Conference on Reconciliation and the Métis of Canada

Ottawa, October 23-25, 2015

Montana's Métis: Federal Recognition & Shared State/Tribal Sovereignty

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Northern Plains Folklife Resources

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The federal context

So much is in the naming. Let's start with the word Pembina. We share that name as foundational to our national histories. Just in saying that, it is obvious our histories are not independent. We know this.

What started in Pembina came to culmination in Montana, for both of us. Just as what happened at Batoche changed us, too. Montana is where a huge portion of the United States' and Canada's history converge and play out in the final days of continental reconfiguration, from and Aboriginal to an Anglo world. And it's really around the Métis story. As it is, our two nations engaged the Métis in strikingly different ways. We don't have Métis in the US, we only have Indians. You have the Métis as a sovereign named within your national constitution.

I think I can say this: you have many kinds of Métis within the diversity of identities that come within the larger notion of being Métis (just look at the national discourse you have on the word itself). Whereas, in the US, most people have never even heard the word spoken. That is changing. You have descendants of buffalo runners, York-boaters, trappers, merchants, trades workers – and that goes hand-in-glove with the many forms of Michif that are spoken among you; we have only buffalo culture heritage bands, with *Mostos Michif* as our heritage language. Only in the last

generation has it become widely acknowledged that so much of what you consider to be your story, the Métis, is also American.

I used to think there was a collapse of Métis culture following the border Clearances of the 1870s into the 1880s, when the people were divided by the Medicine Line, and then 1885 with the Battle of Batoche. Indians had been set apart on reserves and reservations, and the Michif were relegated to all the conditions of refugees and Displaced Peoples (DPs), marginally surviving on the scraps and cast-offs of the conquering Anglo society. Actually, for us, it continued to 1892 and the cleaving of "Canadian Halfbreeds" from the Turtle Mountain Reservation (TM) rolls, and four years later when the US Congress passed the "Cree Deportation Act of 1896," where in Montana a human round-up of Michif Chippewa Cree were rousted by Army troops (mulatto Buffalo Soldiers) and shipped on cattle cars or force marched across the border to Lethbridge – ethnic cleansing by any definition. This was followed by most folks sneaking back across the border, hiding out in the coulees and draws of the Missouri Breaks and Rocky Mountain Front, followed by five generations of abject poverty, prejudice, misanthropy, ignorance, and fear, until today.

This is what brings me to where we are today, with Montana's Métis, the Little Shell Pembina Chippewa, engaging the federal and state governments for recognition of their Indigenous Rights. For me, it is the obverse litany: the memory, power, pride, honor, creativity, and innate ability to persist in the face of oppression that defines the radical hope and ultimate survival of what, by all measures, should surely by now have dried up and blown away – as the government was certain would occur, Montana's Michif.

I no longer think there was a collapse of the Métis way of life. For us, at any rate, there was a collapse of buffalo culture, but I've come to learn that is very different than

DRAFT

the collapse of a people. The fact is, for us in North Dakota and Montana however, there was not a day when the fight did not remain engaged, and families, bands, and leadership continued the expression of the Indigenous rights in the face of what at times surely felt like insurmountable odds. The adage in Montana is, "Waiting for the day that never comes." As I have learned from my friends, the *Okimahkânak* Chartrand and Belcourt, Ol' Gabe's retort at Batoche for Ouellette to give Middleton holds true to this day as living guidance for the work we are about: that Dumont was ". . . still in the woods," means, in the words of Riel, the Michif will "remain Métis, become more Métis." And when Gabriel brazenly proffered ". . . I still have 90 cartridges," he tells us the fight for justice continues fully engaged. With those words burrowing like an earwig in Middleton's brain, Dumont made his way to his extensive family in Montana.

It was seamless and proactive. More schools were built, communities reaffirmed, strategies hatched. Everyone was Pembina-related, no matter what time-period (from 1790 on) or from what quarter of the traditional historic homeland was their route into Montana. Gabriel Dumont, Charles Trottier, and Alex Brien (and many more from Montana) worked directly with Okimah Aissance (Little Shell, nephew of Broken Arm, cousin of Riel by marriage), participating in the McCumber Agreement on the Turtle Mountain Reservation in 1892, to assure all the Pembina relatives had a place to put in, carved from their unceded northern third of North Dakota, including those to "the Prairies west" in Montana and the Saskatchewan. That was not to be. So Little Bear, Rocky Boy, Pierre Bushie, Toussaint Salois, Fred Nault, Smallboy, and Buffalo Coat continued the push for land for the Chippewa Cree Michif in Montana, finally succeeding in 1916 when a reservation was carved out of the decommissioned Fort Assiniboine near Havre, Montana, in the Milk River Country. And, when Rocky Boy's Reservation (RB) proved less than enough for all who needed, and by rights were entitled to, inclusion – i.e., the government greatly underestimated the scale of the DP

DRAFT

dilemma of the Pembina Michif Chippewa Cree in Montana (from buffalo culture collapse and the TM cleaving), they once again cleaved off the rolls all the "Canadian Halfbreeds" – Joe (Desmarais) Dussome and David LaRocque (with many others) stepped up to lead the disfranchised Michif. Those left out of the Rocky Boy's settling became the Little Shell Pembina Chippewa of today. As of old, they are today comprised of two ethnic groups, Michif and Chippewa Cree. Just like the Rocky Boy's and the Turtle Mountains. And they are all Pembina-rooted genealogically.

In a very real sense, what has occurred to the Métis in the United States has been to "cull," or, "cleave," or in essence, by intense centrifugal force, separate the Halfbreeds from their full 19th century core milieu, by denying them their Aboriginal status among their Turtle Mountain and Rocky Boy's relations. At TM, the government lost control, in the end, even though they dis-enrolled many Michifs, with the majority of folks on TM being ethnically Michif. The government named them TM Chippewa, because we don't have Métis (i.e., you understand the political implications of recognizing Métis). They kept more complete control at RB, where a year following creation of the reservation, in 1917, most Michifs were ousted from living with their relatives. (Without question, the American government, to this day, operates within the bias that Métis are miscegenated Anglos whseo progenitors chose to be "squawmen," thus do not qualify as Aboriginal peoples.)

Since 1920, when the dust settled from WWI, and the Michifs realized that their being closed out of Rocky Boy's and Turtle Mountain was final, they reorganized and began petitioning the government as the "Abandoned Turtle Mountain Chippewa of Northern Montana." Going through name changes over time (including the Landless Indians of Montana and Montana Landless Indians, settling on the LST in the 1940s), they have been in the constant state of petitioning since that time.

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Although the LST received from the BIA a positive Preliminary Finding in 2000, with no dissent, on October 27th, 2009, shocking all observers, the BIA announced a negative Final Determination, after 31 years of consideration under the rules as they were put in place in 1978. With 90 days to respond (and me being brought in with 60 days left) the Native American Rights Fund (NARF), on behalf of the LST, submitted on February 2nd, 2010, an official "Request for Reconsideration" to the Interior Board of Indian Appeals (IBIA).

On June 12, 2013, the IBIA rejected most of our arguments, but there were five issues we presented they found beyond their jurisdiction, which they referred directly to the Secretary of the Interior (SOI) under §§ 83.11 (f)(2) and (g)(2). 57 IBIA 101 (6-12-13).[1] Secretary Sally Jewell sent a letter to the AS-IA on September 16, 2013 stating that:

[1] The IBIA referred five grounds to the SOI that are beyond its jurisdiction:

1. Should reconsideration be granted based on the allegation that due process required that Petitioner be provided with an opportunity to review and comment on the interviews of 71 individuals conducted by OFA during 56 interview sessions, and other materials obtained by OFA after Petitioner's last filings and prior to the issuance of the Final Determination?

2. Should reconsideration be granted based on the allegation that application of criterion § 83.7(a) in this case is arbitrary, capricious, and contrary to law?

3. Should reconsideration be granted based on the allegation that the Final Determination erred in requiring Petitioner to demonstrate that the Federal actions relied upon by Petitioner to obtain the benefit of § 83.8 were clearly premised on Petitioner's ancestors being a tribal political entity with a government-to-government relationship with the United States, and that the Final Determination applied an incorrect burden of proof to the evidence that Petitioner provided to show five instances of previous federal acknowledgment?

4. Should -reconsideration be granted based on the allegation that the Final Determination imposed upon Petitioner a burden of proof greater than that required by § 83.6(d), and failed to take into account the complexity of Petitioner's historical circumstances as required by § 83.6(e)?

5. Should reconsideration be granted based on the allegation that it was arbitrary and capricious, or contrary to law, for the Final Determination to reverse the favorable Proposed Finding, when no substantial negative comments were received regarding the Proposed Finding and Petitioner submitted evidence strengthening its petition?

In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, 57 IBIA 101, 128-31 (2013).

DRAFT

> Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am exercising my discretion to request that you reconsider the Little Shell Final Determination.

It was those five issues (brought to the fore through our "Request for Reconsideration" to the IBIA) that to a no uncertain degree "inspired" the BIA to rewrite its rule making for the federal recognition of American Indian peoples.

So, with this, was set in motion the process for the BIA to hold community consultation over three years, to craft a New Rule for federal recognition. The New Rule was release at the beginning of this past summer. The LS are in a "one of a kind" circumstance. Under the New Rule, any group that receives a positive PF with no dissention from any interested party, they automatically get a positive FD. Because the LS are the only group that received a positive PF, and then a negative FD under the old rule, which was "suspended," due to the IBIA ruling and subsequent rewriting of federal regulations on the rule, we have a singular opportunity to tell our story to the AS-IA.

Since that time our team at the NARF has been working to prepare a more full and unvarnished telling of just what the heck happened to the LS people – starting at Pembina. We have a helluva "story" for the AS-IA, Mr. Kevin Washburn. We're feeling cautiously optimistic. This is why.

Under the New Rule, the LST fulfills 83.12 (a), stating that a petitioner "may prove it was previously acknowledged as a federally recognized Indian tribe, or *is a portion that evolved out of a previously recognized Indian tribe*…." (Emphasis added). To state it up front and with veracity, the Little Shell Tribe of Chippewa Indians of Montana are a portion of the Pembina Chippewa Band, and thus were previously federally acknowledged through negotiating the 1851 Pembina Treaty (unratified) and

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the 1863 Old Crossing Treaty (ratified) that ceded the US side of the borderlands from Minnesota to the Montana line to the United States. All else flows from this fact. In concordance with the government's own reckoning, the LST affirms they are the same people as the Turtle Mountain Chippewa, White Earth Chippewa, and Rocky Boy's Chippewa Cree Tribes, each being federally recognized tribes. By the government's own calculation, 89% of the Little Shell Tribe's membership today trace to the Pembina Band. And we, here, all know who the Pembina Band was.

Clarity and uniformity of meaning to all the accumulated evidence over the years falls into place and makes common sense when we utilize certain terminology. There is one term (i.e., phrase) from the U.S. Court of Claims 490 F.2d 935 IV (1974), "American Pembina Chippewa group (full and mixed bloods), including the subgroups of the Turtle Mountain Band, the Pembina Band, and the Little Shell Bands," and one from the New Rule, the word "portions" (83.12 (a)), that when applied, the tumblers on the vault of proof fall into place, and the door of understanding opens to the truth of the Little Shell Tribe. In using these two terms, a continuity of nomenclature (we can share between the Tribe and the government) brings immediate illumination to the discussion of "who are the Little Shell." These terms are engaged in our work. Suffice it to say, they also put to bed two foremost concerns of the Office of Federal Acknowledgment (OFA): that our people are indistinguishable from the broad-based Métis society of Canada ("a society of individuals with some Aboriginal descent"), in light of 25 CFR 83.7(b), i.e., our people are not Indians; and, they are Canadian, both tired assumptions that they stand behind to assert their negative Final Determination.

The Indian Claims Commission dealt with these issue in depth and made legal determinations in the highly significant cases of the Old Crossing Treaty (1863) and McCumber Agreement (1892), of which we are a Party. That is to say, the government swindled the Michif in obtaining effective control of the Medicine Line in North Dakota,

DRAFT

and was held to account. The Court clearly affirmed that the distinction between the "halfbreeds" (Métis) and "fullbloods" (Indians) was, specifically in reference to those peoples articulated in Dockets 191 and 221, i.e., the LST, "primarily on cultural differences, not the biological ones." They cite United States v. Higgins, 103 Fed. 348 (D. Mont., 1900).

This was upheld on Appeal to the U.S. Court of Claims in 490 F.2d 935 (1974) for 23 Ind. Cl. Comm. 315 (June 30th, 1970). While generally upholding the ICC decision in that Appeal, the Court of Claims refined certain terminology to further elucidates the court's intention of including the LST as party to both the Pembina and McCumber judgments. The Court of Claims modified the ICC's term "Plains-Ojibwa" (supporting their reason for choosing the term, though stating there was "a substantial danger of confusion arising from its use"), saying, "the ancestral landowning entity will be denominated as the 'American Pembina Chippewa group (full and mix bloods), including the subgroups of the Turtle Mountain Band, the Pembina Band, and the Little Shell Bands.' This title, though somewhat ungainly, accomplishes the purpose of excluding those not in interest, and including all with colorable claims."[2]

Additionally, two issues still being held up as strawmen by the OFA in the FD (mixed bloods as non-Indians, and the supposed "Canadianness" of the Little Shell as an exclusionary) was put to bed in 1974 by the Court of Claims when they ruled that,

> . . . these full and mixed bloods should be considered members of a larger Indian group, and we are unable to say that this conclusion lacks support in substantial evidence or that the Commission's view fails to satisfy appropriate legal tests distinguishing Indians from non-Indians. Even if the Government were successful in demonstrating that the mixed bloods formed separate political entities, the Commission's findings would still sustain the proposition that the two bands were in "joint and amicable" possession because of the extensive cooperation between them. …

[2] 490 F.2d 935 (1974), note 33, "We include all three plaintiff bands by name because we understand the Commission to have found, upon substantial evidence, that all three groups have at the very least a 'colorable claim' to the award area, and so should be permitted to petition Congress or the Secretary of the Interior for participation in any award."

> Finally on this point, we reject the argument that the mixed blood use and occupancy should be disregarded because a great many of them were British subjects residing for the most of the year in Canada. The Government does not argue that all mixed bloods were Canadian, and its own evidence suggests the contrary. The demographic pattern in this area did not respect international boundaries, and full and mixed blood Chippewas could be found in large numbers on either side of the border.[3]

To the point, questioning the legitimacy of LST because an element of their tribal composition is in part ethnic Métis (mixed blood) is erroneous. As well, for the government to apply "foreignness" to one group, while accepting many others with the same history for trans-border movements, falls flat.

To our benefit, the New Rule also "allows the Department to accept any and all evidence, such as the petitioner's own contemporaneous records, as evidence that the petitioner has been an Indian entity since 1900." (83.7(a)). To this criteria, the LST offers a most remarkable document compiled, edited, and presented to Congress in 1900 by Jean Baptiste Bottineau, attorney for and tribal member of the Turtle Mountain Pembina Chippewa Band: Senate Report 693, 56th Congress, 1st Session, Doc. No. 444, *Turtle Mountain Band of Chippewa Indians, June 6, 1900*, Committee on Indian Affairs, "Papers Relative to an Agreement with the Turtle Mountain Band of Chippewa Indians in North Dakota," (Washington: Government Printing Office, 1900), including Memorial and Accompanying Papers. In totality, this document lines out a clear articulation, using primary sources, the heritage of the American Pembina Chippewa, the portions that became the Turtle Mountain and White Earth Pembina Bands (prior, of course, to the formation of the Rocky Boy's and Little Shell portions of the American Pembina Chippewa), and states unequivocally (in voice of one who was there) the story of our people, including our range and mobility encompassing

[3] 490 F.2d 935 (1974), 7.

Montana as within our traditional historic buffalo culture homelands. This document is yours, too.

The New Rule validation of in-group identification and description allows us to address a significant concern of the OFA: How can we be a tribe when we are we everywhere across the Northern Plains; where is there community in that? Earlier scholarship sought identification of distinct groups of Indigenous peoples by understanding rights bearing groups as "people living together in a stable and continuous community in the same geographic area." If any or all of the federally recognized tribes of the Northern Plains were in this era to undergo the OFA recognition process, not one, under the Old Rule, would qualify. But we are now within the New Rule. In a tip of the hat to Drs. Nicole St-Onge and Brenda Macdougall, along with the rising voice of Dr./ABD Émilie Pigeon, whose specific work lays the ground for this new evaluation of the buffalo culture Métis, the "lived reality and historical experience" of all tribal buffalo culture Aboriginal peoples can only be understood as having far more mobility than the Old Rule allowed. Until recently, successive generations of scholars and policy makers have been mostly "settlement-oriented" in developing conceptual frameworks for understanding American Indians. There are numerous distinctive cultures comprising Aboriginal America. Certainly, our collective knowledge as scholars and policy makers in the 21st century expresses, *unâ voce*, the prescience of a dynamic approach to cultural identification being far more productive in seeking efficacy in understanding and decision making (especially concerning community mobility over time and place).[4]

The New Rule is also of assistance to us in that in-group identification and description allows interested parties to see heretofore "obscured regional economies

[4] Stephen J. Greenblatt, "Cultural Mobility: A Mobility Studies Manifesto," Online Essay, Dept. of English, *Harvard University*, Cardenio Project, 2015. Access at: http://stephengreenblatt.com/resources/cardenio/cultural-mobility.

of networks of groups," [5] such as the broad-based Pembina bison hunting bands/brigades social structure, along with location-specific economic activities of individual groups. This helps make more complete sense of the broad-ranged movement of our people engendered by the buffalo hunting band/brigade culture of the Pembinas. Reframed this way, it becomes unambiguous "the social networks and cultural matrixes that allowed these specialized hunting brigades to organize and perpetuate themselves" over vast territory, showing the Pembinas for what they were, a cohesive tribal society whose traditional historic homeland encompassed the full breadth of the Northern Plains from Red River of the North to the Rocky Mountain Front, across what is today the borderlands of our nations.[6] Key to this understanding is that our traditional historic homeland is larger, distinct, and more encompassing than those American Pembina Chippewa lands held unceded until 1905 with the Turtle Mountain Pembina Chippewa forced acquiescence to the finalized McCumber Agreement.

The "take away" from this is that the ancestral Little Shell buffalo hunting bands of ethnic Michif (Métis, mixed blood), as one of the two recognized Aboriginal identities named within the American Pembina Chippewa, maintain an active integrated socio-cultural and political lineage and relationship within the Aboriginal sphere of the Northern Plains.[7]

The state and tribal context

I was asked by the leadership of the Little Shell Pembinas to draft a hunting and fishing rights document. The tribe is ready to express this element of their sovereignty.

[5] Arthur J. Ray, *Telling it to the Judge: Taking Native History to Court* (Montreal: McGill-Queen's University Press, 2011), 107.
[6] Brenda Mcdougall and Nicole St-Onge, "Rooted in mobility: Métis Buffalo-Hunting Brigades," *Manitoba History*, No. 27, winter 2013, 22, 28.
[7] Mcdougall and St-Onge, "Rooted in mobility," 28.

The need to act now really comes from the gross misunderstanding and thus mismanagement of the last wild bison herd in the world, living in the Yellowstone Country of our state. This is an issue that belongs to all of us.

The fact of the matter is twofold: the LS know a lot about buffalo; and, the LS have admittedly questionable legal basis upon which to express Indigenous hunting and fishing rights in Montana, because they are not, in the eyes of the government, party to any treaties in Montana. I see an opportunity to use four notions that have deeply inspired me in recent history, and apply them to the Little Shell expression of inherent Indigenous Right to Hunt and Fish in Montana on behalf of protecting and encouraging the North American bison.

The first notion is the curtain being pulled back on the "Great and Powerful Oz," being the Doctrine of Discovery for Anglo America. The second is, the UNDRIP. The third is the "Honor of the Crown" (for us, the honor of the State), at the heart of the Daniel's Decision. And, the fourth, the piece that ties it all together (and one of the great learnings I've received from Okimah Chartrand), is the notion of "Shared Sovereignty" as a practical, fair, effective, and attainable mechanism for engaging the administration of the complex and mysterious future whose portal we are all too quickly passing through. The piece is called:

> A Montana Shared Sovereignty Issue Paper, "Little Shell Tribe of Chippewa Indians of Montana's
> Indigenous Hunting & Fishing Rights w/in the State of Montana," *A Document of Truth & Reconciliation*, Respectfully submitted by The Little Shell Tribe of Chippewa Indians of Montana to the State of Montana; Blackfeet Nation; Chippewa Cree Tribe; Confederated Salish & Kootenai Tribes; Crow Tribe; Fort Belknap Aaniiih & Nakoda Tribes; Fort Peck Nakoda & Dakota Tribes; and Northern Cheyenne Tribe.

I do this by covering the basic ground, outlining Article I, Section 8 of the U. S. Constitution that recognizes three sovereign entities co-existing within the (then) new

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United States of America. From the beginning, the relationship between tribal, state, and federal positions has been one of an adversarial nature in every direction. Within a competitive framework that challenges every move, a relationship of antagonism has come to be the norm between the three parties. Each party of sovereigns in the equation of "rights upon this land" can and do make decisions that best serve their singular interests. Unfortunately, the two European-legal-system-based Anglosphere powers have too often allied to the detriment of the third, the Indigenous American sovereigns. In the end, the overarching strategy of the other two nation-state sovereigns (history shows us) is one of an ongoing legal *une idée fixe deviennent doctrinaire* of attrition. Until recently, that is.

The United States, aside, concerning the State of Montana, the LST has every reason to believe (with this issue and more broadly) our dual citizenship shared with all Montana society really does want to "find a way" to recognize the LST in its full embodiment. We live with each other; we know each other. Our Shared Sovereignty and mutual best interests are beneficially reinforced by our sense of shared community. Our Montana affords a society where we know our neighbors and help those in need.

What the LST, through this document, hopes to accomplish is to "flip" the dynamic between us from one of individualist goals engaging adversarial and competitive models, to that of mutual goals, coöperation, and Shared Sovereignty for the greater good of all Montana. The LST sees a new Montana future where a "shared sovereignty" of tribal, state, and federal government's offers an increase of diversity, and thus more broadly applied stability, in the governing of our co-residential homeland. Through existing law and "substantial evidence" of history (i.e., that which a reasonable mind would find sufficient) we show how the State of Montana can accept

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the inclusion of LST Indigenous Rights of Hunting and Fishing on behalf of the greater Montana society.[8]

I then give as rationale that the international community, including the United States, through the endorsement of the United Nations Declaration on the Rights of Indigenous Peoples recognizes the inherent rights of Indigenous Peoples, without any requirement that they first be recognized by nation-state governments.[9] The Declaration recognizes in Art. 1 that "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law." "Indigenous peoples … are free and equal to all other peoples…" Art. 2. Aspects of this view are consistent with domestic law. *See, e.g., Menominee Tribe of Indians v. U.S.*, 391 U.S. 404, 411 (1968) (tribe retains treaty hunting and fishing rights despite termination of government-to-government relationship); *Bottomly v. Passamaquoddy Tribe*, 599 F. 2d 1061 (1st Cir. 1979) (sovereign immunity from suit without federal recognition); *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 ((1stt Cir. 1975) (non-recognized tribe protected by 25 U.S.C. § 177, which establishes a trust relationship with all tribes); *U.S. v. Washington*, 394 F.3d 1152, 1155 (9th Cir. 2005) (Tribe need not be recognized to exercise treaty fishing rights).

The Declaration acknowledges "that indigenous peoples have suffered from historic injustices as a result of, *inter alia*, their colonization and dispossession of their

[8] *Robinson v. Sullivan*, 956 f.2nd 836, 838 (8th Cir. 1992). The U. S. Supreme Court has clarified this, writing that substantial evidence, "means such relevant evidence as a reasonable mind might accept as adequate to accept a conclusion." Richardson v. Peralas, 402 U. S. 389, 401 (1971) (citing *Consolidated Edison v. NLRB*, 305 U. S. 197, 229 (1938).

[9] "And today I announce that the United States is lending its support to this declaration. The aspirations it affirms – including the respect for the institutions and rich cultures of Native peoples – are ones we must always seek to fulfill..." **"**But I want to be clear: What matters far more than words – what matters far more than any resolution or declaration – are actions to match those words." http://www.youtube.com/watch?v=YMv2xiqaWY***c*** President Obama speaking to tribal leaders, December, 16, 2010.

lands, territories and resources…" This is certainly true of the Little Shell experience and that of many other Aboriginal peoples in the United States. Little Shell Tribe Indigenous Rights must be viewed against this backdrop of inherent rights and historic injustice which has prevented the full enjoyment of those rights for a century or more. Federal recognition, while not necessary to a tribe's existence or to its inherent sovereignty and rights, is nevertheless important to the full exercise of sovereign rights, to the receipt of the full range of federal and state benefits and to the dignity and respect owed to all Indigenous Peoples. It is an injustice to withhold that recognition, and State of Montana regulations should reflect the purpose to end, not perpetuate, this injustice.

The State of Montana can take the lead in this matter, superseding the political apoplexy of the United States, by passing laws and making regulations that effectively "bring in from out of the cold" the LST as a fully engaged Shared Sovereign of Montana, along with the State and our sister Tribal Nations of Montana.

Next, we bring the state of Montana directly into the equation. Taking into account the inherent rights of tribes, the unjust denial of those rights due to continuing colonial federal policy, and taking guidance from the Montana Supreme Court, the State of Montana can ensure, by effective decision, to recognize *in toto* the LST for what they are – a sovereign tribe – with all attending inherent rights, including the Indigenous Rights to Hunt and Fish in Montana (Supreme Court of Montana, KOKE, et al. and Appellants, v. LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA, INC., et al., No. 01-888, decided April 29, 2003). In other words, if there is "substantial evidence," which, when viewed in the light most favorable to the LST, and in the light of the adverse effects and generational negligence produced by federal policy, it could lead a reasonable mind to conclude that the State of Montana should recognize all inherent rights of the LST as a full-fledged Tribal Nation of Montana.

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The point is, the LST wants to assist the State of Montana to develop a coherent, defendable, practical, and useable rationale for justifying the State's recognition of the LST's Indigenous Rights to Hunt and Fish.

A government-to-government relationship with the United States is not necessary to a

Tribe's existence, i.e., Federal Acknowledgment of the LST is not necessary for the State of Montana to move forward in its recognition of the full Indigenous Rights of the LST. As noted the federal regulations do not create tribes or convey sovereignty to tribes. *See, e.g.*, Coen, *supra*. Also, as previously stated, unrecognized tribes have sovereign powers, may hold federal rights or be beneficiaries of federal responsibilities, all without the benefit of a full blown government-to-government relationship with the United States. *See*, *e.g., Bottomly*; *supra*, *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, *supra*; *U.S. v. Washington*, *supra*; *Menominee Tribe of Indians v. U.S.*, *supra.* Some tribes have been acknowledged to exist even though not "in amity with" the United States. *Montoya v. United States*, 180 U.S. 261, 266 (1901). Thus, acknowledgment of the LST's existence, as the State of Montana already does, is distinct from and not dependent on recognition of a government-to-government relationship with the United States.[10]

The purpose of the Shared Sovereignty of Montana Issue Paper is to engage the State of Montana and our allied sister Tribal Nations of Montana, as Shared Sovereigns, in the discourse of this issue that concerns us all. Our hope is that this discourse will serve to remedy long standing injustices to the Little Shell Tribe of Chippewa Indians of Montana, as a People of this country and our state, by providing a

[10] The existence of a government-to-government relationship necessarily includes the concept of tribal existence, but the reverse is not necessarily true. *See Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004) (finding the federal recognition process determines whether a tribe "exists" as a legal entity according to the federal government, but that "is not to say, obviously, that non-federally recognized tribes do not exist, or do not possess rights. However, as a general matter, absent federal recognition, tribes do not enjoy the same status, rights, and privileges accorded federally recognized tribes.")

swift, economical, transparent process to acknowledge our status as inherent sovereigns with all rights appertaining thereto, including those contained in the UNDRIP; MCA 20-1-501; the Montana Supreme Court, *KOKE, et al. and Appellants, v. LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA, INC., et al., No. 01-888*; and, specifically the issue of LST Indigenous Hunting and Fishing Rights.[11]

Paul Chartrand is a leader in international Aboriginal law and (with Pembina roots) directly related to Montana's Little Shell Tribe community.[12] He gives us a framework for understanding that,

> The concept of 'truth' is closely associated with that of 'reconciliation,' especially in the context of State policies or institutions that aim at healing the collective wounds of past conflicts and troubled relationships between peoples living within the common borders of a single State. Truth is like fragile spring ice. Any one person can pick up a small piece of it. But larger pieces can only be held up by many hands, working together with great care. When held up this way we know it is the springtime of our relations and the sun makes it a thing of shining beauty. But it is very fragile, and if any one grasps on to it too firmly, it shatters and crumbles at one's feet. The concept of 'shared sovereignties' is presented as an idea that may influence the way citizens think about indigenous peoples, and their aspirations to live harmoniously with others in circumstances of peace and justice in each state and country.[13]

"Shared Sovereignties" is an ethic for whole and healthy futures. As an idea, it is a mechanism for attaining truth and reconciliation that,

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[11] Elements of this section were drawn from: Kim Gottschalk, Nicholas Vrooman, Sandra F. Kennedy, and Anne Coyner, to Ken Washburn, Assistant Secretary of the Interior, Indian Affairs, COMMENTS OF LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA ON PRELIMINARY DISCUSSION DRAFT REGULATIONS RE ACKNOWLEDGMENT OF TRIBES, September 16, 2013, Native American Rights Fund, Boulder, CO, on behalf of the Little Shell Tribe; and, Kim Gottschalk, Nicholas Vrooman, Sandra F. Kennedy, and Anne Coyner, "Interior Board of Indian Appeals, Request for Reconsideration Pursuant to 25 CFR § 83.11 Of the Final Determination Of the Acting Deputy, Assistant Secretary – Indian Affairs, published November 3, 2009, 74 Fed Reg. 56861 et seq, Against Federal Recognition of the LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA," February 1, 2010, Native American Rights Fund, Boulder, CO, on behalf of the Little Shell Tribe.

[12] Professor Chartrand served as a Commissioner on Canada's Royal Commission on Aboriginal Peoples, and, as representative of the Métis Nation of Canada, participated in the drafting of the UNDRIP. His family heritage is the same as the citizens of the LST.

[13] Paul L.A.H. Chartrand, "Reconciling Indigenous Peoples' Sovereignty and State Sovereignty," Research Discussion Paper 26, *Australian Institute of Aboriginal and Torres Strait Islander Studies*, Canberra, Australia, September 2009, 3, 21.

> moves collective thinking in a country that has jettisoned the idea of *terra nullius*, and which now accepts that the existence and presence of indigenous peoples on their lands matters, to the more fully equitable notion that not only the existence but also the political action of indigenous peoples matters in the creation of practices, precepts and laws that reflect a consensual view of the fundamental values that guide a vision of the just society and of the constitutional order that ought to sustain it. Indigenous peoples have a right to aspire to live according to their own visions of the good society, inspired by their own concepts about the universe and the values that ought to inform the way that good relations are to be established and maintained within families, communities, and the Nation-State. This is my understanding of the essence of the right of self-determination.[14] . . .
>
> It is not good that, in what is generally viewed as a democratic country, there be historic peoples or nations with an abiding sense of grievance and injustice about the ruling order. For the [Little Shell] people, the traditional sense of freedom and community feeling captured in the songs of Pierrich Falcon [the fabled 19th century *chanteur* of the LST] has been seriously eroded as time has done its work. A focus on the histories of the [Little Shell] peoples is important if the two sides are to agree that there is a legitimate grievance about which something should be done.[15]

At the May 2014 meeting of the UN Permanent Forum on Indigenous Issues, a "Study on the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress, with reference to the Declaration [UNDRIP]," was presented that outlined ways to engage the pursuit of Universal Human Rights and the Rights of Indigenous Peoples. [16]

The Study calls for a "full and honest account of the past."[17] In the name of Truth and Reconciliation, this document serves to go beyond the rhetoric of old to bring forward the special relationship between the Little Shell Tribe, the State of Montana, and our sister Tribal Nations of Montana, away from the hierarchical and colonial relationships of the past, to a new era of true coöperation, working for our

[14] Ibid., 22.
[15] Paul L.A.H. Chartrand, "Consent as the foundation for political community," notes for a conference at the University of Victoria, October 1-3, 2004, a paper shared with the author by Professor Chartrand, College of Law, University of Saskatchewan, September 22nd, 2004.
[16] Special Rapporteur [Edward John], "A Study on the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress, with reference to the Declaration [UNDRIP], and particularly to articles 26-28, 32 and 40," Econ. & Soc. Council, U.N. Doc. E/C.19/2014/3 (May 12-23, 2014), 5.
[17] Special Rapporteur, "A Study on the impacts of the Doctrine of Discovery…", 11.

common best interest and mutual benefit for Montana's *longue durée*. This document, then, is an effort of the LST to engage the governments of the State of Montana and sister Tribal Nations of Montana in a new era of Shared Sovereignty for the land we all love and call home, Montana.

The Little Shell Tribe of Chippewa Indians of Montana has four rationale for engaging the State of Montana in the recognition of the Tribe's Indigenous Rights, including our cultural heritage of hunting and fishing, on lands within the boundaries of present-day Montana. They are that:

- 1.), the LST, after realizing it was closed out of both the Turtle Mountain and Rocky Boy's Reservations (1904 & 1917, respectively), has maintained from its first communiqué with the federal and state governments (c. 1921, following the society-wide disruption of WWI), that it has rights within both the 1851 Fort Laramie Treaty and the 1855 Blackfoot Treaty (Lame Bull/Stevens). There is incontrovertible evidence that a diplomatic representative of the *Nehiyaw Pwat* (Chief Broken Arm, of the Confederated Cree, Assiniboine, Ojibwa, and Métis, i.e., ancestral Little Shell) was a participant in both treaties; [18]
- 2.), the LST, as direct descendants of both Chief Broken Arm's band and (a generation following) Chief Little Shell's band, were egregiously and detrimentally excluded by the U.S. government from both the 1855 Blackfoot Treaty and the 1892 McCumber Agreement, and therefore has never taken treaty with the federal government, thus their Aboriginal Rights remain unrelinquished; [19]
- 3.), the LST Indigenous Rights (including hunting and fishing) fit squarely within MCA 20-1-501, which says that, "The state recognizes the distinct

[18] See Appendix A.
[19] See Appendix B.

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and unique *cultural heritage* of American Indians and is committed in its educational goals to the *preservation of their cultural integrity*," that include hunting and fishing rights;[20] and,

- 4.), the LST, based on the Supreme Court of Montana decision in, *KOKE, et al. and Appellants, v. LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA, INC., et al.*, No. 01-888, decided April 29, 2003 (finding that the LST meets all criteria and requirements of an American Indian tribe), and given the LST historic and contemporary citizenry is directly related by history and consanguinity to all other Tribal Nations of Montana, thus, *ipso facto*, falls within the existing treaties and rationale of, and pertaining to, the combined sister Tribal Nations of Montana rights for hunting and fishing within the State of Montana.[21]

The Tribe has "substantive evidence" for each of these four positions. Taken together, an overwhelming sense of "rightness" and the need for fulfillment of justice pervades the LST call for recognition in this issue of the Tribe's Indigenous Rights of Hunting and Fishing in Montana.

The LST desires to "find a way" with the State of Montana to easily, fully, and honorably accept the LST into the family of Tribal Nations of Montana that is justifiable to the whole of Montana society. The LST believes that by articulating the historical precedence and relationship of the LST with all the other tribes within Montana boundaries, (i.e., the LST fits naturally within all existing Treaty Rights of its sister Tribal Nations of Montana), logic and moral authority calls for justice to be fulfilled, i.e., embodying the "the honor of the State" encourages the State of Montana to include

[20] See Appendix C & D. Italics added.

[21] It would be to the honor of the State &Tribal Nations of Montana as Shared Sovereigns of Montana to offer unanimous assent, *à la bonne heure,* i.e., *niwakomahkananak* (Cree Michif: "all my relations"); the pervasiveness of consanguinity of LST citizens among all Tribal Nations of Montana, both historically and contemporarily, is shown using primary sources throughout the LST's official history, "The Whole Country was 'One Robe'."

the LST within all similar, equivalent, and acknowledged rights of all American Indian Nations within the boundaries of the State of Montana.

This can be accomplished through diplomacy, statecraft, and moral authority shared between the leadership of the State of Montana and all Tribal Nations of Montana. This saves time, resources, and anguish on all sides of this very real sovereignty issue. Working through this issue would bring all parties (State and Tribes) more closely together, sharing in the potential of a more inclusive, productive, and equitable future. Fundamentally, the State of Montana and the Tribal Nation of Montana share "joint occupancy" of the land that comprises Montana (along with the federal government). The sooner we acknowledge and come to true acceptance of this, and devise effective ways of coöperative and mutually beneficial strategies administering the potential of this land and protection of our dearly loved homeland and shared society, for the benefit of all Montana, the better. This is one simple and clear way to accomplish this goal.

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