enough power, enough ways of asserting pressure, so they can negotiate as equals. That is fundamental."

And of course he was right. Since the failure of those conferences in the 1980s, indigenous peoples in Canada have been doing just that, accumulating enough power-economic, legal and political power-to reach what Premier Lévesque stated is a civilized solution. Today, I think we call this reconciliation-reconciling the power of indigenous peoples with that of the Crown.

And since 1982, our courts have confirmed indigenous peoples do have the inherent right of self-government and that these powers survived Confederation. To quote the court, these powers are: "One of the unwritten, underlied values of the Constitution outside the distribution to Parliament and the legislatures in 1867." They are not absolute, but they are indeed very real.

Reconciliation is now possible precisely because Section 35 is not an empty box. The negotiation table has been levelled. Today, it is about sharing power and it is about cooperative federalism.

With respect to land rights in those parts of the country where no treaties were entered into, either historic or modern, we also have seen clarity provided by our highest court. In 2014, the *Williams* decision, a decision of the Supreme Court of Canada, they granted the first declaration of Aboriginal title to the Tsilhqot'in Nation in British Columbia. Most commentators, and rightly so, point to the decision as being game-changing. In my view, there were two important elements of that decision or takeaways.

The first is that in granting the declaration of Aboriginal title, the Court found that title is territorial in nature and not just to intensively-used sites or small spots that the Crown had previously argued, assuming that there was title in the first place.

Second, the second being that title is held collectively by the nation, the Aboriginal peoples sharing common language, culture and history and not the federally-imposed Indian Act bands. Both of these findings have critical repercussions for reconciliation moving forward and the need to support nation rebuilding.

For both indigenous peoples and the Crown, the challenge today is not to re-fight the fights of 40 years ago, for after all, we have Section 35, we have over 170 court cases dealing with rights. We also have the United Nations Declaration on the Rights of Indigenous Peoples, a document that our government last year has endorsed without qualification. No, the challenge today is to actually use these tools and ensure in the use of these tools that we translate them into practical benefits on the ground in our communities to ultimately improve the lives of indigenous peoples.

However, it is one thing to have rights on paper or declared by a court and quite another to be able to realize them in practice. The journey of decolonization and reconciliation, as I know you know, is complicated, often painful and certainly never easy. It is not easy to make the transition as a subjugated people living day to day in a colonial reality and to walk through the post-colonial door. The colonial legacy is a heavy burden-the poverty, the health and social issues, the breakdown of institutions of social order, and the dependency. There is considerable rebuilding needed. It requires recognition. It requires healing. It requires forgiveness, and it requires trust.

As an important step, in 2008, the Government of Canada apologized to indigenous peoples for residential schools-coincidentally, the same year as the apology came in your country.

Similarly, and again like here, the government also established a Reconciliation Commission-in our case, a Truth and Reconciliation Commission to examine the dark period of our history of residential schools. It was inspired by the commission created in South Africa post-Apartheid.

The Commission documented the stories of abuse told by survivors, while honouring their truths, and it made numerous recommendations, calls to action in a report it released at the end of 2015 that addressed the aspects of reconciliation, the reconciliation project through the lens of residential school survivors and experience.

Our government has committed to implementing the calls to action through improving education, child welfare, health care in indigenous communities, and protecting languages and culture of indigenous peoples.

Our government has also taken another important step towards reconciliation and facing another dark legacy: the over 1,200 indigenous women and girls who have gone murdered or reported missing by the RCMP Police-and I know the numbers are higher than that. Although indigenous peoples make - or indigenous women make up four percent of Canada's female population, 16 percent of all women murdered in Canada between 1980 and 2012 were indigenous.

This past August, the Government of Canada launched an independent National Inquiry into Missing and Murdered Indigenous Women and Girls. And there is no question that the combined work of the Truth and Reconciliation Commission and now the Inquiry into Murdered and Missing Indigenous Women and Girls will be invaluable in the healing journey of reconciliation and in deconstructing our colonial legacy.

But as the late, great Nelson Mandela taught us, beyond the necessary apologies and beyond the emotional work of truth-telling and healing, reconciliation actually requires laws to change and policies to be rewritten. And it is in this regard that I see my role as Minister of Justice, as ensuring our country's laws and policies actually do change based on the recognition of rights. And there are numerous policies and laws that need to change and new ones developed. Political and legal reconciliation in furtherance of the nation-to-nation relationship is a national project that requires significant coordination and commitment at the highest level of government.

So you may ask where do we start? What is needed to be done to rebuild indigenous nations, to actually get back to the original relationship as represented by the wampum belt, both for those nations that have treaties and for those that do not?

The good news is that over the last 30 years since Aboriginal and treaty rights were recognized in our Constitution, as Aboriginal title and rights have crystallized in the court, many indigenous nations in Canada have already begun rebuilding and have demonstrated success, often with little fanfare and little media attention, developing their own institutions of government - of governance, some at the local level, others regional, and sometimes Canada-wide in scope, some as a result of modern treaty-making, others as part of sectoral governance initiatives. There is much that can be learned from this work, and we need to build on that success.

In Canada, we have something called a Community Well-Being Index, and the evidence is clear. Self-governing communities are doing significantly better, both socially and economically than those that are not. Today, there are over 40 former Indian Act bands that are recognized as self-governing within Canada, and dozens more involved in some form of governance reform, whether sectoral or comprehensive. In fact, approximately one-third of our nations are involved in some form of governance reform based on the solutions that they have found and are developing, working in cooperation with the Crown.

For example, in the area of land management, communities are developing land codes that replace those sections in the Indian Act with their own laws dealing with on-reserve land management, including the creation of interests in land, how they are transferred and land use decisions made. There are regional initiatives where communities can make laws with respect to health and health care delivery and education. About a third of communities are developing or have developed financial administration laws. Others are collecting property or goods and services taxes. A group of communities are collectively issuing debentures and raising monies on the bond market secured by their own source revenues to build much-needed infrastructure.

However, while progress has been made, the pace of change is far too slow and not evenly spread across the country. In most cases, the foundational work of nation rebuilding through re-establishing core institutions of governance beyond the Indian Act has not occurred. There is, in truth, no simple legal mechanism for recognition in Canada that supports the transition away from the colonial-imposed systems when a nation is

ready, willing and able to resume control. There have been many attempts at recognition legislation in the past, but they've gone nowhere.

By some accounts, the current pace - or at the current pace, using existing mechanisms for legal and political reconciliation to support nation rebuilding, it would take generations for all nations to move through the post-colonial door. This is obviously not acceptable and clearly demands a need for a more concerted effort by government with new legislative tools and other mechanisms to support nation rebuilding-something that our government has committed to doing, working in partnership with indigenous peoples.

At the highest level, the United Nations Declaration provides a framework for reconciliation, setting minimum standards and is instructive on how we develop our own made-in-Canada framework for reconciliation, reflecting our history and our unique and strong legal and constitutional framework.

Above all else, this framework for reconciliation must be grounded on and in a commitment to principles. Those principles should not only be grounded in law, but should also demonstrate a commitment to go beyond existing legal obligations and to strengthen the nation-to-nation relationship. A commitment to a renewed nation-to-nation relationship between the government and indigenous peoples should be based on the recognition and implementation of the inherent rights of indigenous peoples. It should acknowledge the centrality of the honour of the Crown in all processes and should - and it should understand treaties and agreements and other constructive arrangements between the Crown and indigenous peoples are acts of reconciliation based on mutual recognition and respect and that mechanisms for reconciliation must be developed in partnership with indigenous peoples.

Re-establishing the nation-to-nation relationship, practically speaking, means deconstructing the Indian Act system where it still applies and getting rid of imposed administrative structures and replacing them with self-governing nations. This is the work that excites me the most because as an indigenous Canadian, I know it is essential to ensuring practising and thriving cultures.

So additionally, as Minister of Justice, there are other ways my department is supporting reconciliation. For example, we are reviewing our litigation strategy to ensure that the positions we take in court are in line with our commitments to a renewed nation-to-nation relationship that is based on recognition-recognition of rights.

Also, as part of my broader mandate, big mandate from the Prime Minister, we have initiated a full review of our justice system. Just as the Inquiry into Murdered and Missing Indigenous Women and Girls examines how indigenous women have been victimized, our government has committed to tackling the over representation of indigenous peoples, both as victims and offenders, in the criminal justice system-another symptom of marginalisation, poverty and the legacy of colonization.

Our review of the justice system is focussing on problems that make the system less efficient and less fair, which can reduce access to justice. Working across government with a view - or this review is looking at how measures such as restorative justice and sentencing circles can provide off ramps to the justice system and possibly lead to lower incarceration rates for nonviolent offences. Sentencing circles as an indigenous legal tradition are something that all Canadians can learn and benefit from.

And it is not just in the area of justice that indigenous traditions, legal traditions and governance can have a positive impact on our country as the process of reconciliation unfolds. When it comes to natural resource development, reconciling with indigenous peoples also has the potential to influence the way we approach governance in Canada more broadly.

Returning to the theme of power, historically, political power in Canada, whether federal or provincial, has been weighed to the south where most of us live, and therefore, vote. Local communities with their limited governance role in rural Canada have had typically less influence over significant public policy decisions that affect them and generally keep little of the wealth generated from resource development, despite being impacted by it the most.

However, this is changing with the re-emergence of post-Indian Act indigenous government. People who are attached to, live on and survive off the land that they live on have their own perspectives on land management and resource exploitation that can often differ than from those that do not, are just passing through or are passive investors.

This developing political reality is already beginning to change the way land use planning and decision-making is being conducted across Canada, including how governments must ensure sustainability as well as share in revenue. In my opinion, the nation-to-nation relationship and the resurgence of Aboriginal governance based on indigenous legal

Reconciliation: Moving through the Post-Colonial Door: The Honourable Jody Wilson-Raybould PC, QC, MP traditions will, over the next generation, change for the better the way Canada is governed, not only in transforming indigenous nations, but transforming our country as a whole.

And on that note, and in closing, let me leave you with this thought, or thoughts. Reconciliation is a journey, not a destination. Canada is a federation, and we are going to celebrate our 150th anniversary in 2017. And as we celebrate this milestone next year, I think for Canadians there is much hope and optimism-I don't think, I know. And where in the spirit of partnership we look to complete the project of federalism and where the promise of federalism is enjoyed both by indigenous and non-indigenous Canadians alike and for the betterment of all. As indigenous peoples take back control of their lives, our federation will be strengthened, ensuring that we have a Canada that I think all Canadians aspire to live in, a country based on shared values and principles that we have spent years as a nation fostering, creating a caring, fair, and compassionate society that ensures our place on this planet as a favoured nation and one of the best countries in the world in which to live.

It is in this space of what is and what must remain Canada that indigenous nations and the future of our diverse cultures and languages will be safeguarded and indeed the many different ways to be Canadian, our diversity.

Gilakas'la. Thank you very much.