

TOWARD A BIJURAL INTERPRETATION OF THE PRINCIPLE OF RESPECT IN ABORIGINAL LAW

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Aboriginal law disputes are disputes that arise in the spaces between Indigenous and non-Indigenous societies. To date, the Supreme Court of Canada has resolved Aboriginal law disputes under section 35 by relying heavily on the common law to the exclusion of Indigenous legal traditions and principles. In this article, the author argues that applying a bijural interpretation of the principle of respect provides a promising pathway forward in resolving Aboriginal law disputes in a way that supports the grand purpose of section 35 of the *Constitution Act, 1982*—reconciliation. The author discusses the principle of respect by considering both non-Indigenous and Indigenous theories to propose a robust conception of respect to guide Aboriginal law jurisprudence. She then suggests three ways to implement the principle of respect in the intercultural relationship: (1) making interdependence and relationships primary; (2) rejecting colonial attitudes and stereotypes of Indigenous peoples; and (3) creating political and legal space for the expression and flourishing of cultural difference.

Les disputes de droit autochtone sont des disputes qui surviennent dans les interstices entre les sociétés autochtones et non autochtones. Jusqu'à présent, la Cour suprême du Canada a résolu des disputes de droit autochtone fondées sur l'article 35 en se fiant à la common law, écartant ainsi les traditions et principes juridiques autochtones. Dans cet article, l'auteure plaide que la mise en application d'une interprétation bijuridique du principe de respect est une avenue prometteuse vers la résolution de conflits de droit autochtone, et ce, d'une façon qui donne soutien à la raison d'être de l'article 35 de la *Loi constitutionnelle de 1867* : la réconciliation. L'auteure discute le principe de respect en tenant compte de théories autochtones et non autochtones, de façon à proposer une conception robuste du respect qui guidera la jurisprudence en droit autochtone. Elle suggère trois moyens d'instituer le principe de respect dans la relation interculturelle : (1) prioriser l'interdépendance et les relations; (2) rejeter les attitudes colonialistes et les stéréotypes entourant les peuples autochtones; et (3) créer un espace politique et juridique pour l'expression et l'épanouissement de différences culturelles.

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