



Power without Law: The Supreme Court of Canada, the Marshall Decisions and the Failure of Judicial Activism

Alex M. Cameron

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The Supreme Court of Canada decision in the Marshall case asserted sweeping Native treaty rights and generated intense controversy. In Power without Law Alex Cameron enlivens the debate over judicial activism with an unprecedented examination of the details of the Marshall case, analyzing the evidence and procedure in the trial court and tracing the legal arguments through the Court of Appeal to the Supreme Court of Canada. He argues that there were critical defects in the process - the successful argument at the Supreme Court of Canada was never tested in the lower courts, the Crown's expert was precluded from testifying about a vital document, the Court's analysis does not accord with the historical evidence, and the treaty rights are inconsistent with the colonial law of Nova Scotia. Concluding that the Marshall decision was the result of incautious judicial activism, Power without Law challenges us to reconsider the role of our courts in the Charter era.



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