

TWO ROADS --NO EXIT

*AN IN CAMERA DISCOURSE
ON
NEGOTIATIONS IN NORTH AMERICA TODAY*

by

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Abstract

This work is an interdisciplinary exploration of negotiations between the nations that make up Canada. It explores the disparity that remains between Aboriginals and non-Aboriginals in Canadian North America at a systemic level. It will show that the post-colonial era is rampant with colonial doctrine and that these principles and policies maintain a dogmatic system that can not allow for the continued existence of Aboriginals as separate and distinct peoples. I will show my understanding and interpretation of an old Indigenous system and suggest ways in which aspects of this ancient system may be valuable in creating a coordination of world views that can allow for both factions to exist and prosper. I will specifically address how the differing world views that exist between Aboriginal and non-Aboriginal Canadians—and the inequality between these two groups of peoples—has been and remains infused in the negotiation process that these governments attempt to complete. The final aspect of this work will be a theatrical production piece that allows (in some small way) the traditional Indigenous approach to ‘law’ to be given equal weight as the Supreme Court in *Delgamuukw* suggests.

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Dedication

This work is truly the work of many minds. I can only take credit for the enunciation. I must acknowledge the many who directed me on the way:

To the Elders who have spoken to me over the years;

To my uncles and friends who taught me to be a man of honour;

To the aunties and women who showed and shared their power;

To Professor Steve Wexler who walked the journey with me wherever it took us;

To my family, for keeping me grounded;

Especially Jake.

Finally, to my mother, Marlene Wheeler,

who left us April 3, 2008

never really knowing what I was talking about but always willing to listen.

Chee Meg Wiiche,

Thank you.

Chapter I Introduction and Methodology

*You say that you are our father and I am your son...
...We will not be like Father and Son,
but like Brothers*

GUSWENTA (KASWEHNTHA)
Two Row Wampum Belt

Fire has been an essential part of all Indigenous peoples' cultural practices. As a child, I was taught stories around a fire. As I grew, I was taught that the stories later in the evening had a different meaning. The characters may have been the same but the meaning was somehow changed. The stories were lessons and my time by the fires in my childhood prepared me for the lessons I would learn as I grew. Nanabush, Coyote, Winnaboujou and the Twins were still a part of the stories but as my ability to understand more complex truths expanded so did the depth and importance of the stories that I heard as I stayed up later at the fire. It was explained to me that the stories at the beginning of the fire were amusements. The stories at the end were our truths.

One of the foundational truths of the Anishinabe is the Seven Fire Prophecies. This is the story of the past, present and future of the Anishinabe nation. The prophets saw the coming of the Westerners, the creation of a 'new' people and the final choice that the Anishinabe must make or face Ishkwekamig, the end of the world. Ishkwekamig is a

personality in the Anishinabe history. He represents the idea and the personification like the Horsemen of the Apocalypse. This history tells the story of these new people, the Osh-ki-bi-ma-di-zeeg. They are a hybrid, not the original Indigenous group but something more. This history is not in the chronological order that Western society demands. Ishkwekamig is from our past, stands by us in the present and waits for us in our future. Within the Anishinabe history, these new people with a new understanding come from the old Indigenous people but they are transformed into something new. We are told that the last prophet was but a child and saw the coming of these new people (not to be confused with the Westerners). The Osh-ki-bi-ma-di-zeeg would be the ones to make the decision at the seventh fire. They could chose a new beginning where the Anishinabe would be stronger than ever as they walk to an eight, undescribed fire. The Seven Fire Prophecy ends with either an eighth unknown fire or Ishkwekamig, the end of our world.

It is my perspective that the majority of academic works on the subject of Aboriginal/non-Aboriginal relations from Aboriginal writers fall into one of three categories. There is a position among some Aboriginals generally and expanded upon by some Aboriginal writers that white (non-Aboriginal) immigrants must go back to the countries of their ancestors in order for Aboriginal peoples to live fairly and with justice in a **post-colonial** society. I will address this position here, but also take a stand against such an assumption. This 'post-colonial' perspective—that demands and plans for a removal of non-Aboriginal settlers—is a utopian fallacy. By utopia I do not mean perfect state but rather an imaginary state that can not truly occur. The idea suggests that if left alone, Aboriginal people can somehow return to a pre-contact approach to existence. It

assumes it is the physical presence of non-Aboriginals that needs to be addressed for the rest of the situation to be 'fixed.' This ideology suggests a system without Western influence without any merging of the various world views that are present. A perspective that supposes a system without Western influence can exist is naïve. Even if the non-Aboriginal factions could be removed, their influence as neighbours must define this "Post-Aboriginal world. This is an utopian idea that can and should be addressed in theory but not practice. This work attempts to provide something in the realm of theory that has practical applications.

A second position advocated by a number of Aboriginal academics is that the colonial paradigm is the Aboriginal lot in life and we must simply make the best with what we have been given. This perspective seeks what is acceptable for Aboriginals in a dominant non-Aboriginal system, suggesting that we must take the non-Aboriginal system at face value and provide something that is good for Aboriginal people—or at least do the best we can with what we got. It is a view of Aboriginal life as engulfed, surrounded and possibly overcome by Western influence. This position is defeatist and does a disservice to the ancestors of the Aboriginal people. The Indigenous paradigm is still reflected in day-to-day Aboriginal existence. In cities, on reserves and around the world, Aboriginals work today with a different understanding of the world than the Western paradigm dictates.

A third perspective, which is supported in this piece, suggests a hybrid of the two earlier descriptions. It suggests a way for Aboriginals to work through the present system and not just maintain what is left of their former system of social interaction, but

reintegrate older Indigenous ways of being that upheld social order for thousands of years. This scheme may help the Euramerican structure to:

1. create better balance within the system,
2. allow greater inclusion of all participants within the organization, and
3. establish a true post-colonial perspective that provides a greater opportunity for colonized perspectives to be recognized and addressed.

This hybridized approach advocated here could re-create the world for both Aboriginal and non-Aboriginal Canadians. By recognizing the validity of maintaining aspects of their Indigenous ancestors, Aboriginals are providing a healthier, more holistic approach to negotiations and relationships in this commodified system. By recognizing and adopting parts of this hybridized, Aboriginal system, change will occur in the dominant system for the better, the better for all.

In exploring this third approach, this paper will address some of the legal approaches to negotiation (both Euramerican and Aboriginal), then some of the sociological approaches studying and explaining methods of negotiation. Throughout this process, I will show an alternative approach that continues to be used by Aboriginal communities and nations today, explaining my understanding of how negotiation and social order are maintained in an Aboriginal perspective. This understanding is specific to me as an educated man of Ojibway/Scottish descent raised in Canada: as Nini Anishinabe—Ojibway man—my uncles taught me old ways and new. We were exposed to Traditional stories and songs as well as newspapers and Dr. Hook 8-tracks; I grew up in the 1960s and 70s in the city (Toronto) as well as on the farm (Tamiskaming). I walked, and was taught the skills to negotiate two worlds—and in this discussion will use

the oral tradition to address some of the questions regarding this hybridization. I will incorporate oral, traditional teachings as a source for providing traditional Indigenous ways of being which is the basis for the Aboriginal approach to on-going negotiations between nations. I will also use aspects of the oral tradition to describe the “alternate approach” used by Aboriginal communities today. Finally, I will use the oral tradition as one of the mediums to illustrate the alternate approach or Aboriginal hybrid approach to nation-to-nation contact.

Chapter I introduces an Indigenous approach to socio-legal utility that I have been taught by my family and other Aboriginal communities across the country. I have titled this method the “Reciprocal Expectation model.” In its uncontaminated form, the use of Reciprocal Expectation as a society’s primary legal system is based on an understanding and agreement by all members of the group. This understanding and agreement will be referred to as a “Communal Contract approach.”

Chapter II provides a brief understanding of how negotiations work and the techniques routinely used today. It also looks at how very ‘modern’ and ‘new’ approaches owe a lot to very old and ancient attitudes and tactics for negotiating settlements.

Chapters III and IV look at the situation of Aboriginals and the Crown and their respective positions on their duty to negotiate with each other.

Chapter V looks at the sociological theories surrounding a suggested evolution from ‘primitive’ social systems where a Communal Contract could suffice, to more ‘advanced’ systems where Social Contract is necessary. It will look briefly at one possible reason for the need to transform from Communal Contract to the Social Contract

we now work under, namely, the introduction of commodification and with it, the greater emphasis on the individual and/or the individual rights that underlie a commodified system.

Finally, Chapter VI reviews the information provided and presents it in a way that reflects the both oral tradition and Indigenous cultural approaches to negotiations, social order and the law. The world views of both Aboriginals and the Crown, and their very understandings of what it means to negotiate with another are presented as a theatrical production (Chapter VI, “In Camera”) based on *No Exit*, the 1944 existentialist play by Jean-Paul Sartre. The play, *In Camera*, reflects some of the frustrations on all sides of the negotiation table in trying to reach settlement and certainty with regard to the ‘Indian problem.’ It is my intention to provide oral history while meeting the written demands of the academic arena—in the process reflecting both the analysis of the discourse, that has been reviewed for centuries, and the recognition within the Canadian legal system of the essential substance of the Aboriginal oral approach to marking history. In this way, I hope the play acts as another hybrid that bridges the two worlds.

Background to History- Setting the Stage

On Dec. 11, 1997, a landmark decision was handed down by the Supreme Court of Canada (“SCC”), in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (“*Delgamuukw*”). The following year I entered law school. There was something almost tangible, an excitement when people who cared about Aboriginal law spoke of the case. This enthusiasm was intoxicating. The law, as Aboriginal and non-Aboriginal had

known it, had changed. We would have to understand the meaning of what the Court called “aboriginal practices, customs and traditions” and Aboriginal title and ownership. With this case, Aboriginals believed that things were changing. For me, the most important thing that this case did was to recognize the validity of Indigenous oral history and traditions as an alternative to the Western written form. Just as Indigenous law assumes the validity of oral truths, so Western law assumes the validity of written documents; though two methods of conveying and maintaining history and protocol were presented to the courts, until this case, only the Western written standard was acknowledged.

The Court in *Delgamuukw* found that the trial judge failed to properly consider the importance of oral methods of maintaining a history. With regard to oral knowledge, the Court in *Delgamuukw* stated:

The factual findings made at trial could not stand because the trial judge’s treatment of the various kinds of oral histories did not satisfy the principles laid down in *R. v. Van der Peet*... The trial judge refused to admit or gave no independent weight to these oral histories and then concluded that the appellants had not demonstrated the requisite degree of occupation for “ownership”. Had the oral histories been correctly assessed, the conclusions on these issues of fact might have been very different.¹

The idea that Aboriginal knowledge must be given independent weight and that oral histories could show rights to occupancy, and hence ‘ownership’ was new, exciting and finally accepted. Up until this time, all proof of occupation and therefore claims for ‘ownership’ had to be proven using written documents. It was necessary for Aboriginals to prove that they had these *sui generis* rights to title and occupation against their

¹ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at summary

colonizing counterparts in the colonial counterparts' courts using only the tools of the colonial counterparts to recognize and affirm their Indigenoussness and their right to their Aboriginal lands. The *Delgamuukw* decision entrenched the authority of traditional oral history preservation. Taken together, *Delgamuukw* and *Van der Peet*² demanded that oral histories be given equal weight as evidence.

The task of proving that Aboriginals were 'Indian qua Indian', that they possessed title to the lands they occupied was near impossible using only the systems and tools of the colonizer. It could be argued that this task needed to be an onerous one, as this same Court described the relation between Aboriginals, Canada and land as, "a **burden** on the Crown's underlying title."³ In effect, the Court of Canada was recognizing that Canada had a 'burden' on their title and therefore, in order for Canada to hold 'their land' an effective challenge had to be impossible to accomplish. The effect of this prejudice can be seen if we apply the test of Aboriginal title enunciated by the court Federal Court of Canada (Trial Division) decision in *Hamlet of Baker Lake v. Minister of Indian Affairs*⁴, which set out cumulative criteria relating to Aboriginal title, to the written documents used to prove title. *Delgamuukw* set out an easier understanding of the test as well be shown later.

Attempting to show Aboriginal title without using Indigenous history would be equivalent to a Canadian person trying to prove that they were the owners of a house without using any of the written trappings of the Canadian system—as if, suddenly,

² *R. v. Van der Peet*, [1996] 2 S.C.R. 507

³ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at summary

⁴ *Hamlet of Baker Lake v. Minister of Indian Affairs* [1980] 1 F.C. 518, additional reasons at [1981] 1 F.C. 266

written documentation was no longer acceptable proof of ownership. That we accept written as true shows the entrenchment of the Western paradigm and the systemic prejudice of Canada. We assume writing as true. Without this assumption it is impossible to prove title. It would be necessary to find another method, like oral testimony to prove title. The Torrens certificate of fee simple title and registration would be meaningless. First, you would have to show that these people called British Columbians had a right to give land. But to do this, you could not use any of the papers or documents that “they” as a state produced to confirm their right to pass this title to you. If you finally did manage to show that there was possessory right to the property in question, then you would have to show that you personally held that right and again, you could not use any of the papers or documents that the state had given you. You could not use the driver’s license or birth certificate or Social Insurance Number given to you by the state to confirm who you are. You would first have to show the ‘documents’ come from an entity that was recognized to exist. This could not be done using any papers that the state had created as until they are proven to exist they are not in a position to produce any documents verifying their existence. Similarly, the court said that Aboriginal title exists and provides a ‘test’ to meet; however, it soon becomes very obvious that the task is ‘just a little tricky’. The decision of the SCC in *Delgamuukw* (and *Van der Peet*) recognized this unfairness and took steps to rectify this injustice.

As an Aboriginal law student I saw this decision as a turning point in how our claims for land would be viewed by the Canadian legal system. The land question would be fairly addressed. There would be an equalizing of Aboriginal and non-Aboriginal uses of land. This equalization would provide ability for economic self-sufficiency for many

bands and nations for the first time in generations and in part, would allow a new ability to create something beyond subsistence living—a fact that was envisioned in the Court’s position on Aboriginal lands and the uses that these lands could be put to. With regard to land use, the Court found:

The exclusive right to use the land is not restricted to the right to engage in activities which are aspects of aboriginal practices, customs and traditions integral to the claimant group’s distinctive aboriginal culture. Canadian jurisprudence on aboriginal title frames the “right to occupy and possess” in broad terms and, significantly, is not qualified by the restriction that use be tied to practice, custom or tradition... Finally, aboriginal title encompasses mineral rights and land held pursuant to aboriginal title should be capable of exploitation. Such a use is certainly not a traditional one.⁵

This statement seems to suggest the ‘living tree’ approach to law that I was taught as a first year law student: the right (under law), once proven, must be able to expand and grow. Thus Aboriginal law and systems would live, grow and flourish. In the final sentence of the quote, regarding mineral rights, it is interesting to note that the expansion into subterraneous, advantageous activity is not ‘new’ to many First Nations. The Anishinabe, Algonquin and Beothuk in the east, and many west coast nations including the Haida, Nisga’a and the Tsimshian, used minerals found below the surface. However, the Court uses the term ‘exploitation’ of these rights and it seems it is the right to exploit the resources to depletion that is expressed, and new. This approach, using ‘non-traditional technologies to dig deep and broad, creating supply exhaustion seems to be a part of the modern commodified system of Canada.

⁵ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at summary

By recognizing that Aboriginal groups have a right to ‘progress’ in a modern system and arrange their land use with awareness to the contemporary realities, the Court created the framework for modern Aboriginal social structures. This separation of land from “activities which are aspects of aboriginal practices, customs and traditions” appears to allow Aboriginal groups the right to determine land use. Within the contemporary global paradigm it is essential that land be capable of being used⁶ and Aboriginal land use must reflect present day realities. Just as land use for non-Aboriginals was different in 1850, Aboriginal land use should be able to evolve. The Court addressed the recognition of “Aboriginal title [as] a right to the land itself”⁷ and clarified the issue of the right test for Aboriginal title stating “the requirement that the land be integral to the distinctive culture of the claimants is subsumed by the requirement of occupancy.”⁸

The Court provides a level of certainty with regard to the question of how to defend a claim of Aboriginal title. The court states:

In order to establish a claim to aboriginal title, the aboriginal group asserting the claim must establish that it occupied the lands in question at the time at which the Crown asserted sovereignty over the land subject to the title...Second, whereas the time for the identification of aboriginal rights is the time of first contact, the time for identification of aboriginal title is the time at which the Crown asserted sovereignty over the land...Under common law, the act of occupation or possession is sufficient to ground aboriginal title and it is not necessary to prove that the land was a distinctive or integral part of the aboriginal society before the arrival of Europeans. Finally, the date of sovereignty is more certain than the date of first contact. ⁹

⁶ This is one of the basic premise of Marxist theory

⁷ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at summary.

⁸ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at para 142.

⁹ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at summary

Again, these statements appear good and beneficial to the Aboriginal nations claiming title and rights. However, at paragraph 165 we see some immediate taking back of the possibility to right and title the Court has just implied. The court speaks to infringement stating:

Constitutionally recognized aboriginal rights are not absolute and may be infringed by the federal and provincial governments if the infringement (1) furthers a compelling and substantial legislative objective and (2) is consistent with the special fiduciary relationship between the Crown and the aboriginal peoples...In my opinion, the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims, are the kinds of objectives that are consistent with this purpose and, in principle, can justify the infringement of aboriginal title. Whether a particular measure or government act can be explained by reference to one of those objectives, however, is ultimately a question of fact that will have to be examined on a case-by-case basis. ¹⁰

It is generally understood that in Canada, we will have absolute protection of our rights “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”¹¹ The exception is Aboriginals whose rights can be infringed. It appears that there an ability to infringe on the rights of the category of ‘Canadians’ known as Aboriginals beyond the infringement of other Canadians. This suggests a classification that makes Aboriginals ‘Citizens-minus.’¹² Because these

¹⁰ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at para 165.

¹¹ *Charter of Rights and Freedoms, 1982* section 1

¹² This is counter to the idea of Aboriginals as Citizens-plus proposed by Harold Cardinal in his works The Unjust Society: the Tragedy of Canada's Indians , published in 1969 and expanded in the "Red Paper - Citizens Plus (1970)

protections are individual protections, not communal ones, the clawing away of Aboriginal title is explained in the acceptable infringements. The Canadian courts see the actions of Canada's governments regarding the continued appropriation of Indigenous lands as compelling and reasonable. Both branches of Canada's government view this taking another's land as in accordance with Canada's 'special' fiduciary relationship with Aboriginals. This may be due to the fact that Canada is the communal state component and can not view a further state within that state that has rights as an individual entity. Granting rights to a non-human is tricky. The rights the Aboriginal nations have are (in Canada's view) limited.

Any burden or duty on the part of the Crown is further diluted in the description of accommodation of title. The Court states:

One aspect of accommodation of "aboriginal title" entails notifying and consulting aboriginal peoples with respect to the development of the affected territory... The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to aboriginal title. Of course, even in these rare cases when the minimum acceptable standard is consultation, this consultation must be in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands... And third, lands held pursuant to aboriginal title have an inescapable economic component which suggests that compensation is relevant to the question of justification as well. Fair compensation will ordinarily be required when aboriginal title is infringed... The amount of compensation payable will vary with the nature of the particular aboriginal title affected and with the nature and severity of the infringement and the extent to which aboriginal interests were accommodated.¹³

¹³ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC), at para 169.

This discussion of infringement with regard to Aboriginal title shows again a Citizen-minus approach by the Court. Canadians, as individuals, are not forced to address these depletions of their rights and title. Aboriginals, as a group, are. The *Charter* does not allow individual rights to be slashed in this way. Most Canadians would (rightly) take umbrage to such a dismissal of their rights as Canadians. They would not allow the arbitrary removal of their fee simple titles within the Torrens system, even with ‘fair compensation.’ But Canadians can and do allow this to happen to other Canadians ‘packaged’ as Aboriginals. Though *Delgamuukw* was seen as a victory for Aboriginals, particular aspects have expressed themselves as very limited.

Further, the Court indicates these bundles of Aboriginal rights are frozen at the time of contact. The rest of Canada is allowed to expand and grow their rights. Indeed, there are a number of cases between the Federal and Provincial governments addressing where newly created rights and powers would lie.¹⁴ Specifically, these cases looked at whether certain rights, that had never been considered during the drafting of the Constitution, would now fit into section 91 or 92 of the Constitution of Canada as they had to fit somewhere in the document. The reason for the need for these rights to be placed into one of these two Constitutional sections is based on a legal myth that these two sections are exhaustive; this is a fallacy. If indeed they were exhaustive, these cases would never have appeared at court. However, they did. When Aboriginal groups make a similar claim to a new or growing right (aka living tree) they are informed that this is settled law and there is no more power to give. The law appears to be settled, in the

¹⁴ The most famous of these is the Chicken & Egg cases. *AG Manitoba v. Manitoba Egg and Poultry Association (the Manitoba Egg Reference)* [1971] S.C.R. 689

Crown's mind, until a new area must be fitted into provincial or federal jurisdiction and the myth of Constitutional exhaustiveness continues.

This sets the stages for the present day situation between the governments of Canada and the Aboriginal peoples' government. We find, in policy, rhetoric and the law, an absolutely forward movement. But the Crown ultimately reaffirms Western traditional patronizing and patriarchal positions it has regarding Aboriginal peoples. The Crown's position is fascinating and confusing. This is most clearly evident in the Canada's courts and legislatures recognizing the Aboriginal right to own, use, and 'exploit' the land on one hand, but demanding that it be limited and emphatically 'infringable' on the other.

This work (including the play) will show how the Indigenous reciprocal system and the Western commodified system can merge. It will show how the Aboriginal paradigm has created a hybrid that incorporates both. This Aboriginal hybrid has had limited success as the Western system refuses to accept and variation from their standard paradigm. The descendants of the Indigenous people of this land do not see themselves as a 'burden' on white title. The play is a work of fiction based on Sartre's No Exit, originally published in French as Huis Clos (meaning In Camera or "behind closed doors"), it was translated and published in English under the title No Exit. The reasons for this choice will, hopefully, become obvious. There is a capability in 'fiction' to present pragmatic realities that academic writing can not. Though there is no way to 'prove' the responses and attitudes of the characters, I suggest they are a part of the contemporary paradigm we face. The attitudes and positions of the characters are real

and based on research, firsthand knowledge and discussions with individuals working in the area of treaty negotiation.

Chapter II Reciprocal Expectation and Communal Contract

Just as Indigenous communities have incorporated colonial perspectives to create an Aboriginal paradigm which is a hybrid of the two worldviews, Western states are looking to Indigenous worldviews to find answers to their predicaments. To accomplish this new approach to addressing the ‘Western problem’, these Euramerican states must accept a hybridization of their perspective. Aboriginal peoples have moved from their position of power in North America to a new position where some of their power has been given up. Western states must now similarly give up some of their power and accept a new hybridized paradigm that better represents all peoples within the state. To do this they will need new tools. It is my position that these new tools can be found in the Indigenous past.

It may, at first blush, a work suggesting a new world view be considered by the dominant social group may appear superfluous. It is worth asking, ‘why, as the dominant group should we change?’ The answer is that the relationship between Canada and all its citizens could be improved. Historically, the most extreme cases have been studied to search out the norm and best practices. The relationship between Canada and the Aboriginal people of these territories is the most extreme case of Canada’s sovereign relationship gone wrong. There are negotiations going on between Aboriginal groups and the other governments of the Territory commonly referred to as Canada. It is not my plan to argue the rights of any individual or group to control or occupy of these lands; rather, I hope to elucidate some of the positions that are held by all the various parties within the Aboriginal negotiations. It is essential that the reader recognize that the “Indian negotiations” represent hundreds of separate groups of Aboriginals. Each of these groups

has a different relationship with the Crown of Canada and each has a different vision for their future within the Aboriginal/Canadian paradigm. What I hope to accomplish is not to focus on the issues that are at all the various tables but rather to re-introduce an older Indigenous model that seems to incorporate many of the common traditional worldviews of Indigenous peoples globally. This Indigenous model addresses a socio-legal approach that recognizes a different approach to duty, fiduciary and state. The utility of such an approach will be explored in the form of the Aboriginal hybrid system now practiced by the descendants of these Indigenous people. The Western world can not adopt this system absolutely. They have come from a different starting point and have a different history. But there are useful components that could and should be used to create a twenty-first century Western hybrid that does incorporate the Indigenous understanding of the world and peoples relationships.

The first order of business is to properly address the matters that will be discussed throughout this paper, to set definitions that will allow for a clearer focus on what is specifically being addressed. In our daily discussions on Aboriginal issues and their negotiation there is a tendency to obscure terms and meaning of words, titles and designations. Within the context of legal workings, it is essential to have a proper understanding of the meanings that are being discussed: the law recognizes that there must be a meeting of the minds in order for 'law' to be effective rather than affective. There are terms that describe all the various parties and then there are definitions within the work of the various members of the various parties and very rarely is there a defining component to the extent that I suggest is necessary. Some believe that everyone understands what they mean. This occurs on the part of all participants at some point in

negotiations and rarely have I found there to be a consensus on the meanings of the terms being used. Time is not spent defining terms; the reasons for this may be financial, personal, professional and any number of other reasons. For example, financially, it may seem that it is a waste of money to sit and define terms that have been defined for centuries; it appears inefficient and unjustifiably expensive. But, to know whom you are talking to, about whom you are talking, what will be gained by each participant and what will be lost would, I believe, lead to many negotiations being either resolved or understood to be useless or a futile waste of time. All of these results would, in the final outcome, produce savings not additional cost.

To address the problem with terminology, we will take the time to define our terms and meanings clearly. Throughout this work, the term Indigenous will denote people, ideas and concepts that are pre-contact and therefore lack any sense of a Western interference. For all post-colonial references to Indigenous people, ideas or concepts (by definition having been altered through contact) the author will use Aboriginal. This will help clarify the hybridity¹⁵ inherent in Aboriginal concepts. As Ania Loomba states:

...anti-colonial movements and individuals often drew upon Western ideas and vocabularies to challenge colonial rule. Indeed they often hybridized what they borrowed by juxtaposing it with indigenous ideas, reading it through their own interpretive lens, and even using it to assert cultural alterity or insist on an unbridgeable difference between colonizer and colonized.¹⁶

Loomba is correct in part in this explanation of the hybridization of Aboriginals, however along with the assimilationist aspect, there is also a need to maintain the separation of the

¹⁵ For an understanding of hybridity, see Ania Loomba *Colonialism/Post-Colonialism*. Routledge. 1998

¹⁶ Loomba 1998, 174

Other and the ability to control or eliminate the Other's influence through a process of recognition. Much of the hybridizing of ideas and vocabularies that occurred was by the colonizers; it was to maintain the 'Other' status of the indigenous colonized. But this idea goes further than the meaning that Loomba provides. It expands beyond the ideas and vocabularies to transform the people themselves. As with any hybrid, the mixture of character traits that surface is, to some degree, out of the control of the experimenters. The unbridgeable difference is maintained as long as there remains a colonial paradigm in place. The removal of this paradigm through the implementation of a new Western hybridized standard could fill the 'unbridgeable' void that Loomba describes.

The definitions and terminology is can not be as easily divided as suggested earlier. Even within the Aboriginal community and the government of Canada's various departments, there is factioning and discrepancy regarding which terms phrases represent which individuals. In her book, "Real" Indians and Others, Lawrence addresses some of the issues surrounding 'native identity' and 'Indianness.' She looks specifically at Mixed-Blood Aboriginals in and around the Toronto area. Her book exposes many of the problems with regard to self-identification, land-based culture, C-31 or legislated Indians and skin tone within a very limited geographic area to show the larger implications of these issues in Aboriginal discourse. However, Lawrence falls into the same traps she warns against, in her attempt to discover "Real" Indians. She states:

The fact that most urban Native people have no land-based practices to inform their spirituality...will continue to inform struggles around the practice of urban spirituality. In this respect, we can expect that urban traditionalism will vary significantly from the face of traditionalism in land-based Native communities and that this should not be seen as a sign that urban traditionalism is not "real" traditionalism—any more than urban Native people should be dismissed as not being "real" native people. But this also suggests that urban communities need to develop connections to on-reserve

communities, to keep introducing an emphasis on collective values, and to address the realities of language loss.¹⁷

Lawrence's understanding that land (and more specifically, Reserve land) is a necessary component of "real traditionalism" practiced by "real Indians" means that she has fallen into one of the colonial trappings of Aboriginal definition. Her definition appears to be based on the lands left for Indians by the Crown and falls short of a definition of Indian and Native that reflects the realities of many Aboriginal peoples in Canada today. Her bias creates another exclusionary approach to compartmentalizing who has 'status' on the Indian question.

As Lawrence shows, there is a compartmentalization and conflict that comes with the various attempts to define the many Indigenous nations with any singularity. This has set up a trap that many Aboriginals find themselves taking part in. Across the country, there is fighting among Aboriginals regarding who 'qualifies' to be one of Aboriginal. Throughout this work, I will be looking at a larger conceptual framework and avoid the use of 'Indian' to designate the overall grouping of Aboriginal. Instead, the term Indian will designate only those recognized under the *Constitution Act, 1982* and defined by the *Indian Act*. All these terms ('Indian', 'native', 'aboriginal', 'first nation', 'mixed-blood', 'Métis', 'Eskimo', 'Inuit', 'first peoples' etc.) are colonial manifestations attempting to deal with the 'Indian problem' and Aboriginals allow themselves to fall into this trap by fighting about inclusion within the colonial designation (i.e. that person isn't a 'real' Indian because they don't have a status card, or don't live on the reserve, or don't follow the 'red road' etc.) For example, the concern surrounding the use of land-based tradition

¹⁷ Lawrence 2004, 170

to determine Nateness or Aboriginality is that we are well on our way to a system that has been created through an artificial land ownership system (Torrens¹⁸)—that is not within ‘traditional’ Indigenous land structures. The use of land as an indicator of Aboriginal right is a truly colonial approach. Thus, splitting the Indian terms in these (and other) ways disregards the Indigenous right to identify Indigenous characterization. This paper will attempt a more inclusive approach through the use of new terminology to present old ideas of Indigenous social structures.

The other term needing clarification is the ‘Crown’. Here, like Indian and Aboriginal, there has been a merging of a term to represent one concept or class. The term Crown actually must represent at least three legal entities that have to be recognized within the Aboriginal/Canadian paradigm: namely, the Federal, Provincial or Territorial and the British Crown. The British Crown refers to the entity with which the agreements were signed. The British Crown gave up the right to their sovereign power over Canada in the *Canada Act* and the Aboriginal people accepted that withdrawal provided that, as a People, they were recognized and affirmed within the *Constitution Act, 1982*; which they were. But the historic ‘partner’ to the contract must be where we look to attempt any understanding of the meeting of the minds.

The federal Crown has within its legislated powers, the power “over Indians and lands reserved for Indians”¹⁹ which means their role within this equation was entrenched in their law. According to Canadian law, any time that a Canadian was to address Indians or their lands it was supposed to go through this entity. The *Royal Proclamation of 1763*

¹⁸ The system of land registration used in Canada. Recognized by Fee Simple land ownership by individuals

¹⁹ *Constitution Act, 1982* s. 91(24)

(British Crown) set out the designations of land allocation. All lands west of the Manitoba/Ontario border (there was no Manitoba pre-1870) were recognized as 'Indian lands' and no Westerner wanted them (at the time).

The provincial Crown stems from colonial governments and was put in place through acts of the British legislature (Crown). These Acts afforded to the 'new' governments power over the lands they occupied. Manitoba, Saskatchewan and Alberta all entered Confederation with fewer powers than other provinces. They did not have control over Crown lands, mines or mineral resources within their boundaries. The federal government gave grants in lieu of natural resource revenue. However, by World War I growing numbers of Albertans found the policy (which demanded that the federal Crown have control over 'their' land) irritating and demeaning. Many, in particular ranchers and oil developers, fought for the idea that the province could better manage its own resources. In 1930 the federal government finally transferred control of natural resources to the provinces under the *Alberta Natural Resources Act* and the *Constitution Act, 1930*. The other provinces followed suite, until by 1949 all provinces held the same rights over "their" land, completing the third part of the Crown's voice that Aboriginal peoples must negotiate with today

Finally, in attempting to clarify the Indigenous perspective, I recognize that there are many separate and distinct nations that make up Canada's Aboriginals. It is my position that Aboriginal peoples across North America share similar world views that are distinct from the ideas entrenched in the Euramerican world vision. Among these similarities are: story-telling as a way to impart and strengthen the social order, social gatherings as quasi-legal arenas, and art as a social and legal/ historical record. As a man

of Ojibwa/Scottish descent raised in the city of Toronto and on a farm in Timiskaming, I have a unique perspective upon which to draw. Like Bonita Lawrence, my work stems from questions that are inherent in my genetic as well as social makeup. The experience of being 'Indian' affects each person differently but there appear to be aspects of the experience that are universal. My study of the Law has allowed me to delve into some of the issues facing Aboriginal people in Canada and better understand some of the universal aspects of the experience of being Indian. My world experience has exposed me to still other views. Through this piece, I hope to fuse worlds together and provide a better understanding of the Canadian systems to Aboriginals and of the Indigenous systems to Canadians and possibly continue the work of seeing the world through an Aboriginal lens. I begin by developing and introducing two concepts that describe Indigenous ways of seeing the world: Communal Contract and the Reciprocal Expectation model. Though the terminology and explanation are my own, it is my position that these ideas come from the ancient past and are how the ancestors created this (their) world.

Reciprocal Expectation

The Reciprocal Expectation model demands that every member of a society has a duty to act as fiduciary to every other member of that society. This can only be managed when every member of the society recognizes every other member as beneficiary of their fiduciary duty. Rather than the state's role being that of an isolated entity that may be wronged (criminal law) and can oversee the righting of wrongs (civil and common law), in the Reciprocal Expectation model, participants individually and in community groups work to maintain the balance for individuals and the community as a whole.

The understanding is that a community, which engages in a Reciprocal Expectation model, functions properly when all things are in balance. When an individual is out of balance, they may act out and cause harm to others. This causes those others to be put out of balance as well. The function of the fiduciaries then becomes to work to put the individuals and the community back into balance.

Communal Contract

Social application is at the genesis of the Indigenous Communal Contract. It is not a policy of equality. Rather it recognizes exclusivity, disparity, dissimilarity and difference. Its focus is not to ensure that everyone is equal. The Indigenous worldview recognizes and acknowledges inequality. It embraces divergence and distinctions as beneficial to the social order. Social order, rather than state, bind and determine inclusion. The 'people' and familial ties bring individuals to the community. These same ties keep them.

The basic structures within the Reciprocal Expectation model are three fold:

1. acceptance of the Communal Contract;
2. necessity of person-to-person interaction; and
3. participants' dual role (simultaneously fiduciary & beneficiary).

Within the Communal Contract model, property and obligations are jointly held by the society. Therefore if an individual were to be removed, all benefits and responsibilities they had acquired remain with the society. The individual leaves with nothing. These concepts of Communal Contract and Reciprocal Expectation provide a framework and a set of terms which help to clarify and address the hybridization of Indigenous models and

to use in showing how that hybridization translates into colonial concepts presently attributed as “Aboriginal.”

In this work, I will also explore of the work of Sally Engle Merry in the area of “No Exit” and “Easy Exit” social systemsⁱ. In her analysis, Engle Merry describes a No Exit system where members of the social order can not choose to leave as they have on-going fiduciary obligations to all other members. The No Exit system is countered by her Easy Exit system; an example of which is the Canadian legal system which is based on a mercantile perspective that allows for objects, people, and even non-tangibles like time to be bought and sold. Rights and responsibilities can be paid for, allowing the member to leave the social paradigm.

There is an interesting contradiction in Engle Merry’s No-Exit model that appears to be directly related to currency. It seems that within the Easy-Exit society that money can remove you from obligations that would ordinarily fall on you as part of the Social Contract that you have engaged in. For example, in the case of a conscious breach of contract in a business transaction, one party calculates out the cost-benefit of the anticipated breach and makes a financial determination. In the case of the civil tort, where damages are paid out and the obligation of the guilty party ends despite the fact that the harm done to the other party continues, money has also been used to free the guilty party of further obligation. Thus a financial fixed determinate is conceived and exchanged and the social obligation is ended. However, international law does not allow for ‘citizens’ to remove themselves from the Social Contract by travel. Thus, the Easy-Exit aspect has been removed for most of the citizens of these Easy-Exit states—creating an “international” No-Exit system where obligations are not owed to the membership but

rather to the jurisdictional state ie. Canada, USA or China. In this neo-No-Exit system however—unlike the traditional No-Exit states of Engle Merry’s analysis—the exception is found for those with the capacity to provide financial remuneration for the stepping out of the Social Contract. The ability to leave jurisdictions has become a tool of the rich. Whether in the form of a trip to a jurisdiction where an activity is accepted or where sanctions are ‘different’ or the ability to be a ‘global citizen’ and remove oneself completely from a jurisdiction that one sees as ‘problematic’, individuals that can afford to reposition themselves into other societies and other Social Contracts can benefit from other Easy-Exit forms.

Again, the poor or the ‘non-currencied’ factions of a state remain in a No-Exit position even in the Easy-Exit regime; similarly, in spite of an international No-Exit structure, currencied factions can still “pay their way out.” In the documentary *The Other Side of the Ledger: An Indian View of the Hudson's Bay Company* (“Ledger”) we are shown the historic and contemporary effects of introducing the Euramerican understanding of property, contract and social obligation into Indigenous societies that did and continue to function within a different paradigm. In *Ledger*, the Hudson Bay Company (“HBC”) position presented is that they fulfilled their contractual obligations to Aboriginal people. This is counter to the Aboriginal perspective that HBC, as an accepted member of the Indigenous society, continues to have a fiduciary duty to all the other members of that society. The Aboriginals in *Ledger* state that HBC has an obligation and a fiduciary duty as an engager in a Communal Contract with a No-Exit provision. HBC chose to ignore that aspect of their contract and leave (taking benefits from the social connection)—without even providing compensation. The lack of compensation (while

not appropriate to the Aboriginal No-Exit societies with whom HBC was engaged) is permissible in the Canadian Easy-Exit system because the Canadian Courts must find a head of damages (a dollar figure) that then absolves the entity from obligation; the cost of the court and the possible damage payment define whether it is financially savvy to breach the contract. This financial “loophole” which allows members to leave a society and maintain the benefits derived from that membership is counter to the true No-Exit society where none of the benefits of the Social Contract may be taken out: the benefits belong to the society and not to individual members. This position makes sense. If the state allows for the removal of all beneficial aspects by individual members that can then simply leave the state (with some or all of the excavated benefit), the state must eventually fail as at some future date. There is no remainder beneficial interest to be vested in the remainder or future membership.

Through a study of the terminology, language and the ideas of Indigenous peoples of Canada and the colonizing regimes, I hope to shed some small light on the question “what is it Indians want?” This question has been part of the discourse within Aboriginal academic and legal circles as well as Aboriginal and non-Aboriginal social, business and political gatherings. It is my contention that a greater understanding of the terms used in the broader discourse will be useful in differentiating the perspectives of Western, Aboriginal and Indigenous understanding, allowing for a deeper consideration of the Aboriginal worldviews by the Western world and vice versa.

Today Aboriginals are rediscovering the right to govern themselves, (though they never stopped) an idea that addresses not only Indigenous nationhood, but the recognition of Aboriginal youth, Mother Earth and our relationship with Canada. However, the

Aboriginal worldview is a hybrid of the Indigenous system (Communal Contract) and the Western system (Social Contract) in which much of what is Indigenous has already been sacrificed. I will use Reciprocal Expectation as a lens to view the present situation. By exploring our understanding of Indigenous teachings and attempting to present them in a format that both Aboriginal and Western readers can grasp, the situation in the courts, at the negotiation tables and in our day-to-day existence may improve. It is hoped that a meeting of the minds will be accomplished through this deeper understanding of the Aboriginal worldviews. Much of this misunderstanding stems from and must be reviewed in the context of social giftingⁱⁱ and the effect that currency, commoditization and the alienationⁱⁱⁱ of individuals and property have had on Indigenous understandings of law justice, equity and right.

Chapter III Negotiation Techniques

Traditional negotiations resemble a mobilization for war. The discourse is set as an adversarial struggle where the best result for one party comes at a cost to the opposing party. Differences are accentuated, individuals are vilified, information and knowledge is honed like a weapon or kept top secret as in a covert operation. The parties arrive at the bargaining table in their three piece combat gear. People open with exaggerated positions anticipating that their opponent will provide an equally overstated version of their side of the issue. The focus is on separate, competing interests. The negotiation process is a beating down of the adversary, working to force a strategic retreat. Though many still work through negotiations in this old method, this approach (like methods of war) is receding into the past.

Negotiations²⁰ in the modern context are based on Contract. In this area of law, to negotiate is the process preceding contract formation in a bilateral (or increasingly multilateral) relationship(s). Negotiation ends at any one of a number of juncture points:

1. when a contract forms,
2. when one or a number of the participating parties terminate the interaction short of contract formation,²¹ or
3. when the process is halted due to financial, time or political constraints.

²⁰ According to Black's Law Dictionary, 7th Ed. :

Negotiation- (1) a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter...usually involves complete autonomy for the parties involved, without the intervention of third parties.
(2) dealings conducted between two or more parties for the purpose of reaching an understanding.
(3) the transfer of an instrument by delivery or endorsement whereby the transferee takes it for value, in good faith, and without notice of conflicting title claims or defenses.

²¹ Yogis, John A, Canadian Law Dictionary. Barron's Educational Series, Inc. Toronto.1983

The idea is that the parties are equal and come to the table with similar understandings and like minds. The purpose of the negotiation is to find ‘acceptance’ within the ‘offers’ that each party brings to the table. In the end, the modern perspective is that the parties write out the agreement in the form of a contract; even when the negotiation is for emotional rather than financial ‘consideration’ there is an aspect that is written.²² One of the essential components of negotiation is that the parties must be autonomous and of ‘like minds.’

Within negotiations between Aboriginal and non-Aboriginal parties there are at least two distinct world views at play. While the work of Lawrence, whose work on urban native mixed-blood communities in Toronto may suggest even more paradigms that must be addressed (and I am not denying the existence of many hybridized, as well as Indigenous, worldviews that are at odds with each other as well as the Euramerican paradigm), there must be certainty within the contract or negotiation. The present commodified system of which all Canadians are a part (to greater or lesser degrees) demands this certainty. For this reason I have chosen this binary. It is imperative that all parties know the perspective of the opposing parties in order to understand what is being negotiated. This is the folly of the past and must be avoided in the future. In contract and negotiation, it is essential to know the four “P’s” to contract certainty: place, price, persons and point in time. Lawrence suggests many shades of Aboriginal-ness. I submit that there are essential components that are Indigenous to all Aboriginal peoples. These allow us to recognize definite certainties in Aboriginal negotiations as we share an Indigenous worldview that recognizes Reciprocal Expectation as a standard starting

²² This may be in the form of legislation in the form as in family law protections for common law partners or the ‘legal’ definition of a ‘verbal contract’.

point. That way all parties know what is being offered, what is being accepted and what the necessary consideration is; that can be relied on. We need to recognize and bridge the space between the certainty that is Indigenous Communal Contract and Western Social Contract. This can be done with the standard contract and its four P's.

When negotiating parties approach the conciliation with different worldviews they are not of like mind. The chasm between the participants may not be capable of being bridged. Within the context of negotiation between Aboriginals and non-Aboriginals the cultural differences become quickly evident in the approach to the discussions. According to Sally Engle Merry:

Culture consists of both explicit rules, beliefs, values, and symbols and implicit, unrecognized sets of meanings, metaphors, stories, and discourses through which experience is interpreted and which are unconsciously reproduced as part of social life. Cultural meanings render some forms of activity normal and natural and others strange or wrong. Much of the power culture has to structure social life comes from this capacity to make cultural practices seem natural and self-evident rather than arbitrary or relative. Culture provides conceptions of the self and the social world which are not articulated but are powerful and binding precisely because they are taken for granted.²³

Even in the hybridized modern day Aboriginal culture, the world view is one of societal and individual expectations that create demands on the individuals. Henry Maine proposed that social structures evolve from roles derived from status to those based on contractual freedom. He explains that working through a status system sets out obligations and relationships by birth (I would add admission into the system) whereas a contract presumes that the individuals are equal and free to choose. A similar position is

²³ Merry, Sally Engle. Cultural Frameworks of Mediation, presented on June 3, 1997 at the Asia-Pacific Workshop on Conflict Resolution in Honolulu, Hawaii. The workshop was sponsored by the University of Hawaii Program on Conflict Resolution and the Asia-Pacific organization for Mediation.

espoused by Max Weber in his work on status group. These personal demands apply to each citizen and the society as a whole: there is an understanding that all other members of the society are bound by similar demands based on their position within that society. The idea that whole societies can and have worked solely through these social or status obligations—rather than status based on contractual freedom—Even in the hybridized modern day Aboriginal culture is referred to as Reciprocal Expectation.²⁴

In the Indigenous context, all the individuals that have been recognized as members of the society owe a lifelong fiduciary duty to the community and each member of the community equally. There is a reciprocal obligation from every other member of the society and the community as a whole to the individual. All the parties are bound together forever. The members of the society act ‘properly’ without the Social Contract. There is no possessory right to property or a right to protection except as that which can be demanded by a beneficiary against his/her fiduciaries. The beneficiary of this obligation has the right to demand that their beneficiary interests be looked after. The fiduciaries (those given power over the beneficiaries) must act in the beneficiaries’ best interest, even above their own. Further, the fiduciary must avoid conflict of duty and interest; however, the usual Western demand that the fiduciary not profit through the relationship is nonexistent. In fact, profiting through the relationship is an essential part of the Communal Contract: the Communal Contract demands that each member of the society maintain the best interest of the society as a whole. Further, this Contract, within Indigenous and Aboriginal societies, does not allow the individual to remove him or

²⁴ For a greater understanding of this idea see the paper on Reciprocal Expectation Model, RECIPROCAL EXPECTATION MODEL AND THE COMMUNAL CONTRACT: The Reintroduction of Indigenous Social Order by Don McIntyre

herself.²⁵ The Aboriginal state (or community) is in a position to do more than revoke membership—the existence of a member can be agreed upon as never having happened at all. A person’s standing in society based on Communal Contract may be rendered a nullity or *void ab initio*²⁶ due to the individual’s inability to uphold the social agreement implicit with being a part of the nation. This means that any benefit they have derived from their time within the society reverts back to the nation as a whole. The individual can not be in a better position leaving the society than when they entered: whether as babies born into the system with nothing or individuals that agree to enter into it. The reason for this reversion is in part because, within the Indigenous and Aboriginal context, the state or nation is the ‘Seven Generations.’ Both the ancestors and the future generations must be considered and treated as a beneficiary of the fiduciary relationship that each individual owes to the nation. The state or nation is more important than the individual. This recognition of the need to protect the whole, balanced community means a contract cannot be extinguished by any sort of removal clause. From an Indigenous perspective this is not a feasible way out of the Communal Contract. As long as you are part of the system, you are part of the Contract. The society can remove you—taking the form of banishment or shaming—but then you cease to exist as if you were never there; and therefore social benefits were never extolled on the vanquished and remain with the society. Clearly, in Indigenous worldview, there is no negotiated way out of contract.

The proceeding describes Indigenous social negotiations still used, in part, by Aboriginals today. This is counter to the Western perspective of contract negotiations.

²⁵ This understanding of the world allows for the nation to deny the existence of a individual in the form of Shaming or Banishing or the like. It is not a punishment of a ‘member’ as there is no ‘member’ remaining. They have ceased to exist.

²⁶ Null from the beginning

The Western contract approach is between the listed parties. It is finite and all terms of the deal must be articulated. It is about creating an arrangement. Reciprocal Expectation is about creating a relationship. The Western world has maneuvered from hard and fast rules about contract and negotiations. In much of contract law, we can now look at intent. There may have also been a change in how Western contracts are negotiated. This change recognizes the relationship that the negotiation may form but not in the same sense as the Indigenous negotiation. In the Western context, it is recognized that you may want to continue to work with the other party after the end of the negotiated terms and therefore as an aside, you may want to maintain some semblance of amity. In the Indigenous context, the relationship is the central component negotiated and all other terms are asides. To help better understand this shift in the Western approach to contract and negotiations, the following is a brief summary of the present negotiation strategies employed in the West.

Principled Negotiations

The Harvard Negotiation Project has been the genesis point of a number of ideas and concepts within the arena of dispute resolution. Within the Harvard model there are “Hard,” “Soft” and “Principled” negotiations. Hard and Soft negotiations are processes typically referred to as positional bargaining. In these forms, participants are ingrained and unshakable in their position.

In Hard negotiations participants are single-mindedly focused on changing the other side's position. They are adversarial and their ultimate goal is to win. Hard negotiators are looking for the victory against their ‘adversary.’ They demand concessions and are hard on problems and people. They have a tendency to dig in and

make threats insisting on their position. For the Hard negotiator this is a contest of wills in which they are willing to mislead, demand one-sided gains and apply pressure in order to win.

In contrast, Soft negotiators are single-mindedly focused on agreement. They favor consensus over conflict. They often acquiesce to pressure to avoid a battle of wills. Soft negotiators are looking to be friends and therefore tend to be soft on people and problems. They look for agreement and are willing to make concessions to manage it. This means that Soft negotiators trust others and will change position easily, making offers and accepting one-sided loss in their search for an acceptable answer. To manage, these Soft negotiators will yield to pressure allowing compromise in order to maintain the relationship. Soft negotiators lose ground if they are facing a Hard negotiator on the other side of the table; the final agreement may not accurately reflect the needs of either side.

Instead, the Harvard group has introduced another option, the Principled negotiation. Principled negotiators see themselves as problem solvers looking for a wise outcome rather than a win or an agreement. To accomplish this, they separate people from problems by focusing on interests, not positions. Principled negotiations insist on objective criteria while inventing multiple options for mutual gain. It demands the participants be soft on people and hard on problems while exploring interests to reach results based on principles, not pressure. The term Principled negotiation has been the focus of many of the researchers that have come out of this important project. In their book, Getting to Yes, Fisher, Ury and Patton provide the four necessary focal aspects of this principled approach. They suggest that in order to reach good agreements the negotiators must follow their four principles. These are:

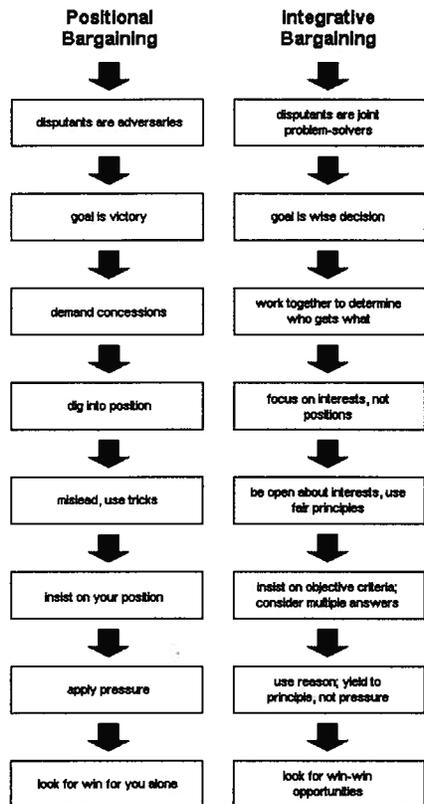
1. Separate the **People** from the Problem
2. Focus on **Interests**, Not Positions
3. Invent **Options** for Mutual Gain
4. Insist on Using Objective **Criteria**

(Fisher, William, and Patton 15)

Fisher and Ury's²⁷ first principle is to separate the people from the issues. People tend to personally get caught up with their sides' positions. They will tend to view tackling of those issues and positions as personal attacks. When people think of each other as partners in negotiation rather than as adversaries they are less likely to see attempts to address issues as attacks on them personally. The relationship between the people can then withstand an honest description of the substantive problem without damage to their personal connection.

²⁷ The first edition of Getting to Yes was written by Fisher and Ury alone. The second edition included Patton as part of the writing team for this evolving work.

Figure 1 Principled Approach



This chart was derived by Brad Spangler from a more complex chart in Fisher, Roger, William Ury, and Bruce Patton. (1991) *Getting to Yes: Negotiating Agreement Without Giving In*, Second Edition. New York: Penguin Books. p. 13.

The authors classify three types of people problems. The first can be described as differences of perception among the parties. To address this, the authors suggest the parties should try to put themselves in the other's place. Peoples' emotions are a second source of people problems. Fear, or anger that their interests are being threatened causes many disagreements to arise. To deal with this the authors suggest acknowledging the emotion and trying to understand its source. Finally, people have problems with communications. Negotiators may not be speaking to each other, the parties may not

be listening to each other, or they may not understand each other. For this problem Fisher and Ury suggest active listening. The listeners should give the speaker their full attention, occasionally summarizing the speaker's points to convey their understanding. The authors emphasize that understanding the other's case does not mean agreeing with it. However there are many cases where understanding can lead to agreement on some issues.

To find those spots of agreement or harmony Fisher and Ury suggest a review of the options for mutual gain. They suggest that multiple solution options be developed prior to evaluating the individual options. The parties then select from the options using

the objective criteria, the authors suggest standardized concepts and principles agreed by the parties. Solution selection can be done according to concepts, standards or principles such as precedent or tradition that the parties believe in. It can also be done according to any course of dealing, outside recommendations, or even the flip of a coin as long as these are not under the control of any single party. The process for coming to multiply mutual beneficial options can be achieved using the steps in the circle chart in their book on page 68.

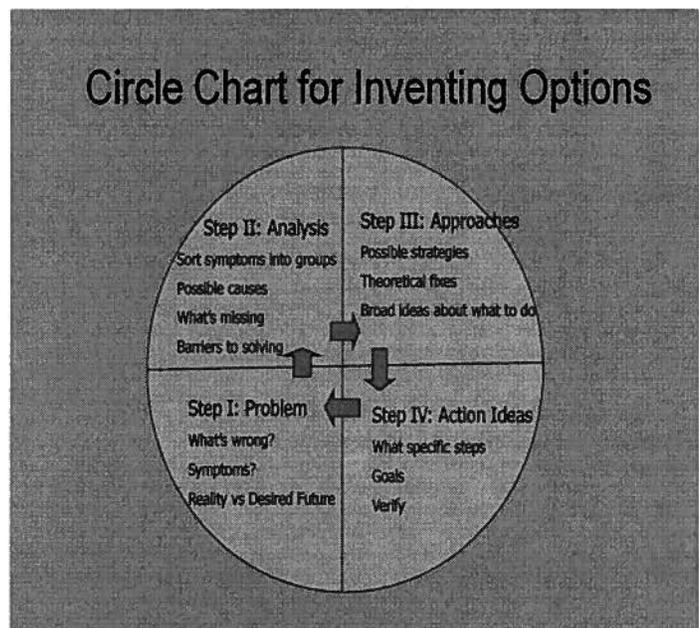


Figure 2 *HNP* Circle Chart for Inventing Options

Even with all this work to ensure that everyone is principled in their approach to the negotiations, Fisher and Ury recognize that sometimes one party has more power than the other. In the event that the other party has some negotiating advantage, due to finances, market share, experience or any number of other benefits they have over the other, Fisher and Ury suggest that all parties develop what they call a “BATNA.”

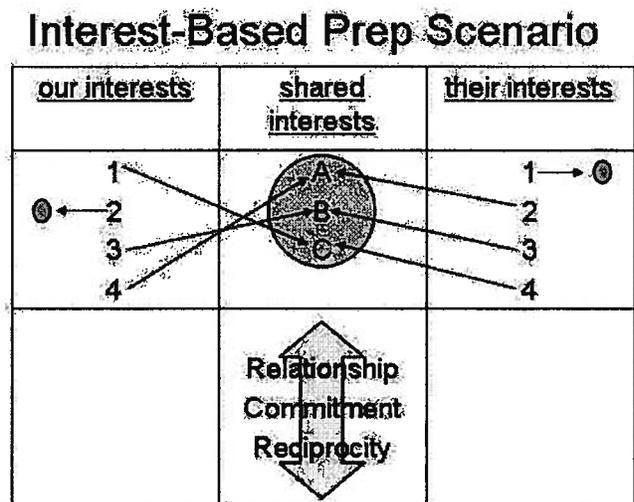
BATNA stands for "best alternative to a negotiated agreement." Improving your BATNA, improves your position; walking away should always be an option.

Negotiations are a forum for addressing interests and these can be various, convergent, divergent, shared, compatible, and/or conflicting interests. Identifying shared and compatible interests or where the parties have convergent interests as "common ground" or "points of agreement" sets the basis for further discussions. The past may help us to identify problems needing solution, but it is in the present that the principled negotiator seeks solutions for tomorrow.

Interest-based Negotiations

The idea that we can negotiate based on interests rather than positions has been further developed by Fisher, Ury and Patton. It has been integrated and expanded by David Lax and James Sebenius, as well as Lavinia Hall, and groups at Concordia and University of Colorado. It has been referred to as integrative bargaining, mutual gain bargaining, interest-based negotiation, problem-solving negotiations, win-win bargaining, principle-based negotiations and open bargaining.

Figure 3 Interest Based Approach



The reference to integrative approaches as parallel to interest-based negotiations is that in both the goal is to create new approaches and solutions that may afford all sides greater consideration. Rather than the all or nothing approach of negotiations of the past, today's approaches are more relation-oriented. "Integrative refers to the potential for the parties' interests to be [combined] in ways that create joint value or enlarge the pie."²⁸ An 'interest' is any reason why the matter is important to one or both of the parties.

As pointed out by Lax and Sebenius in their book The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain²⁹, integrative and interest-based bargaining is essential to make the pie (joint value) as large as possible. Distributive bargaining is the necessary parceling of the value that was created through negotiation. In the end, parties must agree on who gets what. This is why there is negotiation in the first place: more than one party wants the same or similar resources. The idea behind integrative bargaining is that once all parties can see a win aspect to the distribution, it is easier to carry it out. The interest-based approach creates a cooperative working

²⁸ Watkins, Michael and Susan Rosegrant, *Breakthrough International Negotiation: How Great Negotiators Transformed the World's Toughest Post-Cold War Conflicts* (San Francisco: Jossey-Bass, 2001), 31.

²⁹ Lax, David and Sebenius, James. *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain*

relationship. The parties are better aware of the needs and desires of the other side. They have a sense that they work together for each to have something of benefit. This knowledge of shared work for the mutual benefit of all parties allows each to better accept the division and apportionment when the time comes for them to split the pie.

It is generally agreed that there are seven basic steps to the process.

1. The parties describe and define the issue(s).
2. Each party identifies its interests in regard to the issue(s). The other party listens.
3. Each party explores the interests of the other party. This is the dialogue portion.
4. The parties create options or potential solutions to satisfy as many of the interests as possible. This is the brain-storming portion of the negotiation.
5. The parties agree on the criteria they will use to evaluate the options.
6. The parties agree on the options that best meet the agreed-upon criteria.
7. The parties integrate or structure these options into an inclusive solution.

Essential tools in this method of settlement are what are referred to as active listening, brainstorming, and consensus decision-making.

Active listening empowers people to listen attentively to others in order to avoid misunderstandings. It also makes the speaker calm down, relax, feel understood and therefore hang on to their perception and engage. People open up and say more. The process involves a structured form of listening and responding. The form focuses the attention of the listener on the speaker. The listener repeats, in their own words, what he or she thinks the speaker has said. The listener does not have to agree with the speaker but must make their best effort to state what they think the speaker said. This allows the speaker, in turn, to listen and find out whether the listener really understood. If not, the speaker can explain some more and the process repeats until understanding occurs.

Once the position and interests of each side is understood, they move on to the brainstorming portion of the process. Brainstorming demands that participants look to

themselves to find ideas, thoughts and processes. Ideas are welcomed whether they seem foolish and extreme or standard and customary. There is therefore no criticism of ideas; no input is too radical or extreme. Brainstorming is a lateral thinking process. Everyone is encouraged to contribute and develop ideas and ensure that no one criticizes during the session. Ensuring that no train of thought is followed for too long and that people are free to add to other people's ideas is essential. All the ideas should be written down to be evaluated after the session. It is only at the end of the brainstorming session that ideas should be evaluated. Evaluation (engaging critical thinking) happens only after the imaginative possibilities have been exhausted.

The last essential aspect to interest-based negotiation is Consensus decision - making. The word 'consensus' derives from the Latin meaning 'think or feel together'. Consensus decision -making is concerned primarily with the process of thinking or feeling together. This is a group decision-making process. This process has two main objectives: first, the agreement of most participants, and secondly the resolution and mitigation of any objections. The parties work together to achieve the decision that most participants can agree upon. The process aims at being a solution-oriented practice which allows the active inclusion of all participants in a cooperative egalitarian methodology.

What should be obvious when comparing Principled to interest-based negotiation is that interest-based negotiation places greater emphasis on groups. The group is central. Prominence is given to thinking together. The concerns, thoughts and feelings of the other side or sides are considered. The terms 'group,' 'assembly,' 'partners,' 'inclusive' and 'cooperative' resonate within the practice of interest-based negotiation.

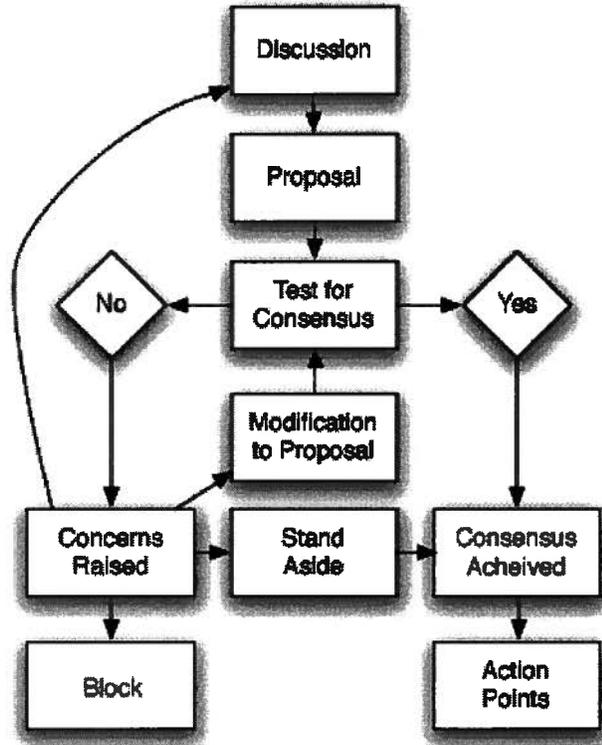


Figure 4 Consensus chart by Grant Horwood

Indigenous Negotiations

Aboriginal leaders need negotiation skills that work today. Negotiation is a huge part of their day-to-day existence and to find the best skills they are looking at the various techniques that are available to them. Aboriginal leaders walk in two worlds and the work that they do as leaders is representative of this hybridity. They must be responsive to their people and to the needs of their nation. And they must also represent their nation to governments, corporations, and populations in the rest of the world. Today's Aboriginal leaders are negotiating lands claims, tri-partite agreements, and lease terms with governments and corporations. Possibly the most difficult question that Aboriginals

face is, “What is essential in the maintenance of our Indigenesness and what change is necessary to improve our position in relation to the rest of society?”

There is an old saying; “You can’t teach an old dog new tricks.” This is wrong. Research indicates that we learn throughout our lives. We adapt to new situations and adjust with new information. Many Indigenous Trickster stories which are thousands of years old teach the same thing. Whether Wolverine learns to beat a new trap, Coyote hoodwink an old foolish man, or Raven learns the use of a new tool, Aboriginal stories teach us that we must continue to learn. By using our stories in combination, these teachings in combination with skills from non-Aboriginal sources, Aboriginal leaders are showing themselves to be a significant force in dealing with business and government in Canada. This is critical to negotiation.

In the game of negotiation, knowledge is power. We are all learning that the more knowledge is shared, the more powerful all participants become. (Though this may appear contrary to the old adversarial system it rings true in the interest-based model.) By learning the skills that are available through programs and books, Aboriginal people and leaders are gaining the expertise to negotiate in non-Aboriginal arenas. Aboriginals already have the skills to negotiate in the Indigenous world, receiving this know-how in our Indigenous stories and teachings. It is essential for many Aboriginal peoples to gain this foothold in the non-Aboriginal world while maintaining their position and ties to traditional ways of negotiating and being. In the Indigenous context negotiation is about relationship-building. Relationships, in the Indigenous paradigm, are about long-term commitment. By this I do not mean 5, 10, or 25-year commitments. Aboriginal negotiation is about life relations; it is about the idea of “reciprocal expectation” in one’s

dealings with other people. This idea is at the foundation of the Reciprocal Expectation model. Simply, this is an I-do-for-you therefore you-do-for-me approach, which creates a permanent relationship. This model of relating to others in your circle or network demands an acceptance of an ongoing relationship. Once someone has been accepted by a community and vice versa, there are rights and obligations owed to and from the person and the community. This permanent, lifelong, mutual relationship is what is on the table within Aboriginal negotiations. The relationship expressed in the Communal Contract is on that commences immediately once an individual has been offered and accepted membership within the community. For Aboriginal people, this has always happened through birth. Indigenous people were born into their nation. Immediately, they were taught the expectations of being human. They were taught the obligations they had to the other people of their nation but also the obligations they had to Mother Earth, the trees, the animals, the rocks. It is the Indigenous understanding that everything within this territory accepts the Reciprocal Expectation and reciprocal obligation of the Communal Contract. This is best expressed in the harvesting prayer my uncles taught me for plants, animals and anything else that is gathered for human use. The prayer is:

Thank you, brother for giving up your life.
Know that your meat/leaf/sap etc. will be put to good use.
The use it will be put to is[*describe use*].
Know further, that I recognize that we are part of one Circle.
That one day, I too will go back to the ground; and
my body will once again be used
to Grow the grass,
to feed the feed the animals,
to nurture Mother Earth.

The harvest prayer illustrates the essence of living within a Communal Contract. It also illustrates an Indigenous understanding of civil rights afforded to non-human entities.

This understanding of rights and obligations flowing equally to human and non-human is one of the foundations of the Reciprocal Expectation model. Within the Indigenous approach this is expected for the lifetime of the entity. (There is an aspect that goes beyond the life of the individual but that is not for this paper.)

This understanding of the relationship that is being entered into needs to be understood when a corporation or other government comes to Aboriginal lands. They need to understand that the Aboriginal negotiators are working to build relations: good permanent relations. Aboriginal negotiations are about creating those permanent life-long (and beyond life-long) relationships. For Western corporations and governments, which have the potential, in Western law, to live forever, this is an important concept to understand. A nation, a monarch or a corporation survives the life of individual members. Therefore the obligations and duties agreed to by the Canada/Britain, the Mother in the Hat or HBC do not end with the death of individuals or the expiry of a contract. The relationship forged is create for all time from the Aboriginal perspective and Western institutions must recognize and incorporate them to acquire certainty in their existence.

Negotiation is about balance. It is getting what you need from someone while giving what they need from you. There is the expectation that this give and take will be reciprocated. In order to maintain this give-and-take, each side must be taken care of by the other and given respect and full consideration. Done properly, this relationship should be able to maintain itself forever. This is the Indigenous way of looking at negotiation. In modern business, one of the major conditions of any negotiation is the termination date. I believe a termination date is foreign to Indigenous thinking. Balancing these two ideas is

what today's Aboriginal leaders do. Interestingly, a rule of the interest-based approach is to listen to the other side and react to the other party's concerns and incorporate your own to create solutions that addresses everyone's needs. This is a balanced negotiation.

In Indigenous teaching too, balance is essential. Effective negotiation provides solutions. It is about listening to the other side and hearing what they need. It is about telling what you need. It is a respectful conversation toward understanding each other's interests. It is about searching for solutions that will address the needs of both sides and finding solutions that ensure an ongoing relationship. Any solution put forward must be something that takes into account each party's interests to maintain the new relationship. It must be something that everyone can live with. Balancing the Indigenous paradigm with the Western paradigm is sometimes difficult. It demands choices be made. For example, many of today's negotiations are about damages or compensation—which translates into dollars. This was not always the way for Aboriginal societies. It was never the way for Indigenous societies. If you killed my life partner who was responsible for maintaining our food source, you may be responsible for ensuring food for my family for the rest of your life. If you wrecked my house, you may be responsible for providing me shelter. You would not be responsible for creating a bank account for me or providing me with store credit. Some may suggest that cash is just as good or better than shelter or food. However, the Reciprocal Expectation model recognizes the importance of those obligations and of the community seeing the physical manifestations of those obligations. It demands people face their obligations and responsibilities rather than allowing people to 'buy' their way out of these commitments.

Figure 5 Comparisons of Paradigms

ALTERNATIVE NEGOTIATION PARADIGMS	
WESTERN	INDIGENOUS
Easy Exit	No Exit
Social Contracts	Communal Contract
Fiduciary Duty of Crown	Reciprocal Expectation
Linear	Circular
Cluster issues after identification	Unwind issues from situation Individual situation with many issues
One at a Time	Holistic
Beginning -->Middle--> End	
Finish issue then off the Table	Creation of Relationships

Prior to the introduction of currency the approach to survival and negotiations among Indigenous groups included barter for necessities, generalization of skills and an

acceptance of the subjective basis of the Communal Contract.³⁰ Being a part of a community was essential for survival of both the society and the individual member of that society. Currency has allowed an objective perspective of work and subsistence. This objectivity has extended to the hybrid Aboriginal approach to law.

The person-to person component of Reciprocal Expectation is removed upon the introduction of Western views in two ways. First, the separation of state from the members of that state creates a void in which no member of the state has to take on the role of fiduciary; this is attributable only to the state itself. The personal components of the Trust are removed and we are left with the state machine. The supposed beneficiaries of the state-run system are not personally known and therefore the state sets up a system

³⁰ As described in Glyn Davis' book Money in North American History - From Wampum to Electronic Funds Transfer, money in North America is more recent than in Europe. The Incas used a system of barter involving gold dust (kept in transparent quills) and cocoa beans (kept in sacks of 24,000) and still managed a high level of civilization without the use of money. In Indigenous North Americans wampum (made out of the shells of a type of clam) eventually became an Aboriginal mode of currency. The powerful Iroquois amassed large quantities by way of tribute. Roy Davis suggests 'Wampum's use as money undoubtedly came about as an extension of its desirability for ornamentation. Beads of it were strung together in short lengths of about 18 inches or much longer ones of about 6 feet.'

of classification and codification that vainly attempts to address all the needs of all the members all the time. Second, the introduction a cash system and the commodification and alienation of everything within the system have created a gap between the person-to-person interactions. The individual is no longer obligated to show the community their responsibility to the other members or their 'righting of wrongs.' Within the Western paradigm, if one member of the community harms another, they must compensate the injured party through cash settlement. The connection to the community and the connection to the individual members of the community have disappeared to be replaced by a commodification of injury. The person-to-person component of Reciprocal Expectation is removed upon the introduction of these Western views. In the area of negotiation with Aboriginals, much of what is Indigenous has already been sacrificed. The fact that Aboriginals have entered into Western-based contractual obligations and struggled with ongoing negotiations reflects how much of what is Indigenous has already been sacrificed but also how much still remains. Aboriginal's Indigenous sense of land, of community, of duty and of self have all yielded much to the dominant structures. But Aboriginals have maintained some semblance of difference in their approach. There is a difference in the perspectives of Aboriginals and other Canadians. Using Reciprocal Expectation as a lens to view the present situation, the surrenders made by Aboriginals thus far are evident. Aboriginals have given up much of their approach to the world and their fellow man. Indeed, the hybridized Aboriginal is made up of a fusion of Indigenous and Western perspectives. In order to maintain a semblance of Indigenous understanding, Aboriginals can give no more.

Though Aboriginals negotiate and have contracts, the idea of an Indigenous contract is something of an oxymoron. The Indigenous worldview sets out that relationship is not formed through contract nor can the breach or the end of a contract terminate a relationship. A contract is simply an offer that is accepted and consideration given. Western contracts demand much more. They create time lines and limit obligations. Western contracts are about making deals and getting the best ‘bang for your buck.’ Contracts and negotiation in the Western paradigm is about adversarial binaries. The smarter, faster better party gets the best deal and other party loses. In the West lawyers are brought in to address contracts and negotiations. Lawyers are taught to be adversarial. The best lawyers are the best fighters. Strong advocates for their clients position; they work to get them the best deal. When lawyers are negotiating on behalf of their client they focus on a small amount of issues and suggest that all other aspects of the relationship are irrelevant. Negotiation is different if you start with the idea that you are creating a relationship as described in the Reciprocal Expectation model. To understand the Communal Contract, we must recognize that there is only one ‘Great Law-type’ of contract. From an Indigenous perspective the offer to be a part of the membership is accepted by you and in consideration you will be the beneficiary of the fiduciary duty of every other member of the nation. All relations flow from this one contract, the Communal Contract. The only real negotiation is the admission into the community. The rest flows inevitably from that agreement. This is how Indigenous peoples related prior to contact. Aboriginals have maintained this view of relationship throughout contact. The impossibility of ending relations by breach or termination of the contract is a fundamental Indigenous perspective. The fact that Aboriginals can not give it up in

their dealings with the Western world has muddied the waters of relationships since the time of first European trades and the historic treaties. The perspective that demands an unending relationship to the Indigenous community and all its members is a part of the Communal Contract; as long as there are Aboriginals this will be a part of how they see the world.

For the Indigenous individual, the only way to break the relationship that is a part of the contract is for the contract to cease to exist. This idea is not completely foreign to Western legal ideas. Within contract law, a contract can be unwound or deemed a nullity. These two constructs of law allow that through a breach or a finding a proper contract was never created; the contract can be undone and the parties are to be put back into the position they were in prior to entering into the contract. One proof of no contract would be that there was 'no meeting of the minds.' In Indigenous thought, the essential aspect of the 'Contract' is that every member of the society is a participant in all Communal Contracts. The creation of a 'new' Communal Contract involves the admission of a new fiduciary and new beneficiary in the form of the new member. In the context of Western contract law, the offer is the fiduciary relationship, the acceptance is inclusion with the social paradigm and the consideration is reliance on the other members to fulfill their fiduciary role. This contract is with every member of the society and not the state. In this way the Communal Contract is counter to the Social Contract.

In the Social Contract every member of the state contracts with the state. The state can conceivably remain without any members. In the Indigenous Communal Contract the contract is between the members or citizens and therefore the contract can

not continue after the removal of the constituent members. This idea of Communal Contracting is at the foundation of the Indigenous worldview. This idea will be revisited in the section on Collective rights. In negotiations with Aboriginal groups, there is still a recognition and understanding of the Indigenous Communal Contract. Many of the stories we hear about misunderstandings and discrepancies with during negotiations with Aboriginals appears to stem from two sources:

1. Non-Aboriginal groups fail to recognize or comprehend this negotiation of a relationship the Communal Contract demands; and
2. Many Aboriginals find themselves lost in trying to unilaterally integrate the Reciprocal Expectation model and Communal Contract into negotiations with groups that fail to recognize or comprehend the nature of the relationship being formed.

It should be evident that with this difference in place, there can be no meeting of the minds. This being the case, all that the parties can agree to is to disagree.

Comprehension and recognition of the Reciprocal Expectation model by all parties will allow them to begin to speak the same language. The parties may not agree on specifics but the interest-based aspects, the big picture of living together, with neither of us going anywhere can be addressed. With this as a starting point, a new relationship may be drafted in the negotiations that allows for certainty. Certainty for all parties.

Chapter IV Aboriginal Positions and Duty to Negotiate

No-Exit vs. Easy-Exit

No-Exit societies are ones where the obligations that exist bind one to the civilization and culture. Engle Merry explains it this way:

[In] no-exit societies... the incentive to disentangle relationships and to compromise and repair ties is far stronger since social interdependence is far greater and replacement of relationships far more difficult. As the cost of exit from a social system increases, the incentive to compromise and remain within it grows. The structure of the no-exit social group demands social practices of disentangling and compromise, yet the practices constitute conceptions of right, normalcy, and virtue which have a power to constrain and channel action all their own.³¹

In Aboriginal communities, the relationships that bind one are familial or clan-based as well as social and uniquely (*sui generis*) 'national.' When introducing her or himself, an Aboriginal will state his/her birth name, Indian name, Clan, Territory, Band, Nation and then describe the location with regard to the province and even say Canada. These levels of entanglement are part of the colonial framework but distinct to 'Canada.'³² There is a strong tie to Aboriginal nationhood and unlike those of European descent; Turtle Island³³ is the Aboriginal's first and only home. There are no other connections to any part of the globe. Indian and Inuit peoples have creation myth that tie them to this land base.

³¹ Engle Merry, Sally. *Cultural Frameworks of Mediation* 1. Wellesley College. June 1987 pg 20

³² This is based on multiple national identities and the fact that the rights of Aboriginals are "recognized and affirmed" in the *Constitution, 1982*. As well, much of the land base that is Canada is still in contention with regard to Aboriginal rights to sovereignty. This is affirmed in international law but that is for another paper.

³³ The land base known as North America

In no-exit societies, in which there is inevitably a greater need to compromise, to repair relationships, and to subordinate the interests of the self to the group, the metaphors of interpersonal mediation are those of disentangling, not contract.³⁴

Aboriginal No-Exit societies are a contrast to the Western Easy-Exit society. In the West, all subjective investment of the Communal Contract has been removed and replaced by currency. Currency allows individuals to distance themselves from any individual relationships. Through objective compensation, obligation is ended and individuals can move on without further reproach, despite any 'true damage' that may have been caused. The duty *to* others in the society is not present. Rather each individual has a duty only to the society itself. This type of system is referred to by Engle Merry as an Easy-Exit system. She states:

In social systems which are easy to leave, or at least in which exiting is relatively costless, people tend to avoid and endure problems as long as possible. When problems become intolerable, people either go to court or other public agent or move away. Under these conditions, there is little incentive to compromise in order to repair relationships since neighbor, friendship, and even kinship relations can be abandoned and replaced by other ones.³⁵

Working with the concept of Communal Contract within No Exit societies there is a demand for reciprocity and permanency that is descriptive of the Indigenous approach to existence. There is, however, an interesting modern contradiction in the Engle Merry No-Exit model that appears to be directly related to currency.

Within an Easy-Exit society, money can remove the individual from obligations that would ordinarily befall them as part of their society's Social Contract. For example,

³⁴ Engle Merry, Sally. Cultural Frameworks of Mediation 1. Wellesley College. June 1987 pg 32

³⁵ Ibid. pg20

a conscious breach of contract in a business transaction is one where one party calculates out the cost-benefit of the anticipated breach and makes a financial determination. The use of money to remove obligation can also be seen in the case of the civil tort, where damages are paid out and the obligation of the guilty party ends despite the fact that the harm done continues. A financial fixed determinate is conceived and exchanged and the social obligation is ended.

However, the new legal system (internationally) does not allow for the travel of 'citizens' to remove themselves from the Social Contract. The Easy-Exit aspect has been removed for most of the citizens of these Easy-Exit states. The exception is found for those with the capacity to provide financial remuneration for stepping out of the Social Contract. Leaving a jurisdiction has become a tool of the rich. This can take the form of a trip to a jurisdiction where an activity is accepted or where sanctions are 'different.'

'Global citizens' have the ability to be remove themselves completely from a 'problematic' jurisdiction; individuals that can afford to reposition themselves into other societies and other Social Contracts can benefit from other Easy-Exit forms. The poor or 'non-currencied' persons are forced into a No-Exit status even within the Easy-Exit regime. This is providing that the Easy-Exit is the dominant scheme for the participants.

Let us return to the HBC example. The Aboriginal society states that HBC has an obligation and a fiduciary duty as an engager in a Social Contract with a No-Exit provision. HBC chooses to ignore the No-Exit system and leave (taking benefits from the social connection) without providing compensation. The lack of compensation is partially because the Canadian Courts must find head of damages, which theoretically is a dollar figure that could absolve the HBC from obligation. The cost of the court and the

possible damage payment may make it financially savvy to breach the original contract. However, such a breach is counter to the true No-Exit society with which HBC was/is engaged, a society where none of the benefits of the Social Contract may be taken out. Benefits belong to the society and not to individual members. If the state allows for the removal of **all** beneficial aspects by individual members—if parties like HBC can simply leave the state with all of the extracted benefit—the state must eventually fail. There is no remainder beneficial interest to vest in the future membership.

The departure of a non-Aboriginal ‘negotiated’ party without any continuing obligation or any sense of guilt is acceptable and standard in the systems that Engle Merry refers to as ‘easy-exit societies’. These are systems where it is easy to leave or where the act of departure has relatively little personal cost to the departing individual. In her analysis, she looks at this phenomenon with regard to urban and rural communities, but within an Aboriginal context that designation is moot. The Indigenous No-Exit philosophy is present today in all aspects of Aboriginal life. On reserves and within urban centers, an ‘open-door’ policy to off-reserves members, and a continued connection to ‘home community.’ create a sense of belonging that can only be severed through unusual, extraordinary procedures that are not lightly undertaken or carried out even today. My grandfather, Frank King, explained this inclusion within the family: “If you eat with us, sleep with us, work with us and be with us, you are one of us.” This addresses the inclusion within the familial—and by extension community and national—units.

Once there has been an inclusion, there is commitment that accompanies its recognition; with the right to be included there is an understanding of commitment.

Commitment does not allow departure; there is no personal choice available to exit the community. These No-Exit societies are ones where the obligations that exist bind one to the civilization and culture. To recap Engle Merry point:

[In] no-exit societies...social interdependence is far greater and replacement of relationships far more difficult. As the cost of exit from a social system increases, the incentive to compromise and remain within it grows. ³⁶

In Aboriginal communities today, the relationships that bind individuals take the form of Indigenous familial or clan-based connections as well as social and uniquely 'national' associations. Indigenous states are based on the understanding by all members that they are a part of a No-Exit system. This alternate approach to contract involves a mutual give and take which is at the heart of the No-Exit system.

The approach to problem-solving and bargaining is diametrically contrary to Western approaches. Rather than engaging in the negotiation to 'win' for yourself. The Indigenous approach suggests individuals 'win' but creating the best result for the entire community. As stated before, Engle Merry explains "[t]he structure of the no-exit social group demands social practices of disentangling and compromise, yet the practices constitute conceptions of right, normalcy, and virtue which have a power to constrain and channel action all their own."³⁷

In order for the community/system to function (and do so without contract) there is a necessity for an interchange to be recognized, affirmed and demanded.

Inclusion does not, however, stipulate a response. Rather, the individual's response exists in response to actions and in anticipation of actions that have no

³⁶ Engle Merry, Sally. Cultural Frameworks of Mediation 1. Wellesley College. June 1987 pg 20

³⁷ Engle Merry, Sally. Cultural Frameworks of Mediation 1. Wellesley College. June 1987 pg 20

beginning or end. This obligatory back and forth movement alternately acts as an obligation and a benefit (sometimes both simultaneously) to all citizens of the society. There is a necessity to show, feel, and give in response to understood, assumed or anticipated fiduciary benefits to you. The show of this mutual give and take is an essential part of Indigenous social construction. Further, the show of mutual give and take is the acceptance of the Reciprocal Expectation relationship, or the 'contract' of inclusion. By allowing the inclusion within the Indigenous social order—through trade, habitation and interrelationships—to occur, Western settlers accepted the offer of collective acceptance and took the consideration of community inclusion within those early social paradigms. Whether at a potlatch, feasting, powwow or kitchen table there is a record-taking component that must be fulfilled. 'Documentation' acts as a verification and confirmation of your fulfillment of your roles. Early Western governments recognized this and took part in the ceremonial relationships which documented their inclusion within the Indigenous paradigm and therefore acceptance of the Communal Contract.

Upon managing your duties, others in the community are under an obligation to ensure that your roles are recognized, that there is a witnessing. This, in turn demands recognition of the recognizer. The system works only when there is a return for something given or done. The expectation of return does not necessarily involve the person or people that the original act benefited; rather, since there is no beginning or end to the benefits, there is no assumption of complementary or equivalent action. The assumption is that the benefits have come, are presently tangible and will continue to flow as a result of all the individuals' inclusion within the society. In other words, if

everyone in a society walks around actively working to benefit the other members of the society, each individual receives abundant benefit. This is all premised on the understanding that as a member of the society, the individual must continually meet their fiduciary obligations.

Eva Marie Garroutte addresses the need for such reciprocity in her book Real Indians- Identity and the Survival of Native America. She presents the idea of a circle of reciprocity in the story of the hunter and the deer-people. She shares this story of cannibalism:

...a hunter takes a deer woman for a wife and goes to live with her people in their underground village. He learns to follow their way of life, and he and his new relatives quickly take on their proper roles, each making an appropriate gift to the other: whenever the people become hungry, one of the deer people offers itself and the hunter kills it. Everyone eats, and the hunter performs the appropriate ritual that allows the dead deer to return to life. Thus there is a full circle of reciprocity: the deer people share their flesh, each in turn for the others, while the hunter shares his skill with weapons and his attentiveness to ceremonial requirements.³⁸

This example shows that activities are not 'bad' in and of themselves. Rather the approaches to the activities hold positive or negative indicators and determiners. In Western society killing is bad. The story tells of a killing, but when done properly and by the appropriate people, killing is right. It allows for sustenance of the society, maintenance of the social order and continuation of the social protocols. This also makes up an essential part of Indigenous spiritual understanding and protocols that are intrinsic within the Reciprocal Expectation model. This spiritual understanding can be seen in the

³⁸ Garroutte, E.M. 2003, p.130

return of the deer in the story Garrouette shares. The ceremony provides the recognition, the deer's life is the consideration the deer provides, the understood return to the community is the consideration provided by the hunter and the rest of his community. Within the Communal Contract, the deer, the hunter and the Indigenous society are all a part a relationship that brings them together and keeps them together for all time.

The exception to this is in the case when someone refuses to fulfill their duties and obligations within the Communal Contract. After all attempts have been made to help this person fulfill their obligations, and the individual continues to disregard their role as fiduciary. The other member of the society **must** remove the person that is a threat to the Communal Contract through their breach of the agreement. The other members of the society (friends, family and neighbours) have their fiduciary duty to consider. First they have a duty to the individual that is breaking the Communal Contract. Their duty to this person is to help them understand the role they play within the community. They must (as fiduciary to this individual) take their best interest into consideration and explain the social purpose they hold and the consequence of not fulfilling that duty. Next, the community members have a fiduciary duty to all the other members of the society that the out of balance individual is 'hurting' by their lack of balance and refusal to regain their balance. This lack of balance throws others out of balance as well and the entire community suffers. The membership must come together, as fiduciaries, and make decisions about their beneficiaries. On the one hand, the out of balance individual and on the other, the entire remainder of the community of beneficiaries. At one level the decision to remove the out of balance individual that refuses to restore their balance is also a benefit to that individual as well. They will loose

the benefits of the community of which they are presently a member but will gain the knowledge to be a member of society from the experience. The lesson is hard but necessary.

Banishment, in its various incarnations, is the removal of an individual, entity or aspect from the existence of the whole because it is not possible to reconcile a balanced community with the continued existence of the offending party. Balance is at the essence of Indigenous worldviews. The community must determine if the individual can be balanced with the balanced community.

... [T]he Canadian system is grounded in a belief in 'correctional' punishment based on banishment to special institutions where the goals of retribution, deterrence and reform of the offender legitimize the punishment. Punishment is a concept which is not culturally relevant to aboriginal social experience. Banishment is the most severe remedy available under aboriginal systems of justice... [Incarceration]...is seen as counterproductive, creating further obstacles to the restoration of balance and harmony after an anti-social act. (p.248).³⁹

To Indigenous thought, the most important thing is recreating the balance within the community. The community, which is the sum of all the members, has a right to ensure its harmony. If one member must be removed to ensure the collective, that is acceptable and understood within the Communal Contract. The Western state, by contrast, is an entity in and of itself. Harmony and balance are non sequiturs. The state must be maintained, a goal it manages through the use of contract.

Westerners think that without a contract there is no relationship between parties, and upon termination of the contract the relationship ceases. Western society has

³⁹ Monture-Okanee, P.A., and Turpel, M.E. (1992). Aboriginal Peoples and Canadian Criminal Law: Rethinking Justice. University of British Columbia Law Review (Special Edition), pp.239-277.

removed the subjective investment within all state relationships; it has no idea of balance. Within the Indigenous and Aboriginal context, banishment is the only way to be removed from the community and the fiduciary duties and benefits that membership entitles one to. In the Western context, contract has replaced these benefits and obligations with currency. Currency allows an individual to distance themselves from any individual relationships. The duty and obligations that one owes as part of the Western social contract are impersonal; they are bought with cash. Within the Western realm of legal contract, a breach of the terms of the agreement is compensated by damages in the form of cash. The obligation ends and individuals continue without further reproach, despite the 'true damage' that may have been elicited. Duty to other individuals in the society is not present. Rather, each individual has a duty only to themselves and the society in the form of the state. Thus, individuals must abide by rules (Laws) that protect the state but there is no obligation to protect your fellow citizen. The laws are to ensure individuals do not 'offend the state' by their actions. Engle-Merry refers to this type of system as easy-exit. She describes there being "little incentive to compromise in order to repair relationships since neighbor, friendship, and even kinship relations can be abandoned and replaced by other ones."⁴⁰

However, it is the restoration of balance that is at the root of Indigenous negotiations. Once an individual is accepted into the society, their role is to benefit that society and maintain the balance with that society and themselves. As they entered the relationship with none of the benefits they have acquired through membership, they are not entitled to maintain those same benefits upon being removed from the society. The

⁴⁰ Ibid. pg. 20

only way, from an Indigenous perspective, to be removed is to 'not exist.' Therefore any changes that your existence has caused (any unbalance) must be undone for the balance to be restored.

With HBC, restoring balance would mean that the Aboriginal community would be entitled to all the benefits that HBC had extracted from the community. The idea that HBC owes anything to the Aboriginal communities may seem ludicrous. The suggestion that companies need return profits and benefits they managed to extract from a location because the company removed its physical manifestation after the profits cease to flow may seem insane. But only from a Western perspective in which community means nothing, environment means nothing and duty means nothing. From an Indigenous model, if you breach your fiduciary duty to the community of which you are a member, and do not accept responsibility and show remorse, there is nothing the society can do to help you; you must cease to exist. With this banishment comes a loss of all benefits you have derived from your place in the community. From a Reciprocal Expectation perspective, if you refuse to take on your role as fiduciary, you can not gain from your role as beneficiary; your possessory right ceased with your existence within that society. This is obviously different from the Western perspective where currency allows you to accumulate within a society and then leave that society with all the financial benefit in tow. The conflict between perspectives here is the core difference between the Indigenous Easy-Exit society and the Western No-Exit society.

Collective Rights

Within Indigenous societies, there is an understanding that social agreement within one's civilization provides protections for each of the members. This protection, provided to all members by all members is another part of the Reciprocal Expectation model. At its most basic, the idea stems from an understanding of the world in which each individual is completely dependant on every other member of the community.

Western societies assume that each individual is not completely dependant on the society. This is obviously false: if you had all the money in the world, you could not survive without someone to provide you food and shelter. Within Aboriginal communities, there are unwritten understandings with regard to roles and duties that individuals owe as part of being born to a specific nation. These duties are not stagnant; they grow and change with the person. As one becomes a member of a Society or Circle, the duties, roles and obligations enhance and morph. People have duties to their family, to the children of the community, to the Elders, to Mother Earth and to each other. Part of these duties involves knowing the stories, sharing the stories, teaching the stories and incorporating the stories into your daily life. There is an obligation as a member of an oral history society to maintain your stories. There is also an obligation to maintain a supply of new members (children) and ensure they have these social stories. There is a web of social fabric created that must be maintained and mended, another part of the duty of membership. The idea of a Trust-like guardian for all things that are specific to your

Indigenous nationhood is the first component of Reciprocal Expectations. The Trust obligation placed on every other member of the Indigenous nation demands that all members be fiduciaries to every other member of the community and to the nation and to the land base. The second aspect of Reciprocal Expectation is the right to be beneficiary to which every other member of the community is a fiduciary. The duty owed is by each member of the society to each other member of the society.

This social construction is an alternative to the Social Contract of the West. It is the Indigenous Communal Contract and makes up the underlying/unstated agreement within the Indigenous state. However, the Indigenous Communal Contract has been altered in an attempt to exist parallel to and in conjunction with the Western Social Contract of Canada; colonialism having prevented any natural progression of Indigenous society by negating the Communal Contract. The resulting alteration has created an Aboriginal Communal Contract, which is a hybrid of the two systems as described by Loomba, with both sides contributing to the new Aboriginal worldview. This change is akin to the work of Maine on moving from Status to Contract in Ancient Law, an idea that will be further explored in chapter five.

A meeting of minds between Aboriginal and non-Aboriginal participants cannot occur without an understanding of the different Indigenous world view that rests on duties to all other members in a society. “All other members” includes non-human components as well as ancestors and future generations and so is not limited by time constraints (therefore not limited to those members alive at a specific point in time). This could be simply understood as *stare decisis* in the case of Indigenous Ancestors but within the Reciprocal Expectation relationship the decisions made must reflect the future

as well as the past. European negotiations with the Aboriginal peoples of Canada have been continuously misconstrued due to the failure of each side to understand the other. Without a clear understanding of the idea of Reciprocal Expectation and the obligations that accompany any Aboriginal negotiator, the non-Aboriginal negotiator will inevitably become confused and angry. For the non-Aboriginal the negotiation has traditionally been adversarial and sets out the terms of the deal and consequences of breach. For the Aboriginal, the negotiation is about the creation of a relationship with a whole society and the inclusion of the parties in the Trust relationship, with all its accompanying obligations. The negotiation documents can present only a part of the Reciprocal Expectations that commence with the completion of a successful negotiation.

This misunderstanding has been lessened as generations of Aboriginals reach higher levels of education and business understanding.⁴¹ However, the understanding of the Western perspective by Aboriginals can not address the lack of understanding of Indigenous perspectives by Canadian negotiators. As Aboriginal individuals return to communities with greater appreciation of Western concepts, they are many times met with the apprehension that they are bringing with them “White man ways.” One of the ‘White man ways’ is the worldview in Canadian society that all contractual relations can and will end.

In The Fourth World: An Indian Reality, George Manuel and Michael Poslums explain:

⁴¹ It should be noted that the graduation rates for Aboriginals from high school, though increasing, are still the lowest in the country. Over 52% of the Aboriginal population is under the age of thirty. Business success rates are among the lowest and methods of creating on-reserve income sources are very difficult, particularly with legislated inhibitors to acquiring core funding. This information comes from Stats Canada, Aboriginal Business Canada and first hand discussions by the author.

The colonial system is always a way of gaining control over another people for the sake of what the colonial power has determined to be “the common good.” People can only become convinced of the common good when their own capacity to imagine ways in which they can govern themselves has been destroyed.⁴²

Generalized reciprocity is when one person shares goods or labor with another person without expecting anything in return. This give and take is primarily practiced within nuclear families, between parents and children, married couples, and even with the family pet. In Indigenous cultures generalized reciprocity occurs within clans and even whole nations. Such a system can only work when the people within the social order allow maximum trust and demand minimum social distance among its members.⁴³ Further, general reciprocity is ‘enforced’ through a ‘moral reciprocity.’ Moral reciprocity refers to the general tendency of all beings (except maybe the corporation) to reciprocate support to other members of the society. Social Theorist, Marshall Sahlins addresses much of this in his work on reciprocity. Sahlins also suggest that individuals would reciprocate interpreted harms within the relationship. I assert that within the Reciprocal Expectation model, this may occur but that the good or harm is interpreted as against the whole society as all the members are beneficiaries of the individual’s fiduciary roll. Any ‘reciprocated harms’ will inevitably bring into play the society’s concern with balance and be dealt with under the terms of maintaining balance.

⁴² Manuel and Poslums p.60

⁴³ See the work Marshall Sahlins, in particular. Stone Age Economics. (1972) Chicago: Aldine-Atherton

Chapter V Crown Positions and Duty to Negotiate

Federal Crown

On November 22 2006, Prime Minister Stephen Harper stated the position of the federal government regarding sovereignty and nationhood. "Our position is clear. Do the Québécois form a nation within Canada? The answer is yes. Do the Québécois form an independent nation? The answer is no and the answer will always be no."⁴⁴ Harper put forward a motion stating that "this House recognizes that Québécois form a nation within a united Canada."⁴⁵

Though Aboriginal nations have a better claim to sovereignty, there is no such declaration regarding Aboriginals. The government of Canada (Federal) maintains their position of power over Aboriginals through their law. Section 91 (24) allocates power over "Indians and lands reserved for Indians" to the Federal government. Canada has, through a system of delegated systems, attempted to remove itself from the fiduciary obligations it holds for Aboriginals. By providing limited resources and even more limited (and constrained) social powers to 'bands,' Canada has attempted to keep all of the benefit of the relationship with Aboriginals but to remove themselves from any further duty.

Canada's negotiation policy is based on the position that

Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian

⁴⁴ <http://www.cbc.ca/canada/story/2006/11/22/harper-quebec.html>

⁴⁵ <http://www.cbc.ca/canada/story/2006/11/22/harper-quebec.html>

Constitution. Aboriginal jurisdictions and authorities should, therefore, work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws which is indispensable to the proper functioning of the federation.⁴⁶

This approach by the Federal government of Canada to negotiations restricts the fields available to Aboriginals for consideration with regard to those negotiations. It seems at first to be a justified position for any government to take. In its negotiation policy, Canada states:

There are a number of subject matters where there are no compelling reasons for Aboriginal governments or institutions to exercise law-making authority. These subject matters cannot be characterized as either integral to Aboriginal cultures, or internal to Aboriginal groups. They can be grouped under two headings: (i) powers related to Canadian sovereignty, defence and external relations; and (ii) other national interest powers. In these areas, it is essential that the federal government retain its law-making authority.⁴⁷

The policy becomes problematic when you look at the matters that Canada deems not integral to Aboriginal cultures or that are related to Canadian sovereignty. In the final analysis, because the section 91 is deemed to be all of the powers necessary for federal sovereignty, Canada will not negotiate anything within these Constitutional powers. And yet, these are the only powers that the Federal government of Canada is in a position to negotiate; section 91 is exhaustive in enunciating all federal power. If section 91 is off the table then the Federal government is not willing to 'give' anything; they are practicing Hard negotiation techniques.

⁴⁶ http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html

⁴⁷ http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html

During negotiations, Aboriginals may attempt to use Western techniques—in the form of demands for damages or compensation in a monetary manner, thereby addressing the only external system available (commodified)—and seek redress within the Canadian courts. Aboriginals are stonewalled. Such a situation can be referred to as “Plateau Bargaining,” an approach whereby one side demands the other side acquiesce to their position and then continue to negotiate from that position, making further demands. An example would be a circumstance in which one party has made promises, and then after much work had been done by the other party so it could accept the offer, the first party reneges on the promises unless dramatic new concessions are added. Plateau Bargaining is eliminated by using binding promises during the process, spelling out in advance when and which parts of a promise are binding. Though it seems that any ‘promise’ made during negotiations would be binding, this is not the case. This enigma is at the foundation of Plateau Bargaining. And Plateau Bargaining has been the standard approach to negotiations by both the Federal and Provincial government of Canada regarding the Indigenous and Aboriginal peoples of Canada. In their ‘treaty’ making, Canada’s negotiation continually demands further relinquishing and abandonment of Aboriginal rights (a smaller category of Indigenous rights).

An example of this approach to the ‘Indian Problem’ is the Federal government’s outlawing of the Potlatch in 1884. The Potlatch is the primary social institution of the Pacific First Nations. It addressed the economic, political, religious, social functions and needs of these nations. The Potlatch allows for the re-distribution of ‘wealth.’

Reciprocity⁴⁸ is counter-intuitive to the Western system; with reciprocity, status is raised not by who has the most, but by who has distributed the most resources. The hosts demonstrate their wealth and prominence through giving away goods. With the settlers inclusion within the Indigenous social structure, the Aboriginals understood that the resources passed to the newcomers would be returned and redistributed. This was a show of good faith. The Indigenous groups trusted the newcomers as part of their continuing system. The Westerners took this understanding and from this new position of power (fiduciary within the Indigenous community) demanded more power and resources. In the time it took for the Indigenous people to understand that this Plateau bargaining provided no balance and that the newcomers refused to learn the rules of Reciprocal Expectation, the rules had changed and the Indigenous peoples of the territory had transformed into ‘Canada’s Aboriginal people.’

This creates an unusual modern legal problem when we attempt to unwind the historic treaties or look at treaty making in Canada, today. Treaty can be explained as a contract between sovereign nations. In order for a treaty to be valid, there must be a meeting of the minds. The example used in law school of this meeting of minds is if you have a box of kittens, some white, some black and I offer to “take a kitten” we have no meeting of the minds if I meant a white cat and you meant a black cat unless we agreed the purpose of the cat was to catch mice and therefore colour didn’t matter. If the Indigenous nations were working within a Reciprocal Expectation model and the Western settlers were engaged in Plateau bargaining then what was being discussed was not the same thing. The minds did not meet and there can be no contract. But it becomes more

⁴⁸ Reciprocity - informal exchange of people’s goods and labour, an informal economic system.

confusing then just the interpretation of the contracts. Canada suggests that the treaties signed were not real treaties because they are not with nations. But they also suggest that the Indigenous people were in nations but more like nations within a nation (as described by PM Harper regarding Quebec). This is different than the nation within a nation idea that is represented by the European Union. Further, the treaty negotiations that are presently going on within Canada do not suggest even the level of engagement that the Prime Minister would afford Quebec.

In Western international law, land may be claimed through one of three methods:

1. terra nullius (“the land of no one”);
2. conquest; or
3. acquiescence.

If we look at this understanding of international law and the rights to binding title, we find some problems. The land in question—Turtle Island, or the part of the continent later named Canada—was never empty. The papacy and the monarchs of Europe all recognized this fact. Policy was put in place to remove the inhabitants but there is no doubt that the inhabitants were present. At no time in the territories that are described as Canada was there a war in which the Indians were defeated as a group. In the history of Canada, there was never a war waged against any Indigenous group. Indeed, Canada is quite proud of its history of non-violence with ‘its Aboriginals’. The final method of acquiring title is acquiescence and the claims, throughout history, for sovereignty, Aboriginal title and rights indicates that at no time have Aboriginals submitted to be ruled by another.

The situation, where the representatives of Britain and then Canada allowed the Indigenous people to give them their power and the Crown accepted that power, puts

Canada (and arguably Britain) in the role of fiduciary. In these circumstances the Indigenous people of these lands placed “trust in the faithful integrity of another, who as a result gains superiority or influence over the first”⁴⁹ and Canada assumed “control and responsibility over another [the Aboriginals]”⁵⁰ Canada is in a fiduciary role regarding the Aboriginal people of these territories. This is based on a number of factors including historic treaties, the *Royal Proclamation*, Papal Bulls and the *Constitution Act of 1982*. Canada’s fiduciary relationship is based on the fact that it took/accepted power from the Indigenous inhabitants and has benefited from that relationship. Some would argue that as a fiduciary, Canada has managed to acquire too much benefit from its Aboriginal beneficiaries. Canada cannot hope to claim any unilateral removal from fiduciary obligations to Aboriginals. Nor can it hope to return to the Aboriginal peoples the benefits it has extricated from the land and people that it so desperately wanted to connect with.

It is the Western idea of law, coupled with a basic understanding of Indigenous law and justice that creates many of the contradictions we have explored. The movement from an Indigenous non-commodified social system into the hybrid Aboriginal commodity-based system that is only partially Indigenous and partially Western has created problems and disjoints in the Aboriginal system both at a personal and community level.

⁴⁹ Definition of fiduciary relationship taken from Black’s Law dictionary. 7th

⁵⁰ Definition of fiduciary relationship taken from Black’s Law dictionary. 7th

The Western system has created this Aboriginal system to tackle the Indian problem that was present upon their ‘settlement’ on this continent. The *Royal Proclamation of 1763* (“*Royal Proclamation*”) established, for the Crown, the framework for negotiation with the Indigenous people based on collaboration rather than conquest. Though the purpose was self-serving, the words were conciliatory.

...it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds⁵¹

Though the words seem fair and just, the original approach by Canada was to exterminate the Aboriginal occupants; the second effort was to assimilate the Indigenous people’s descendants into the Western paradigm (creating the Aboriginal hybrid). This included and continues to include the western idea of commodification and mercantilism. The attempt to assimilate the Indigenous peoples has only been semi-successful and has resulted in an Aboriginal population that knows the rules of Western engagement but, much of the time, refuses to engage. This has resulted in much of the trouble facing Aboriginals and others attempting to negotiate with Aboriginals.

Today Aboriginals live in a commodified system where status is determined through an accumulation of wealth *and* a reciprocal system where status is achieved through the re-distribution of material goods. This dichotomy has created what appear to be contradictory positions among Aboriginals. However, it is rather a hybrid position that recognizes both social paradigms and creates a cohesive whole. This is not to suggest

⁵¹ *Royal Proclamation of 1763*

that this Aboriginal system is not without fault, but it has created a working hybrid model of both systems.

Non-Aboriginals use this apparent contradiction (that they have shaped) to show that Aboriginals are just Brown business people looking for money and do not deserve treatment different from other Canadian business people or foreign business people. An example would be the case of the Residential schools, when individual negotiators and even the courts assumed first, that an apology should be enough if the Aboriginals are indeed advocates of the type of Reciprocal Expectation system I am suggesting. The logic of the non-Aboriginals continues that if the Aboriginals request cash for compensation or damages then they are not living this Indigenous lifestyle.⁵² Therefore those requesting cash (more than just a 'subsistence living') are either not true noble savages (and hence, as just Brown business people, not entitled to special treatment) or are Indians and therefore entitled to special treatment (which only allows subsistence living); a standard that no other Canadian is forced to endure. These types of unusual contradictions are not new for Aboriginals or Federal Crown.

When the *Royal Proclamation* placed the Crown in the role of fiduciary, it declared that only the Crown could acquire land from Aboriginals, and only through treaty-making. The last of the historical treaties was signed in 1923. At that time, the Federal government made it a criminal offence for an Indian to hire a lawyer to pursue land claims settlements against the government.

That however, is no longer the case. Aboriginals in Canada are presenting a greater force in negotiations and politics, locally, nationally and internationally. The

⁵² This can be found in the courts approach to determining compensation based on earning potential in which Aboriginals have a lower earning potential than Non-Aboriginals.

voice of Indigenous peoples cannot be silenced, and they speak now from a growing position of power. The old colonial ways, which demanded that the colonized submit to colonial perspectives and views, is no longer the sole method of interacting with various societies. To negotiate better on a global level, modern governments have begun to recognize the Indigenous societies that remain. Negotiations are now between governments with similar knowledge and understandings. Where this will go is not clear. What is clear is that it cannot go where Western negotiations assume it goes, toward a totally Western understanding.

This idea of a Western understanding is not as straight forward as it sound. One argument made against Indigenous approaches is that they are not legal connections to land or property but rather religious observances that should not be recognized as the religion and state must be separate. The separation of Church and state is a new phenomena that has occurred as part of the 'post-colonial modernist' approach to statehood. Religion has always been a part of the governments of the West. The traditional Western idea has been that the Monarch was next to God and did the work of God on earth. This is why 'regular' people must listen to their sovereign or head of state. The understanding that the monarchs and the Pope speak as the voice of a higher power is at the core of the Western system. This power to control the rest of the world through the authorities these figures commanded was addressed by Thomas Hobbes in his 1651 work on the social contract and the origins of creation of an ideal state, commonly called Leviathan.⁵³ This is also his proper name for the Commonwealth. The methods of

⁵³ The full title is Leviathan, or The Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil

passing on their decrees were through royal proclamation or royal decree. In the case of the papacy, these proclamations were called Bulls.

A Papal bull is a document granting some right, charter or privilege, issued by a Pope under seal but open to public inspection. Pope Alexander VI provided the Castilian king with three bulls. The third of these bulls, the bull *Inter Caetera*, assigned to Castile the exclusive right to acquire territory, to trade in, or even to approach the lands lying west of the meridian situated one hundred leagues west of the Azores and Cape Verde Islands. An exception was made, however, for any lands actually possessed by any other Christian prince beyond this meridian prior to Christmas, 1492. The bull *Inter Caetera* became the standard for subsequent doctrines regarding claims in the "new world." It provided:

all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde. With this proviso however that none of the islands and mainlands, found and to be found, discovered and to be discovered, beyond that said line towards the west and south, be in the actual possession of any Christian king or prince up to the birthday of our Lord Jesus Christ just past from which the present year one thousand four hundred and ninety-three begins.⁵⁴

Pope Alexander VI's division of the New World is seen in two very different lights (even in the West). One group saw the act as completely altruistic stating:

⁵⁴ A copy of the complete Bull is provided at the end of this work.

One of the first of his public acts was to prevent a collision between Spain and Portugal over their newly-discovered territories, by drawing his line of demarcation, an act of truly peaceful import, and not of usurpation and ambition.⁵⁵

The next Pope saw Alexander VI as greedy and self-serving stating: “Now we are in the power of a wolf, the most rapacious perhaps that this world has ever seen. And if we do not flee, he will inevitably devour us all.”⁵⁶ (Reston 287) Even among Westerners themselves coming into and colonizing the new world there was a contradiction in understanding the intent and goals—the same contradiction is still inherent in the non-Aboriginal negotiation position today.

Provincial Crown

The *Royal Proclamation* ordered that Aboriginals should not be disturbed in their use and enjoyment of the land. However, the *Terms of Union* that the provinces signed on joining confederation allowed them control of lands through section 92 (5) and (13). The Provincial Crown bases their negotiating and legal position on a number of specific events in British Columbia’s history. Britain's *Royal Proclamation of 1763* reserved lands for the Indians until they are ceded or purchased by the Crown. This seems to conflict with section 91 (24) which provides that the Federal government will assume responsibility for “Indians and Lands reserved for Indians.” The latter federal power resulted in the first *Indian Act* in 1876, which consolidated all laws relating to registered Indians. The conflict arose when the lands that were apparently reserved for Indians were gifted to the provinces.

⁵⁵ Referenced from *Civiltà Cattolica* (1865), I, 665-680 at <http://www.newadvent.org/cathen/01289a.htm>

⁵⁶ Giovanni di Lorenzo de' Medici, later to become Pope Leo X

The question of who has rights to the land of Canada and how did they acquire it is still a question for many Aboriginals. The Provincial and Federal government view it as resolved in their favour. Despite this, the Supreme Court of Canada has ruled several times on Aboriginal rights and on several occasions found that Aboriginal rights exist in law. Neither the courts nor the Constitution provides a clear definition of Aboriginal rights. The courts have encouraged all parties to seek resolution of these matters through negotiation.

Aboriginal rights (including title) were "recognized and affirmed" in section 35 of the *Constitution Act, 1982*. This is Canada's supreme law and states: "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed." This is not a creation of those rights. It is recognition by the governments of Canada of obligations on their part and privileges belonging to Aboriginals that the law says must be respected.

Within the provincial paradigm, the *Terms of Union* granted the Provinces certain rights and powers. One of these powers was control of the lands they occupied. These lands became a 'gift' to the province from the Federal government. The Federal government acquired the ownership of the land in question through their purchase from the HBC for 300,000 pounds.



Figure 6 Prince Rupert by Studio of Antony Van Dyck

It is interesting that when PM Harper provided this gift of recognition that the “Quebecois form a nation within a united Canada” the leader of the Bloc Quebecois, Gilles Duceppe said:

We're tabling a motion that respects all sides without subjecting the recognition of a Quebec nation to partisan conditions. Yesterday, the prime minister did exactly the opposite. He tabled a motion that recognizes a Quebec nation with a condition attached -- a partisan string attached.⁵⁷

It is this use of partisan strings, which is entailed by Canada's demand for membership and adherence that Aboriginals oppose. Duceppe went on to say "Quebec's future belongs to Quebecers, period. Quebecers under the rules under of the National Assembly, can decide on their own future." [sic]⁵⁸ It is strange that the provinces can not accept a statement like “Aboriginals future belongs to Aboriginals. Aboriginals can decide on their own future.” Indeed, in light of the Seven Years' War⁵⁹, it could be seen that Aboriginals have a greater right to make that statement. The French in Canada (with what has been argued a dubious claim to the new territories) lost the Seven Years' War and were conquered by Britain. Both Britain and France understood and recognized the international rules of law. They were functioning within the same world view or legal paradigm when France lost its 'claim' to the New World. Quebec represents the

⁵⁷http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061122/quebec_reaction_061123?s_name=&no_ads=

⁵⁸ ibid

⁵⁹ “Seven Years' War” is used to describe the North American conflict also called the “French and Indian War” and the “War of the Conquest.”

descendants of the citizens that lost were a part of this European war. They negotiated and fought with a like mind. France lost the war. The spoils of war which belonged to France go to the victor, Britain. Once again, the question is, did France own the New World to lose it in a war?

British Crown

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same⁶⁰

From an Indigenous perspective, all relations with the Crown were with the 'woman in the hat.' This was the understanding of the relationship with the agents that spoke for the 'great mother,' 'great father,' 'the woman in the hat.'

Aboriginals were left in an awkward position when Canada took on the responsibilities of the British Crown. In many cases, treaties that were signed with Aboriginal groups were signed on behalf of the great mother. If she was absolving herself of all those responsibilities, what relief did treaty Aboriginals have? Further, for those nations that had not signed treaties and had not ceded land, what was their standing with this 'new' government that owed them nothing? The willingness of Western

⁶⁰ Portion of the Preamble to *Canada Act 1982* (c. 11)

lawyers to accept the repudiation of their own law is quite remarkable to Aboriginals. The Crown, as fiduciary to the Aboriginals are attempting to contract out of their duties. The transfer of responsibility for upholding the agreement was almost lost as the Western legal argument would be that the Canadian Crown had no obligation to the Aboriginal peoples. That obligation was with the British Crown. Apparently, nothing is sacred to Western lawyers (including the honour of the Crown). This is why Aboriginals had to fight to get section 35 into the *Constitution, 1982*. The Aboriginal peoples of Canada were still holding firm to the honour of the great mother and her wish to stand by the words of her ancestors. These words were:

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid.⁶¹

The lands not recognized as Lower Canada (Ontario) and Upper Canada (Quebec) and those lands that were agreed to in treaty were to remain Indian lands. The boundaries of Rupert's Lands⁶² extended to as far as Alberta. They included the hydrographic (surface water) basin of Hudson Bay -- what is today northern Quebec and Ontario, the entire province of Manitoba, most of Saskatchewan, and part of southern Alberta. What was 'Canada' was indeed a very small land mass. Rupert's Land was the name used to

⁶¹ *Royal Proclamation of 1763*

⁶² This grant consisted of a monopoly and complete control of the entire Hudson Bay drainage system, which included northern Québec and Ontario north of the Laurentian watershed, all of Manitoba, most of Saskatchewan, southern Alberta and a portion of the Northwest Territories and Nunavut.

describe the lands provided to the HBC. The HBC was granted a trading monopoly in the whole Hudson Bay watershed area. In 1670, Prince Rupert became the first Governor of, after having sponsored an expedition of Radisson and des Groseilliers into Hudson Bay. Rupert's HBC secretary was Sir James Hayes (Radisson named the Hayes River, Manitoba in his honour). In 1869, control of this territory reverted to the British and Canadian governments.

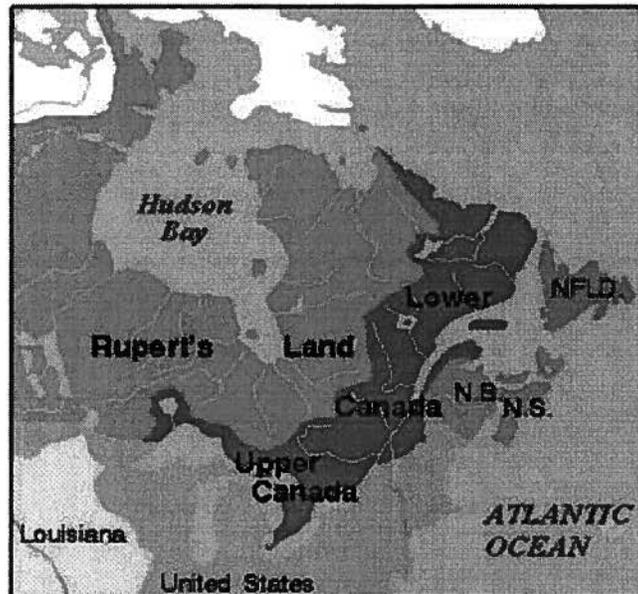


Figure 7 Map of Canada circa 1791 (Smith)

The sale of Rupert's Lands on 15 July 1870 back to the British Crown for certain land around its posts, some 2.8 million hectares of farmland and £300 000 cash seems odd to Aborigines since it appears that even in Western law, the right to give it in the first place was tentative. Dismissing the question of whether the British Crown could give the land to HBC and that they gave more than just a trading monopoly, the position

of the British Crown was that the lands reserved were for the Indians. The *Royal*

Proclamation states:

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.⁶³

Aboriginals always understood that the Crown's position would be to arrange that the 'Indian' lands would be returned. After all, the document that provided that power, the *Royal Proclamation*, stated:

And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.⁶⁴

All of this—reserving land and protecting it for 'Indian' use—was based on an understanding that the Indigenous peoples (the Indians or Aboriginals) had a different world view than the Europeans. What the Crowns did was accept its role as fiduciary. Even within the Western context, the Crowns' role, as fiduciary, demands that the governments of Canada take the interest of "said Indians" above their own. Understanding the difference was the reason that the Crown held the lands communally. They understood from the Indigenous people that 'ownership' was a foreign (Western) concept. Aboriginal rights within an Aboriginal nation are also communal. The highest rights are to the seven generations. It is to the future and the present that we act as stewards. That role supersedes our individual rights. All this is the demand of Reciprocal Expectation; all this is the way that a Communal Contract must function. And

⁶³ *Royal Proclamation of 1763*

⁶⁴ *Royal Proclamation of 1763*

these ideas were conveyed to and understood by the early Crown representatives. If the Royal Proclamation is read with this understanding in mind, it makes sense; otherwise the Royal Proclamation makes no sense.

The Covenant Chain was a series of documents describing an alliance between the Iroquois Confederacy and the British colonies of North America. The Covenant Chain began in 1677 when Sir Edmund Andros negotiated the signing of two treaties. In a Covenant Chain council that took place in 1692, the Iroquois leaders asserted, “You say that you are our father and I am your son...We will not be like Father and Son, but like Brothers.” This is the understanding that the British Crown recognized with the Indigenous peoples of Canada. They recognized a relationship that was not passed down to us like father to son but that we shared a mutual experience of existence like brothers, with neither in charge. Each was supposed to be free to act according to their ways. The Aboriginal peoples have maintained that communal understanding and that knowledge of individual responsibility as a fiduciary to the whole of their society.

Canada’s Charter of Rights Freedoms⁶⁵ affirms individual rights as they have been established and developed in Western societies. In this system, the individual can charge the system with not providing or protecting their rights. This Western view works on the idea that within these societies, individuals have a duty to the state, by virtue of being a part of the Social Contract⁶⁶. By staying within the society, one agrees to the terms of the contract. This is through acquiescence. Any contravention, breach or

⁶⁵ *Constitution Act, 1982*. Enacted as Schedule B to the *Canada Act 1982 (U.K.) 1982*, c. 11, which came into force on April 17, 1982

⁶⁶ Social contract theory (or contractarianism) is a concept used in philosophy, political science and sociology to denote an implicit agreement within a state regarding the rights and responsibilities of the state and its citizens, or more generally a similar concord between a group and its members, or between individuals. http://en.wikipedia.org/wiki/Social_contract last checked August 6, 2006

defiance by an individual is an attempt to return to the state of nature; any breach by an individual means the state has a right to compensation or redress⁶⁷. The contract formed is between the individual and the state, and any relationship between individuals is only in relation to the state. However, using legislation such as the *War Measures Act*⁶⁸, section 1 and the POGG⁶⁹ provisions within section 91 of the *Constitution*⁷⁰, any individual right may be revoked by the state. There are no absolute rights that flow to the individual, within the Western worldview.

It may be suggested that there is also a fundamental problem with the Reciprocal Expectation model: its demand for blind faith on the part of the membership. Within the Reciprocal Expectation paradigm, you must trust that your fellow citizen will look after your best interest beyond his own and this doesn't always happen. This, I concede. There are people that will take advantage of this approach. The checks and balances occur when the individual that does not fulfill their fiduciary duty to the other members is challenged by the community, by the membership. The Aboriginal model proposed is not so much about asking people to blindly trust as never before because this model asks us to trust ourselves (for we also have a fiduciary duty to protect the whole community) and others we are already in relationship with. On the contrary, the Western perspective demands a blind faith that the system, the state, will control everything and ensure that all is taken care of. From the Indigenous perspective this blind faith in the state is a much more fearful approach to social living. Within the Reciprocal Expectation model, one is

⁶⁷ As per the Social Contract of Hobbes and Locke

⁶⁸ The War Measures Act (enacted in August 1914, replaced by the Emergencies Act in 1988) was a Canadian statute that allowed the government to assume sweeping emergency powers.

⁶⁹ Peace, Order and Good Government

⁷⁰ *Constitution Act, 1982*

continually held accountable by neighbours, sisters, brothers, children and oneself to ensure that the society, as a whole survives. This is community policing at its very best. In the Western approach, it appears the members are left powerless and must trust in a faceless state.

The position of the British Crown was that they were making treaty—a contract between sovereign nations. They recognized and were reminded that this process of treaty was ongoing and that the Crown and the Indigenous people entered it as equals. That same duty was passed to the governments of Canada with the *Canada Act*.⁷¹ This duty was entrenched in section 35 of the Constitution Act, 1982 to protect the special relation that existed and continues to exist between “Brothers”—the Crown and the Indigenous peoples of the land called Canada.

⁷¹ The Canada Act, 1982 including the Constitution Act, 1982 1982, c. 11 (U.K.) [29th March 1982]

Chapter VI- The Sociology of Negotiations

The idea that there are alternative systems running concurrent to the Canadian legal system appears very difficult for positivist legal theorists to accept. Though the law seems to have trouble finding any time or place for an alternative system of social construction, the sociological and socio-legal theorist seems to wallow in attempting to address it. Whether 'wallowing' takes the form of denying alternate approaches or an advancing absolutely new ways of living together, sociologists work to find a vocabulary to address the idea of two systems running side by side. Generally, within the sociological work on systems there are a number of points that are standard. From my perspective these are:

1. there are dominant systems that favour certain members of society;
2. this favoritism is based primarily on sex, race, social position; and
3. these systems permeate the overriding social order.
4. These systems of favoritism are so entrenched that most members can not recognize their presence.

Within the study of sociology, generally the colonial construction is the dominant form of systems. Whether this is because the work that is being recognized is from these colonial systems or as a member of these colonial constructs this is what I am privy to is open to debate. Even the work of individuals that that are working to present an alternative perspective to colonial dominants do so with a recognition of this dominants. Much of the present work is in the area of de- or post- colonial systems, and ascribes to the models an understanding that the colonizing components of the system have been replaced with something new and exhilarating. I propose that this is not the case. The colonial paradigm continues to be the dominant structure. And the use of the past tense does not change that fact. De-colonial or Post-colonial states can only occur:

- a. when the subsystems are removed;
- b. the benefits held by one (or several) groups that was achieved through the colonial structure is returned to the communal membership for proper distribution;
- c. those benefiting groups are no longer in their power position; and
- d. any system in place is not either dominated by the old colonial system or that same colonial system with different signifiers.

I do not mean that, in a post-colonial state some individuals will not take up (or retake) power positions BUT new power positions should not and can not be based on the previous colonial paradigm. Any system that provides benefit to specific groups to the detriment of other groups is still a colonial system. Until the presence of the colonial infrastructure is recognized and addressed there is no progress and to suggest otherwise is Myth-making. Myth-making is a term that describes the approach of the dominant sector to reengage the colonized with a new vocabulary. The words are not what make colonial constructions; it is the actions of the state's members. The state itself is not capable of any action. Even within the Western idea of state where power has been given by the citizens to the government to act on their behalf, there must be people, bureaucrats to carry out actions. The Western state has no consciousness of its own. The Indigenous state recognizes the power of the citizenship and maintains their power position. With this power to act as state, the citizens also accept the responsibility for their actions as the state. This is Reciprocal Expectation.

This work is based on an idea taught to me as an Aboriginal: the idea of Reciprocal Expectation that demands members have a right to social mutual give-and-take. Marshall D. Sahlins described three kinds of reciprocity. The most basic forms are economic exchange, Generalized reciprocity, Negative reciprocity and Balanced reciprocity. Generalized reciprocity is normally associated with gifting economies and

involves virtually uninhibited giving. Balanced reciprocity is still based on the gifting idea but with the proviso that the value of the gift will somehow be returned in kind at a future, undetermined date. Negative reciprocity is normally associated with barter economies and involves an immediate exchange for equal value. Suffice to say that each of these describes an approach to pre-commodified existence that is still practiced in some form today by Aboriginal and non-Aboriginal alike.

Though a society's move from non-commodified exchanges to commodified ones is often described by economists as an evolution of exchange—a progression from a system where you give everything away and hope to survive, to the most advanced form of trade involving absolute commodification and tokens of exchange (cash)—this is a blind understanding of the system in which we presently engage. In fact, the 'new' system can not and does not attempt to replace the older systems of exchange. Thus, I propose that Reciprocal Expectation need not limit the current approach to economics nor limit the understood trajectory from entirely non-commodified systems to partially or predominantly commodified exchanges within one culture that can represent both Indigenous and Western perspectives socially and economically. I suggest our present colonially entrenched structures are not part of a movement through any of these aforementioned social or economic systems. We are not moving past a particular composition (economic or otherwise), then growing beyond that particular aspect's usefulness and casting it off to replace it with another; we are continually adding 'improvements' to that first system—which was the Generalized reciprocity system. The problem with this approach is that at some point all the rules and exceptions to the rules that make up the system weigh it down. Eventually, the structure becomes too

contradictory. Inconsistencies and incongruities become blatantly obvious to members of the system and outsiders alike, and when this occurs the system can not be overhauled any more. There can be no new concessions created to continue the old system. It must be made anew. It must take the recognized and unrecognized aspects of the old systems into consideration and create something new that can work for all the Actors.

The ability to possibly create a more equal system from for all players is found in the Veil of Ignorance of John Rawls. He offers an approach to recreating entire systems whereby all Actors may have an equal opportunity to any and all positions within the given system. The equal-opportunity idea is counter to the work of Bruno Latour, who suggests that this is a question (or idea) that has no place in Actor Network Theory (ANT). I suggest the final question should be, if forced to divide up the social pie, how you would cut up the slices. From personal experience, if the cutter of the pie doesn't have control over the distribution of the pieces, they work much harder to ensure equality. In this chapter I will attempt to present aspects of a number of social theory positions and show how the Western perspective is limited by looking at social development as a progressive, linear equation in which North America is well ahead of the rest of the world. Marshall Sahlins argues all cultures are equal to those of the West.⁷² It is the distinctiveness of each culture or society that can be beneficial to the collection of equal cultures. The exploration will be begin with the Indigenous an example of one Indigenous commonwealth system and move through colonial sociological approaches to contemporary perspectives of social integration and the theory

⁷² In his debates with Gananath Obeyesekere How "Natives" Think: About Captain Cook, for Example (1995)

behind it. I, like Sahlins, believe that this is not a linear progression through social order but present them chronologically for convenience.

Haudenosaunee

One of the most famous examples the multiple uses of reciprocity and the control that people can yield over each other as described in the Communal Contract is the Haudenosaunee Confederacy. Also known as the Iroquois Confederacy, it continues to be an international treaty affiliating six Indigenous nations. The Iroquois are an alliance made up of five nations: the Mohawk, the Oneida, the Onondaga, the Cayuga, the Seneca and the sixth tribe, the Tuscarora, which joined after the original formation to create the Six Nations. The Iroquois or “people of the longhouse” were formed with the understanding that they would be separate complete whole parts of a separate complete whole. The unifying ‘document’ that enunciates their unification is a constitution known as the Gayanashagowa⁷³ (or "Great Law of Peace"). This unification of the five nations and the recognition of the possibility that more nations could join is recorded in the Hiawatha Belt. There are many Wampum belts that address the Great Law of Peace. Wampum belts can be read and interpreted just like any other document. This is very much like the hieroglyphics of the Egyptians that anthropologists easily accept as a language today. These belts, like totem poles, petroglyphs, pictographs, medicine bundles and many other forms of communication present a ‘written’ history of Indigenous people still used by their Aboriginal descendants. They are a written language that is still presented in Aboriginal gatherings today. The beginning of this

⁷³ A copy of a written version of this law is included at the end of this work with other documents referred to throughout the piece. This version prepared by Gerald Murphy (The Cleveland Free-Net - aa300) Distributed by the Cybercasting Services Division of the National Public Telecomputing Network (NPTN).

Constitution can be found in the Hiawatha Belt and the international scope of the great law and its recognition as a 'living law' component can be found in the work of Mohawk writer and legal scholar, Kanatiyosh:

The Hiawatha belt represents the unity of the original Five Nations and is read from the right to the left. The first square, on the right, represents the Mohawk Nation. The second square represents the Oneida Nation. The heart or the tree in the middle of the Hiawatha belt represents the Onondaga Nation. The square to the left of the tree represents the Cayuga Nation, and the farthest square to the left represents the Seneca Nation. The small white lines that lead away from the Seneca and Mohawk Nations represent paths that welcome others to join the Confederacy. These nations have agreed to follow the Peacemaker's message of the Great Law of Peace.⁷⁴

Kanatiyosh describes how this binding document provides for expansion of the nations that accept the Great Law. The Tuscarora nation shows that the addition of like-minded members is possible: they joined the original five to create the Six Nations that we all speak of today.

The Great Law addresses the duties that members of the Confederacy have to one another. These duties are held by the individual and inform the members of their role in various situations. The Great Law does not really describe what the states or nations must do or can do; rather it describes the individual duties of the membership. Powers of nationhood were left to the nations. The Great Law sets out when and how meeting of the Confederacy are to occur and the roles of the individuals at the gatherings. This one system, the Great Law, addresses the various social, spiritual, legal and environmental roles the members agree to abide by.

⁷⁴ Kanatiyosh. The Influence of the Great Law of Peace On The United States Constitution: An Haudenosaunee (Iroquois) Perspective. <http://www.tuscaroras.com/graydeer/influenc/page1.htm>. Last checked August 5, 2008

Like the Tuscarora, the Dutch came to gain admission into the Confederacy. The Indigenous⁷⁵ document to recognize this alliance and the Dutch's appreciation of the feasibility of this approach is the Guswhenta (Kaswehntha): The Two Row Wampum Treaty of Alliance between the Dutch and the Haudenosaunee Confederacy. When the Dutch arrived, the Iroquois entered into treaty with them. Most important in the reading of the wampum was the understanding written into the wampum.

The Onkwehonweh called the Wampum Belt - "GUS-WHEN-TA". The Two Paths signify the Laws and Beliefs of the Whiteman and the Laws and Beliefs of the Onkwehonweh. The White Wampum background signifies Purity, Good Minds and Peace, and that the Two Peoples should not interfere with one another's Ways.⁷⁶

This was reiterated in the oral history:

The Whiteman said, "I understand, I confirm what YOU have said, that this will be everlasting as long as there is Mother Earth. WE have confirmed this and OUR generation to come shall never forget what WE have Agreed. Now it is understood that WE shall never interfere with one another's Beliefs or Laws for generations to come."⁷⁷

⁷⁵ I use the term Indigenous despite the fact that this event is obviously post contact. It is however, describing a system that was still without influence and so this event does not fit well into the simple definition that I provided earlier. An example specific to the Great Law would be as follows: the written (transcribed) version supplied with this text is an Aboriginal version of the Great Law, the presentation of the Hiawatha Belt and the oral telling of the meaning described by Kanatiyosh would be an Indigenous version of the Great Law. Once again chronology, progress and evolution is not the same within the Indigenous paradigm.

⁷⁶ <http://hometown.aol.com/miketben/miketben.htm>

⁷⁷ <http://hometown.aol.com/miketben/miketben.htm>

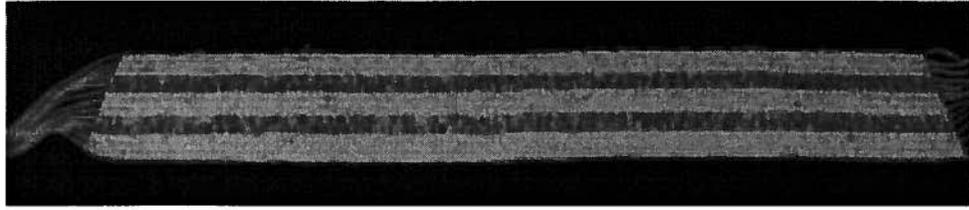


Figure 8 Two-Row Wampum Belt---Guswhenta Treaty Alliance

The acceptance and holding of the Two-Row Wampum is recognition by the Western world of this alternate paradigm. It is the Dutch's acceptance of their place within the Confederacy. This was made possible by the Great Law which allowed for other nations to join the Confederacy but not (as the Two-Row states) interfere. The Dutch, and all Western powers since, have refused to either recognize or uphold this obligation. Any treaty made after the Two-Row by the Dutch with any other power must, according to Western international law, recognize the relationship that the Confederacy affords. But the West did not.

Memmi

Canada was just part of the colonization of the Americas and the world by the West. Colonialism continues to set the stage for across the globe. The middle of a process like colonialism is not the correct place to commence a post-colonial movement. This should happen at the end of colonialism and is what the last chapter addresses.

In Albert Memmi's best-known work The Colonizer and the Colonized, written in 1957, he describes the interdependent relationship of the two (or three) groups⁷⁸. He

⁷⁸ He presents the Colonizer, the Colonized and the Colonial.

describes how these groups work and live together after colonization. In his description the groups form a new relationship but do not merge in their interrelationship. Memmi writes of the colonizer, "He endeavors to falsify history, he rewrites laws, he would extinguish memories. Anything to succeed in transforming his usurpation into legitimacy." (Memmi 1991:52). This description may help to explain the colonial position of Indigenous non-human occupancy. It was in 1960 that Indians were given the right to vote. The reason that the concept of terra nullius worked in the case of North America is that the New World was considered unoccupied according to the Papacy and the Monarchies; there were no humans, only savages. This reasoning allowed for the negation of their position within the recognized system of the explorer. Not recognizing the human-ness of the Other allows the explorer (whether in theory or practically on a ship) to maintain an advantaged situation. What is acceptable between humans in the 'civilized' world could cause problems in a colonial paradigm. This mindset was (and continues to be) addressed through the systemic use of non-human categories. An example of this non-human mindset in the colonial past would be the laws that allowed one man to own his wife, his children or another man. In the present, the *Indian Act* allows the governments of Canada to carry out actions that would not be acceptable to other Canadians. An example of this continued non-human approach would be section 6 of the *Indian Act* which allows the government to determine who can maintain their 'legal' connection to their Aboriginal heritage. This section allows individuals to be denied 'status' as an Indian which in turn may affect their ability to reside on reserve, to inherit through the Canadian system and even the proceed distribution upon marriage breakdown.

What is missing or necessary to allow or force a transformation from colonial to post-colonial? Are the non-human qua human beings destined to forever be the Other, left 'outside' while residing inside the colonial system? Latour's position of blindness to the situation where Actants/non-humans/colonized struggle to move into positions of Actor/human within a non-colonial system may be explained by Memmi if we accept that there are colonizing effects within the systems that Latour addresses. This will be further addressed later in this chapter. Memmi writes, "the colonialist realizes that without the colonized, the colony would no longer have any meaning. This intolerable contradiction fills him with a rage, a loathing, always ready to be loosed on the colonized." ⁷⁹

In October 2006, Memmi's follow-up work entitled "Decolonization and the Decolonized," was published. In this book he examines the causes of the failure of decolonization efforts throughout the world. Memmi suggests that in light of global decolonization, the suffering of former colonies cannot be attributed to the former colonizers, but rather to corrupt leaders and governments in control in these states. It seems that the colonized states have learned their lessons too well. With the Reciprocal Expectation model, hopefully, this can be the beginning of a dialogue with colonial states to begin the recognition of Other Indigenous paradigms around the globe. It is necessary for new hybrids to be created that are truly inclusive of both the Indigenous and Western perspectives. To accomplish this, the dominant, Western colonial stakeholders must allow space for a paradigm shift that may alter their power position. The creation of new social models that are hybrids that have the Western perspective holders moves closer to the Indigenous social approach may create a more peaceful 'decolonization.' There is

⁷⁹ Memmi 1991:66

much in the current Western system that can be pointed to as not working for anyone within the Canadian state. Just as I have described Aboriginals as being a hybrid of Indigenous social theory adjusting to Western influences there can be a similar adjusting of the Western social theory to accommodate Indigenous influences. This will not create one social perspective as each group will come from a distinct starting point. But like in interest-based negotiations, this will allow both sides to recognize the points they have in common and the benefit each worldview can be to the other. This shift, from all social orders moving inevitably to the Western perspective, to all social orders moving toward the most beneficial system for all citizens will see Canada finally realizing its long standing goal of being a 'cultural mosaic.'

Said

This shift is made more difficult if we accept the position of Edward Said. Said contended that colonial domination has been in place so long that even the most outwardly objective Western texts on the Other are permeated with a bias that Western scholars cannot recognize. They have constructed and written the Other's past from a perspective that takes Europe as the norm, and from this position show how the Other deviates. This is counter to the understanding espoused in the Two-Row Wampum that demands that the Western settlers and the Indigenous people travel side by side parallel to one another but never interfering or crossing over. This is not the case in Canada nor is it the case in any colonial paradigm according to Said. This appropriation by Western scholars of the Other's culture, language and history has created a figment of Western

imagination that the Other is forced to defend both for and against to maintain any semblance of control over self.

In *Orientalism* (1978), Said described the "subtle and persistent Eurocentric prejudice against Arabo-Islamic peoples and their culture" served as validation for colonial and imperial ambitions. He argues that Western writings on the Orient, and the perceptions of the East provided in them, are suspect, and cannot be taken at face value. According to Said, the history of European colonial rule and political domination over the East distorts the writings of even the most knowledgeable, well-meaning and sympathetic Western 'Orientalists':

"I doubt if it is controversial, for example, to say that an Englishman... in the later nineteenth century took an interest in those countries which was never far from their status in his mind as British colonies. To say this may seem quite different from saying that all academic knowledge [about Other]... is somehow tinged and impressed with, violated by, the gross political fact – and yet that is what I am saying in this study of *Orientalism*." ⁸⁰

For Said, Western writings create an "Other", which is based on the need to contrast "difference." The Canadian mantra, 'none of us are going anywhere' is not necessarily a conciliatory attitude. Aboriginals and non-Aboriginals can be together as colonials and fight, be together as separate equals in peace or be together as a new hybrid that is created using the knowledge that each side has to offer. The choice is up to the members of the society.

⁸⁰ Said, *Orientalism*:11

Sahlins

Marshall Sahlins states that the power that culture has shapes people's perceptions and actions. He views all societies as having two consecutive development aspects. First, all societies have a 'general evolution' which is the tendency of these systems to increase in complexity, allowing for a greater ability to adapt to the environment. This is the aspect that would develop if a society functioned in isolation. However, societies and cultures do not develop in isolation. There is interaction between neighboring communities and influence through trade and diplomacy. These interactions with other systems cause a distribution of character that he refers to as 'specific evolution.' Specific evolution affects each social or cultural system differently as the various influences affect different systems differently at different times. Further, all systems are at various places in their development and none came from a common origin⁸¹.

Sahlins argues that Indigenous cultures are distinct and equal to those of the West.⁸² This is because he does not concede a progressive hierarchy. Instead, he sees a collection of equal cultures, each with various aspects in different measure.

He describes another aspect of the reciprocity spectrum as Negative reciprocity⁸³ is a system where a "*quid pro quo*" response is given and expected in return. Negative reciprocity is the other side of the coin of any reciprocal system. Negative reciprocity is the dominant approach to interaction within the Canadian social and legal system. Just as in moral reciprocity, there is understood action for moral and immoral acts. The Reciprocal Expectation model must address not just finance and mercantilism, but civil

⁸¹ Evolution and Culture (1960)

⁸² In his debates with Gananath Obeyesekere How "Natives" Think: About Captain Cook, for Example (1995)

⁸³ Suranovic, Steven. "Negative Reciprocity" International Trade Theory and Policy

and legal wrongs within the same model. Every member is responsible for all aspects of the social organism. Though much of Sahlins' work addresses the trade aspect of social arrangements, it is not limited to this. Systems of exchange such as gifting and barter maintain their functionality through recognition and enforcement of this type of negative reciprocity scheme. Amongst the membership using such an approach there is said to be a minimum amount of trust. A person gives goods or labor and expects 'payment' immediately with goods or labour of equal value. Because negative reciprocity can involve a minimum amount of trust it can allow maximum social distance and therefore can take place among unfamiliar persons or foreigners. This allowed non-commodified, nonindustrial societies to grow and continue to function beyond small communities and even engage in relations with other nations.

Negative reciprocity fairness requires that negative actions be reciprocated in kind. The same fair dealing consideration can be found in moral reciprocity with regard to societal exchanges. The bad deed must have a deed which equals all the badness that the first deed created a thought further addressed in the concept of moral reciprocity. Moral reciprocity is the tendency of humans to reciprocate both assistance and harm in relation to the subjective interpretation of that assistance or harm as moral or immoral. These ideas of reciprocal social function can be seen today in the Restorative Justice approaches that many Aboriginal groups are using. Suffice it to say that within these organizations, the guilty party (they must admit their guilt) is required to face and hear the damage they have done to not only the victim but also the victim's family, the community as a whole, their own family. All agree on a suitable payback. Although the approach has been used on a very small scale within the Canadian Justice system, that

limited scope ensures the maintaining of the dominant social groups. The admission of restorative approaches which may appear to be in line with the Reciprocal Expectation model is something of a lost leader. Though there is an Indigenous like aspect to the system, in most cases Crown must approve the files that enter this diversionary avenue and the files that Crown approves prevent any real substantive work on the social reform of the Aboriginal communities. The Canadian legal system is providing a very limited application that they maintain absolute control over. They provide a mere semblance of justice reform. This is not to take anything away from the great work being done by countless individuals and communities across the country but without true control over the system, this is not the just system suggested.

Rawls

John Rawls offers an account of "justice as fairness."⁸⁴ In A Theory of Justice, Rawls attempts to reconcile liberty and equality in a principled way. In the standard social contract, citizens in a state of nature contract with each other to establish a state of civil society. The parties provide the government with powers in exchange for the government taking on a fiduciary roll which protect the persons and property of the citizens.

Rawls uses a modified social contract, explaining we have ends we want to achieve, and we will achieve them together if we can—but we don't want to give up privilege. Man is both rational and reasonable but can only truly exhibit this in a "well-ordered society ... designed to advance the good of its members and effectively regulated

⁸⁴ This is developed in his work A Theory of Justice.

by a public conception of justice."⁸⁵ He asks, 'what principles of justice would we agree to if we desire to cooperate with others, but would also prefer more benefits, and less burdens, within that cooperation?'

To come to a fair and just understanding of all participants Rawls provides a model of a fair situation using the original position and the veil of ignorance. The original position is a hypothetical situation. In social contract theory, persons in the state of nature agree to the provisions of a contract that defines the basic rights and duties of citizens in a civil society. In his book, A Theory of Justice, the original position is designed to accurately reflect what principles of justice would be manifest in a society premised on free and fair cooperation between citizens, including respect for liberty, and an interest in reciprocity. Rawls' approach is akin to the Indigenous approach upon which the Great Law and the Reciprocal Expectation model are founded. His perspective demands that the citizenship—the individual members—take a role in their positioning, not just leave it to the state. Representatives of the citizenship are placed behind a veil of ignorance, depriving the representatives of information about the individuating characteristics of the citizens they represent. The representatives are unaware of the talents and abilities, ethnicity and gender, religion or belief system of the citizens they represent. Rawls specifies that the parties in the original position are concerned only with citizens' share of what he calls primary social goods, which include basic rights as well as economic and social advantages. Rawls argues that the representatives in the original position would adopt the maximum rule of game theory making the choice that produces

⁸⁵ Rawls, Theory: 397

the highest payoff for the least advantaged position. This is members acting as proper fiduciaries within the system.

He argues that two principles of justice would be especially necessary. The First Principle is stated that "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."⁸⁶ In other words we would demand a principle of equal basic liberties, like freedom of conscience, association, expression, but not the liberties associated with property ownership and contractual exchange. The Second Principle addresses wealth indicating that:

Social and economic inequalities are to be arranged so that they are both:

- a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- b) attached to offices and positions open to all under conditions of fair equality of opportunity.⁸⁷

This second principle ensures a fair equality of opportunity so that, whatever one's station in the society, the liberties of the First principle are meaningful. This guarantees that those with comparable talents and motivation face roughly similar life chances. Rawls states we would want to ensure "fair worth" of our liberties. This principle allows that wherever one ends up in society, one will possess enough effective freedom that life will be worth living.

⁸⁶ Rawls, *Theory*: 302

⁸⁷ Rawls, *Theory*: Section 11

The Difference principle of Rawls is sort of an addendum to the two primary principles “in order for any change to be accepted as an improvement, it must help the least advantaged representative person.” This additional principle recognizes that any society will not be ‘fair’ but that the inequalities in a society should work to the benefit of the least advantaged.

Rawls held that these principles of justice apply to the "basic structure" of fundamental social institutions like the courts, governments, markets, the constitution, etc. These principles were to give priority to basic liberties over the more equality-oriented demands of the second principle. Finally, Rawls took his approach as applying in the first instance to truly "well-ordered society" (Theory, p. 397). He expresses the basic structure of such a society as including ‘justice as fairness.’ This allows for the working "out [of] principles that characterize a well-ordered society under favorable circumstances" (Theory, p. 216). Rawls indicates that the representative parties in the original position would select two principles of justice using concepts of right considerations, namely that they be:

1. general in form
2. universal in application
3. publicly recognized
4. final authority
5. prioritize conflicting claims

Thomas Nagel (a Rawlsian) has suggested that the concept of original position take into account the tension between original and actual positions. This advocates for a social ethics approach to the original position. What Rawls espouses is a recreation of the system of law and social order without the difficulties of attempting to negotiate a new paradigm while knowing the benefits and privileges you hold in the present

structure. This approach can only work if you accept that as Sahlins suggests, there is no hierarchy to social order and law.

Maine

In Ancient Law, Maine suggests there is such an order. He addresses the Western progression through the basics of social law. In chapter five entitled, “Primitive and Ancient Law”, he writes of the formation of “law” and where our basic understanding for the commonwealth and the state are formed:

there long remained the vestiges of an ascending series of groups out of which the State was at first constituted. The Family, House, and Tribe of the Romans may be taken as the type of them, and they are so described to us that we can scarcely help conceiving them as a system of concentric circles which have gradually expanded from the same point. The elementary group is the Family, connected by common subjection to the highest male ascendant. The aggregation of Families forms the Gens or House. The aggregation of Houses makes the Tribe. The aggregation of Tribes constitutes the Commonwealth. Are we at liberty to follow these indications, and to lay down that the commonwealth is a collection of persons united by common descent from the progenitor of an original family?⁸⁸

What Maine describes and ascribes as belonging to the Greeks and Romans is a system that may have had genesis in the idea of Communal Contract. It may be this understanding of the ‘law’, as stemming from the fiduciary duty one has to part of a familial unit is what Maine is describing. This core relationship is at first based on survival to meet basic human needs. As humans accomplished the goal of subsistence, the rules altered and changed.

Maine goes on to explain that there are certain ideas that are beyond question. He explains the idea of Family as limited to that “original stock”. This seems to be a part of

⁸⁸ Maine, Law: 61

Maine's Christian mentality which he can not leave behind. Even when describing the Greeks and Romans he sets out an understanding of the world that allows for no other contingency. This may be seen as an aspect of Said's Orientalism. Maine states:

Of this we may at least be certain, that all ancient societies regarded themselves as having proceeded from one original stock, and even laboured under an incapacity for comprehending any reason except this for their holding together in political union. The history of political ideas begins, in fact, with the assumption that kinship in blood is the sole possible ground of community in political functions...It may be affirmed then of early commonwealths that their citizens considered all the groups in which they claimed membership to be founded on common lineage. What was obviously true of the Family was believed to be true first of the House, next of the Tribe, lastly of the State.⁸⁹

Counter to this 'original stock' position of Maine, many cultures describe themselves as 'human' and recognize others that do not originally fit into that category (though there are ways, like adoption and treaty, to become human.) The idea of Family that Maine is espousing is not the nuclear family nor the extended family. This he explains can be gleaned from an understanding of the records of these ancient civilizations and their own explanation of the role of family. He seems to understand this idea. He states:

everywhere we discover traces of passages in their history when men of alien descent were admitted to, and amalgamated with, the original brotherhood. Adverting to Rome singly, we perceive that the primary group, the Family, was being constantly adulterated by the practice of adoption, while stories seem to have been always current respecting the exotic extraction of one of the original Tribes and concerning a large addition to the houses made by one of the early kings. The composition of the state, uniformly assumed to be natural, was nevertheless known to be in great measure artificial. This conflict between belief or theory and notorious fact is at first sight extremely perplexing; but what it

⁸⁹ Maine, Law: 61

really illustrates is the efficiency with which Legal Fictions do their work in the infancy of society.⁹⁰

Maine's understanding of family was different from the Indigenous idea of family. This seems to be because, for Maine, with membership comes a Social Contract that ties the individual to the state. Within the Indigenous Reciprocal Expectation model the individual becomes a member of the Communal Contract that ties them to each and every member of the family, Clan, community, and nation. Maine's understanding of the process for 'primitive' cultures is limited by what he could see as an outsider and the writing of other outsiders he took as authoritative.

Latour

The approach Maine took to writing about primitives is described by Bruno Latour. Latour describes the "cycles of accumulation" as the method by which we can 'study' society. He describes how in cartography we can find a parallel to the empirical sociological methodology in the explorer's map. The cycle begins with an explorer, and a fully loaded ship sent to draw a map of unknown lands. Upon his return to his system the explorer has a map that describes 'his' experience of the previously unknown land. He has not found, discovered or fathered a 'new land.' He has sketched the landscape, interacted with native people, left a footprint and returned to his landscape bearing the prize: the map. The next explorer is sent out, with all the resources that the first had plus the map from the previous expedition and returns with another map.⁹¹ Latour argues that science is simply a similar series of cycles of accumulation. This is how inscription

⁹⁰ Maine, Law: 62

⁹¹ Latour, 1987: 225-7

works. In the Western paradigm, it is only once there is written evidence that anything exists. There is a demand to prove validity or temporality through documentation. There is a problem, however, in that there is a prejudice that the maps of the explorer are considered the truth or the actual facts. In the case of the empiric explorer and the sociological theoretical explorer there is an overlay of their own system onto everything they come into contact with. They do not recognize any Other system of recognition of existence until it has been transcribed into their system. This is a form of tunnel vision that has served the West but not humanity.

It seems that for Latour, there can be no system prior to the inscription of some recognizable system. The land only appears as the cartographer draws it with some magic pencil. And like the cartographer's maps, Latour views the natives that Science and Technology Studies ("STS") enlightens as being system-less until western incorporation and demarcation. Latour readily accepts this trope of colonialism. He indicates the need for the inscription before the science of society can commence, in effect negating any system outside of the inscription of his own making.

To return to the explorer and his maps, in his interactions with the natives, the explorer will be informed of the inhabitants' personal names for their social organism. The inhabitants will (prior to contact) have conceived individuals names—AhnAhnsisi, community/nation names—Anishanabeg, site names—Timiskaming and Canada⁹² etc. These are the system names that the explorers will have been provided, however upon their return to their system, the map they provide describes a Canadian named Frank

⁹² I include Canada as it is an Algonquin word which means the village and is an example of miscommunication and mistake making up the topography of indigenous exclusion within the sociological system framework.

King who lives in New Liskard, Upper Canada within the colonies of the United Kingdom. This second string of labels describes a system that Latour can only now see—he sees it as the ‘real’ system when in fact it is only as an addition to the ‘real’ (original, Indigenous) system. The first system never functions as an alternative to his recognized, real system. What has occurred within the colonial paradigm is that the space of the ‘new world’ has been recognized as inhabited by ‘Actants.’ The Indigenous people were positioned with the plants, waters and animals. They affect the colonizing Actors but lack the character to alter the Western system. While this positioning is serviceable for the Primal Animist perspective of many Indigenous groups, ultimately this position is used to negate their existence as ‘Actors.’

To recognize the presence of an alternate system, the colonial player would be forced to recognize the colonized inhabitants as human Actors with equal influence on the system. It seems that the colonial structure can only work as long as the natives are Other. As Other, these ‘people’ fall within the system only as Actants. Within these ‘systems,’ the Other, as a group, balks at the idea that there is a place for ‘concessions’ for Other voice. Concessions can not be seen as a validation of the voice or the presence of the Other as Actor but only as an acknowledgement that a presence exists within the dominant’s system or paradigm. The dominant system can not allow for the Other’s systems; this ‘space’ did not exist until the cartographer drew it into existence. Without this space, there can be no system. The colonial construct is formulated with the understanding that some exist, some don’t, and some do but don’t matter. However, only those ‘marked’ and recognized as implicit with the recognized system benefit from membership. This is the crux of the colonial system.

Can Latour's analysis hold up in the "post-colonialist" framework? Does Latour's vision allow for 'new' humans? Within the post-colonialist paradigm, the constructs which define who qualifies as people are addressed within Latour's five major uncertainties. These are the natures of groups, actions, objects, facts, and types of studies done.⁹³ However, in Latour's system we are privy to certain facts about the first of these uncertainties. Within his system the Actor must be a human and humans are a limited class. The colonialist chauvinist paradigm that he is writing from recognizes and assumes an understanding of who qualifies as "human." Latour addresses the Actor/Human/Actant/Non-human paradigm in this way:

We may then be able, finally to understand these nonhumans, which are, I have been claiming since the beginning, full-fledged actors in our collective; we may understand at last why we do not live in a society gazing out at a natural world or in a natural world that includes society as one of its components.⁹⁴

The system functions for those privileged to be recognized within its standard. To allow this system to function there must also be Actants, objects that have non-human standing. These Actants are capable of affecting the Actors but never acting to alter the system of their own volition.

Within most colonial standards, there is a suggestion that certain groups have moved from chattel to human standing. This can be seen in the case of Blacks in the United States, Women in Canada and the US and Indians in the North Americas. What is the effect when the positivist legal descriptor alters to allow a new, more inclusive definition of 'human?' It seems that for Latour, positivist legal definitions are not

⁹³ Latour Social, 22

⁹⁴ Latour 1999,174

enough for transformation. He addresses this by explaining that that is not for his theory to address. But it seems that any theory must be put to the test of pragmatic realism.

Another criticism is that Latour suggests that all actors are equal within the network. He does not account for pre-existing structures, such as power, but instead sees these structures as emerging from the actions of Actors within the network. Power emerges with the ability of an Actor to align other Actors to its interests. There seems to be an understanding that all Actors are equal within the network. Only their ability to manipulate and influence other Actors effects change. The ability of Actors to manipulate and influence other Actors does not account for pre-existing structures--such as Actors within the Indigenous system that are not recognized within the colonial system due to a lack of inscription--such as power, that the network has predetermined. Rather, Latour sees these structures arising from the actions of Actors—any Actor—within the network. Latour uses the example of the puppet with strings to explain this position. He indicates that any puppet can equally manipulate the puppeteer. The puppeteers are made to “do things they will have never thought possible by themselves.”⁹⁵

This appears to be akin (whether Latour wishes to admit it or not) to the situation with the (colonial Savage/Chattel) non-human-human as the (colonial Actor) human still controls, manipulates and keeps a ‘hand’ in any attempt made by the non-human-human (“NHH”) to be sovereign. The action of these NHH is not necessarily a revolutionary form that demands deconstruction and reconstruction of organizations and constitutions to work. Latour allows the NHH to act as Actants which affect the Actors—like the puppets—but he refuses to allow for the ability of the NHH to transform into full Actors

⁹⁵ Latour 2007, 59

which can manipulate the system itself. The NHH, like all other Actants, are limited by what the system allows of the Actant. This is much like a bank machine can affect an Actor by not giving them money but they can only work within the system. The Actant can not make a conscious choice to withhold funds.

Reformation of the present form through integration of organizations is feasible. The possibility comes from the position and deposition of those that are recognized as human and therefore Actors/humans/speakers within the status quo system. The Actor state has recognized these NHH as being human (this is through full legal citizenship). It is left to the human citizens to act toward the NHH as citizens and humans as their own laws dictate. This scenario can be seen as a theatrical stage. From the audience perspective, the puppets have a human-ness that is uncanny. They do everything that humans do in the same way. They walk, talk, react and have character. It is in the backstage area where the marionettes are hung up on hooks, where they cease to function with any semblance of human-ness but for the most superficial outer appearance that the puppets true circumstance is evident. They are put into a box for ease of transport to the next show where they will be reanimated for a brief time to amuse the human audience. Despite the appearance of human-ness that appears on the stage, the puppet will never be a real boy.

This is also true for Indigenous peoples in 'post-colonial' colonial states. They have the appearance of being human but when one looks below the surface, when one is in a position to see the systems working (or not) then it is apparent the lack of human-ness the system affords the colonized. For the NHH there are always strings attached. For a true integration, there must be a new system where the workings that deny human-

ness are omitted, not simply better hidden. The true work of the Actor Network Theory (“ANT”) only occurs backstage and only when the puppets are capable of expressing and manipulating the system. A dichotomy arises. As soon as the ‘puppets’ receive this power, their ability to describe the time in a box diminishes. The more integrated they become within the system, the less capable they are of describing the NHH paradigm. This returns us to the Memmi’s colonial. As the lot of some of the colonized improves and they become recognized as an Actor (capable of changing the system), their understanding of the NHH position begins to diminish. Many Aboriginals have had the experience of seeking out higher education to help their people only to be told upon returning from school that they are “too white.” The use of ANT as a tool to look at post-colonial colonized individuals is that (like the puppet) as they become less colonized, there is an inverse proportionality to their ability to speak of the colonized experience. Once they are off the hook, they become less capable of describing the experience of being on the hook. But while they are on the hook, the puppeteer and the audience can only view these entities as human-like objects that have no voice.

For Latour and other members of the ANT school, they can only know the work of being an audience member. They may have some understanding of the puppeteer but never the marionette. The resemblance to human only functions as long as the audience and the puppeteer are in sync. The puppet never has a say. It is only when the puppet does not function due to problems with their strings that the illusion of human is lost to the audience and the puppeteer must break the suspension of disbelief and recognize the puppets for what they are, human-looking Actants.

Latour seems to suggest that we do not need to make the determination of who has the character to act within the corporate body—an understandable position since he can not understand the position of not having a voice. He is a product of his colonial upbringing. For myself, speaking as one that is within the colonial paradigm, one that is gaining one voice (assimilated human) and losing another voice (NHH) it is essential that that this disjoin be articulated primarily because there remain those who continue to function within the system as NHH. Inside a corporate body are collective[s] exchanging human and non-human properties.⁹⁶ The right to fight to be human is only ever important to an individual when it is denied.

“Since other cultures still mix the constraints of rationality with the needs of societies, they *have to be* helped to emerge from that confusion by *annihilating* their past.” [emphasis added]⁹⁷ I submit, the system that has attempted to annihilate the Indigenous systems of the past continues to fail, but continues to try. What is the outcome according to ANT when Actants stop being chattel/objects and present to the system personified/humanized actions? I suggest that these ‘new humans’ are able to describe, re-scribe and proscribe their system and their position within the preordained social system. The description is the act of accounting and providing their narrative within the system. Re-scription will be the review and adaptation of their position within the system as ‘object’ and non-human and their perspective throughout the non-human timeline. Proscription is the act of articulating the role these former objects have as humans within the system. All of these ‘scriptions’ must be carried out by the colonized.

⁹⁶ Latour, 1999:193

⁹⁷ Latour 2007, 448

In opposition to Latour, I do not believe he can articulate the colonized experience. And if there is no one to present it in sociological terms perhaps it is the fault of sociology, which has not opened the door for the new vocabulary of the new humans. Humans are free to choose their path.

Sartre

For Jean-Paul Sartre, "man is condemned to be free."⁹⁸ We are given choice and with that choice we must take absolute responsibility for all our actions. It is difficult to reconcile this statement from a colonial colonized perspective. The oppressive functioning of the state prevents true freedom for the colonized and yet that same state demands that the colonized take full responsibility in a 'post-colonial' paradigm. The ability for humans to be free is limited in this present system. We do not control our reciprocity. The roles of fiduciary and beneficiary are proscribed by the state. In order to be free, we must take back from the state the right to decide. To do this it is essential that the old regime be replaced. Humans need Others. This Other can not be found in the empty entity of the modern colonial state. Older Indigenous models require a recognition of the Other to help the balance within the social paradigm. This role of Other is the fiduciary duty expounded in the Reciprocal Expectation model.

For Sartre the "Other" (meaning anything that is not the self) as a construct of "reflective consciousness." This construct can be any attempt to articulate, describe, understand or contextualize the thing-in-itself. The Kantian phrase "thing-in-itself," means the thing as it exists "by itself," distanced from our impression of it or our knowledge of it. Self consciousness needs the "Other" to prove its own existence. The

⁹⁸ "Being and Nothingness" and his talk, "Existentialism is a Humanism"

self consciousness has a "masochistic desire" to be limited by the reflective consciousness of another subject (the Other). These are seen in the Hegelian phrase "Things-for-us." The difference in these two phrases shows the dichotomy that Sartre sees as man. We strive for an independent 'Self' but that 'Self' can only be defined by 'Things' and the 'Other.' This contradiction that is man is expressed in Sartre's play No Exit⁹⁹; his character states, "Hell is--- other people" ("L'enfer, c'est les autres.") We must decide if it is the other people that make us a 'thing' or the other people that prevent us from achieving the thing-in-itself within us.

His play, No Exit, has four characters, a man and two women and a valet. They find themselves in a livingroom with Second Empire furniture. The hell of Sartre's characters is an understanding that they each need the other two in order to create some illusion for their Self. Garcin must use the women to 'reflect' himself. They (the Other) are necessary for the creation of any image for him. For Garcin, the Thing-in-itself is an impossibility. He is forced to maintain his position with the two women even though the image is not what he wishes to portray. He can not exist without the other two. The opposite of existence, where man has no power to create his future, is hell. This is true of the 'post-colonial colonial' paradigm. The characters of the play, like the colonized, like the NHH, like the Aboriginal hybrid, all have similar fates. They must remain locked up forever with each other, using the Other to create a picture of themselves.

In the play, the audience learns very slowly the facts concerning the three characters. This is Sartre's condemnation of the social comedy and the false role that

⁹⁹ The original French title was Huis Clos (which literally translates to "In Camera" or behind closed doors).

each man plays in it. The most famous utterance in the play, made by Garcin, when he says that hell is other people—l'enfer, c'est les autres —is in the briefest form possible. This truth is not expanded. This is Sartre's definition of man's fundamental sin. The picture man has of himself must be provided by Others. This Other see him in a distorted image of himself that they then reflect back. He has rejected what the philosopher has called reality. He has, moreover, rejected the possibility of projecting himself into his future and existing in the fullest sense. In social situations we play a part that is not ourselves. If we passively become that part, we are thereby avoiding the important decisions and choices by which personality should be formed.

Sartre states that man is doomed to float in a quagmire that is not of his choosing. Even if we choose to rage against the machine, we are only a reflection of how the Other views our fury. It seems that according to Sartre, to step out of the present social paradigm is not an option. I cannot agree. It is my contention that understanding Self as Self is possible. It may be that it is impossible to accomplish in Sartre's world. What the Communal Contract and Reciprocal Expectation model offer is a different world in which to attempt it.

Conclusion

So where does this all bring us to? In the end we are left with a Moral reciprocity. Whether generalized, symmetrical or negative, reciprocity is recognized as a social

paradigm that works.¹⁰⁰ It is the same as virtually uninhibited sharing or giving. It occurs when one person shares goods or labor with another person without expecting anything in return. What makes this interaction "reciprocal" is the sense of satisfaction the giver feels, and the social closeness that the gift fosters. In industrial society this occurs mainly between parents and children, or within married couples. Between people who engage in generalized reciprocity, there is a maximum amount of trust and a minimum amount of social distance.

Balanced or Symmetrical reciprocity occurs when someone gives to someone else, expecting a fair and tangible return at some undefined future date. It is a very informal system of exchange. The expectation that the giver will be repaid is based on trust and social consequences; that is, a "mooch" who accepts gifts and favors without ever giving himself will find it harder and harder to obtain those favors. In industrial societies this can be found among relatives, friends, neighbors, and coworkers. Balanced reciprocity involves a moderate amount of trust and social distance. Negative reciprocity includes what economists call barter. A person gives goods or labor and expects to be repaid immediately with some other goods or labor of the same value. Negative reciprocity can involve a minimum amount of trust and a maximum social distance; indeed, it can take place among strangers. Negative reciprocity was a prevalent form of exchange to establish friendly relations in nonindustrial societies between different groups. According to Sahlins, all these aspects are continually at work in all social systems. The various social models or paradigms are just different quantities of these various reciprocal approaches. The Reciprocal Expectation model is simply a different

¹⁰⁰ Sahlins, Marshall (1972). *Stone Age Economics*. Chicago: Aldine-Atherton.

formula for social function. It is no better or worse than the model used in Canada today. However, the formula presently used in Canada is not working at many different levels. So like the recipe for a cake that doesn't work, it is time to change the ingredients.

This conclusion of the academic portion of this paper is the introduction of the oral presentation. This is to allow some of the traditional Indigenous approach to law and order as an oral teaching to be encapsulated in the overall work. Is one system better than the other? No. Can one system benefit from the other? Absolutely. The Aboriginal system is a hybridized version of the Indigenous system with aspects of the Western approach. These aspects include alienation and commodification. The commodified system of the West has not yet incorporated the reciprocal aspects of the Indigenous world. Sahlins work indicates that the Western socio-legal systems come from a reciprocal genesis and I do not dispute this. Rather than the Reciprocal Expectation model providing a new perspective, I suggest it should be used to remind the West of what was best of their Indigenous beginnings and offer was to reintroduce aspects of their past. As stated before, I am unsure how the Indigenous and Western components will eventually merge; I am sure that they must. The conflict will continue. Once Canada accepts parts of the Indigenous paradigm, the hybrid they create will be beneficial to Canada, Aboriginals and the world. The fire at Anishinabe gatherings has two purposes, the beginning brings the people together and the ending provides them with the knowledge of who they truly are through their stories. Stories are not just the traditional stories of the Indigenous ancestors but Aboriginal stories of the day-to-day. These stories need not be limited to Aboriginals.

A young white woman falls down in the middle of a busy downtown corridor. People in business suits pass her by and as she falls to the ground she thinks about the many times she had done the same thing on similar streets. There occurs a paradigm shift in the thinking of that young woman. From conversations with such women—tangentially, I have never had a similar conversation with a man—there comes with this type of experience a new perspective on the world. She begins to see the people in the world as having a duty to help her; she also recognizes a duty on her part to take care of other people (stranger and kin alike) when she sees them unable to take care of themselves. This is a rebirth of the Reciprocal Expectation model. It is a revisiting of the Communal Contract on an individual scale. It is when we are most vulnerable that we see the benefit of this type of relationship. Every person has times throughout their life when they can not manage the world alone. This is when they turn to their fellow citizens, as the state is not present. At this level the state can not be present. The state can help ensure that the medical treatment is there in the final equation. We all need the state in this role as a big picture, large shareholder in the function of the state. We need the people that we at a grassroots contact with to ‘have our back.’ Even if we depend on the state run ambulance to get us to the state run hospital where our state universal health care finances our state sponsored surgery, we need someone to call 911. We need someone to care, someone to have a duty to us as citizens—partners in our lives. Aboriginal communities across Canada recognize this need. They have not accepted as readily, the overarching role of the state. They continue to recognize the need for individual participation in the entire social structure. They see this in the form of a Reciprocal Expectation within their social frameworks. That framework demands

acceptance of the Communal Contract and the continual negotiation necessary to maintain the balance that makes up Indigenous social paradigms. The young white woman recognizes the necessity of reconnecting with the other individuals within her community when in a time of crisis. Canadian society is in a time of crisis within the legal arena. Anticipatory breach and buyouts has ensured that there is no certainty in contract or negotiations. The Canadian legal system has managed to create exceptions for almost every rule. This loophole and doubletalk mentality prevents certainty for anyone within this framework. One of the possible paths out of this crisis is to look to other communities and see how they manage these same situations. Within Aboriginal communities it is accomplished with these Indigenous models. Inclusion of some of the aspects of the Reciprocal Expectation model may create a new hybrid, like the Aboriginal, that focuses Western and Indigenous paradigms through a Western lens.

Chapter VII - In Camera

Plot synopsis

The entire play takes place in the board room of a law office used for Treaty negotiations. The room has no windows, no mirrors, and only one door. Despite the introductions, it appears these talks have been going on and two of the people Fox and Inez appear to know each other. They talk about being close to finishing. The third negotiator, Mikwam, appears to be new or under-informed.

The play begins with Mr. Ishkwkamig leading a man named Vincent into a room that the audience soon realizes is Hell. Eventually Vincent is joined by a woman (Chastity), and then another (Stella). After their entry, Mr. I. leaves and the door shuts. Though there is much discussion, there is no progress. They realize they are there to torture each other, which they do effectively, by probing each other's sins, desires, and unpleasant memories. At first, the three see the events only concerning them in the room but eventually they begin to see the metaphor between their relationships in the board room and the relationship in Canada; they are left with only their own thoughts and the company of the other two.

Dramatis Personae

Canadian Negotiator - Mr. Vincent Fox - is the first character to whom the audience is introduced. He is a White middle-aged man. He is married, promiscuous, self-righteous and boorish. He takes credit for others work and passes the buck for his own mistakes. He is a bully. He is condemned to wish for pain, which he feels will redeem his cowardly actions. He is constantly waiting for his physical torture to come, but this itself is one of the tortures.

Provincial Negotiator- Chastity Inez (Meek) – is the second character to enter the room. A lesbian, her sin is turning a wife against her husband, twisting her perception of her spouse. Indeed, Inez seems to be the only character who understands the power of opinion, throughout the play manipulating Stella's and Vincent's opinions of themselves and of each other. She is the only character who is honest about the evil deeds she, Vincent, and Stella have done and, without her; life in Hell would not be torture.

Aboriginal Negotiator- Stella Mikwam – is a "society woman", she has grown up and is a part of the Women's society of her people and has married a white man. She is 45. She has dyed blonde hair and glasses which are fashionable but thick. She married her husband for his money and to get out of the circle of poverty. Throughout the play she makes advances towards Vincent, seeking to define herself as a woman (perhaps her only role) through a man.

Mr. Ishkwekamig (World End) – Mr. Ishkwekamig enters the room with all three characters. He introduces the characters and seems to be prophetic. His name is World End in Anishinabe mowin

Scene 1

Introductions

[The music comes up loud. It is song in the form of a Cree round dance song. Just drums and voice. In Cree the song sings “It’s the end of the world as we know it. It’s the end of the world as we know it; it’s the end of the world as we know it and I feel fine.” The same line is song in English within the refrain. The song continues and fades as the lights come up half on a small office space. The drumming of the song is replaced by the ticking of a clock in the same rhythm. This continues to fade until it is almost imperceptible. This ticking will continue throughout the entire production until the very end when the drum and the songs return. There is a large round table in the center of the room. Three chairs are placed in the back stage side of the table. Two of the chairs are closer together on the stage left side of the table. There are three empty glasses turned upside down and a jug of drinking water on the table. There is a speakerphone system that sits in the center of this table. A side table for food trays and coffee that is empty at the present time sits on the downstage right side toward the centre stage area. On the walls are large black and/or silver frames that are empty. They contain no art and there is no appearance that art is forthcoming. The wall can be viewed inside the frame. The music is a Métis jig with fiddles and singing in Cree. As the song reaches a particularly high pitched note, the note is held and transforms into the monotone note that is the test-pattern note from the emergency broadcast system. The lights come up full. Enter Mr. Ishkwekamig and Mr. Vincent Fox. There is a long pause.]

V: Hm, so here we are and this is what it looks like. Are all the rooms like this one?

Mr. I: We cater to all sorts.

V: I am glad that you could fit us in. The regular place that we have booked had a series of accidents: flukes. We didn’t know what we were going to do. There was a great concern that we would have to indefinitely postpone these meeting. And then my office got your brochure. The receptionist tells me that you hand delivered them to the offices.

[Mr.I nods]

V: That must have put you back some. The post office delivers leaflets for 2 ½ cents per flyer but then you have to have a minimum order of 100, 000 which is still only \$2,500 when you think about it but...

[Mr. I nods. Vincent trials off. There is a long pause. Vincent looks around and notices the frames]

V: I guess I am a little early. Chastity, the provincial negotiator, is always exactly on time but we were hoping to finish all this up in the very near future. We all believe that we are very close. This is why I was so happy to find out about you guys, Shadowbox Professional Office Services. **[Looking at empty frames on walls]** Are you new? The

Aboriginal negotiator is new but I think we are so close to an agreement that that shouldn't matter. I think that if I can just talk to them, get them to understand just how close we are. This is the best for all Canadians and after all, Aboriginals are Canadians too. In the Constitution¹⁰¹ and everything. With a bit of time, I know I can make them understand but we have been having some trouble. [pause] Are you Canadian, Mister ...? I'm sorry. I forgot your name. I'm usually very good with names. Mister?

Mr. I: Ishkwekamig

V: Right.. Ishk-wey-ka-ming. Is that Romanian?

Mr. I: Nish.

V: Nish?

Mr. I: Anishinabe.

V: Oh...Can you direct me to the bathroom?

Mr. I: If you were to go down this hall to the right, you would come to a door. The door is not marked if you go through the door you will find yourself in a passageway that will go past a series of grey doors. The 17th grey door on your right is not marked but if you go through that door you will come to another passage with a series of grey doors. The 9th door on your left is not marked but if you go through that door...

V: Never mind. I'll be okay. I can wait. **[Turns into the room. Mr. I. remains standing at the door until there is an uncomfortable silence]** My name is ...

Mr. I: Mr. Vincent Fox. **[Vincent goes into trance]** You are the Canadian negotiator for this session. You are 45 years old, married, promiscuous, self-righteous and boorish. You take credit for others work and pass the buck for your mistakes. You are and have always been a bully. You wish for pain, which you feel will redeem your cowardly actions. You are constantly waiting for this physical torture to come, but this waiting is itself torture. Your name, Vincent, is Latin for 'conquering' which is how you view your role in these proceedings. You could say this is your own Manifest Destiny. A term used to advocate for and justify territorial acquisitions and westward movement, or, in some interpretations, an ideology or doctrine which helped to promote the process. Advocates believe that colonial expansion was not only good, but that it was obvious and certain; "manifest" and "destiny". Originally a political catch phrase of the Democrats circa 1850, it was rejected by Whigs and Republicans of that era.

¹⁰¹ Section 35 of the Constitution Act, 1982 Recognizes and Affirms Aboriginal and treaty rights.

V: **[coming out of trance]** Thanks?...how did you...right.

Mr. I: Just doing my job. Water. Phone, extra pads of paper and pens. Can I get you something else? Coffee? Tea? Juice? No. Nothing?

[long uncomfortable pause]

V: Have you seen the crows outside? When I was coming in here just now there must have been 50 of them. A bunch on the power line and a tree that must have had 30 in it. I didn't even notice until one started them all off by cawing. Then the rest of them started the same screaming. A whole Murder of them. I wonder if the screaming is why they call it a murder. They are sneaky like that, aren't they? I mean you don't even notice and suddenly there they are. They will take over you neighborhood. Cause noise, toss garbage everywhere. They just act like they own the place. They have no respect. They toss the garbage; make the whole place look like crap and for what? They have no respect for property... Animals, that's what they are. I wonder why they call it a murder?

Mr. I: They are crows. They are animals, Corvus Corax, the common Crow. A murder? I believe the term tells us more about people than the animals. I just say flock.

V: No the term is murder look it up. Murder of crows, Murder of ravens.

Mr. I: The term for a group of Ravens is 'An Unkindness' or a 'Constable' or 'Conspiracy', depending on what they are doing at the time. The term "murder" to describe a flock of ravens or crows has no linguistic justification. It's fanciful and presumably metaphorical. There is no valid ornithological genesis. There's nothing wrong with using it, as long as one appreciates and respects this distinction. There's no reason not to use this term. Excuse me.

[Mr. I exits and returns shortly with a woman]

C: Hm, so here we are and this is what it looks like. Are all the rooms like this one?

Mr. I: We cater to all sorts.

C: Thank you. I didn't want to be late. **[looks around and acknowledges Vincent]** New kid not here yet? **[Vincent indicates negative]** Figures. Well, in that case, since we are waiting for the new Aboriginal negotiator to show up, can you direct me to the bathroom?

Mr. I : If you were to go down this hall to the right, you would come to two doors. Neither door is marked but the door on the right will lead you through a passageway that will go past a series of grey doors. The 3rd grey door on your right is not marked but if you go through that door you will come to another passage with a series of grey doors. The 8th door on your right is not marked but if you go through that door...

C: Never mind. I can wait. So...Hello, I am...

Mr. I: Chastity Inez. You are the Provincial negotiator for this session. **[turning from Chastity to face Vincent and the audience]** She is 41 years old and a lesbian--with some exceptions-- **[slight indication to Vincent]** she has recently turned a wife against her husband, twisting the wife's perception of her spouse and then leaving the wife alone. She has one grown child, a daughter name Spring. Her name, Chastity, means 'meek' which is strange since she is very straight forward and considered by many to be brash. She makes no qualms or apologies regarding her appearance or her lifestyle or her opinions. Mr. Vincent Fox for Canada.

C: **[coming out of trance]** How did you?...I just...Thanks?

Mr. I: It was my pleasure.

C: Vincent.

V: Chastity.

Mr. I: You know each other.

C: Know each other....

V: We have worked together before.

Mr. I: Water. Phone, extra pads of paper and pens. Can I get you something else? Coffee? Tea? Juice? No. Nothing? If you will excuse me. There is one more to come. [he exits]

C: You know who it is for the First Nation?

V: Nah, They didn't even get around to sending over the name. They go through them so quick; I can't keep track of them. I haven't heard anything about this one. You?

C: Not a word. I was sort of thinking that there would have to be a postponement but it seems that they got someone. God bless them.

[pause]

C: That new guy there seems sort of strange. How did you find this place? Shadowbox, never heard of it. Is it new? **[notices empty frames]** it must be new.

V: Yeah. It is new. The host guy? He does seem strange but I can't put my finger on it. Their flyer just showed up at the office shortly after the... that unfortunate series of events. It is odd that it happened all in the same week. And we are so close to settling

this. I can just feel that we are right there. And, what happened to the other guy? Have you heard if he will be okay?

C: who?

V: The OTHER guy.

C: This new legal services guy?

V: No Not him [indicating Mr. I] The Other guy.

C: Oh, no. I don't.

V: Mister...Mister...whatever his name is. I am usually so good with names. You know I am but Mr. Itchy-something seems... odd.

C: well, I don't think that they pay them very much. Probably, just a little more than minimum wage and what can you expect for that. I mean some immigrant that hardly knows what they are doing.

V: No, that is not the strange thing about him. It isn't that he doesn't know stuff; it's that he seems to know too much.

C: oh, you mean with the introduction thing and all that?

V: Yeah.

C: Probably just Googled us and found out about us.

V: you think it was on Google?

C: you would be surprised what you can find out on Google.

V: I guess....So how have you been keeping?

C: Good, I just bought a new place. That new subdivision over in the valley there. You know the one that they took out of the land freeze and opened up for development.

V: Nice. How do you like it?

C: it's nice. I would invite you over but...

V: no, I understand. It could be awkward.

C: yes

V: Yes. [pause] Did you see those crows outside?

C: How could you miss them? They're everywhere. I hate the bastards. I am already having problems with them in my new neighborhood; they just seem to be trying to take over. What have you been up to?

V: I just got back into town from up north. I found the cutest little old Indian man that makes puppets. His wife does the traditional costumes and they put them in these painted boxes.

C: You brought it with you?

V: Well, I just flew in today for this meeting and this office is on the way home so I just left my stuff at my office and brought the present.

C: Oh, my that is adorable. What were you doing up there?

V: Just talking to another group of discontented beneficiaries of the Crown's honour and largesse. But look at this. The box that they put them in is very complicated. That is to keep the strings from getting tangled. Getting them into the box and out of the box is a bit of a pain but I have found from experience that if you don't put them in their proper place, things just turn into a mess. I went to this little shop that they have on the reserve. You know the type. The front of someone's house and they also deliver mail and sell the smokes and a little bit...

C: I know what you're talking about...so...

V: [during this talk, Vincent is unpacking the marionette. Once he gets the puppet out he starts to] So I was asking about a present to bring home. Because a lot of times when you show up at these places they will give you some traditional Indian trinket. I always give them to my daughter as a coming home present. She sort of expects that now, when I get home, I will have a present for her. Well they didn't give me anything and when I asked if there was a place to get something they told me about this store. It took about 20 minutes to find because they don't mark them properly. Unless you know where you're going you can't ever find these places and you don't want to ask because everyone is looking at you like you're a criminal or something. You know what I mean.

C: I do. It's like they see a white person and immediately think that we're there to take someone away. Not all white people work for the social services or the police.

V: I know. So, I don't ask anyone but find it and I knock on the door and they don't want to let me in. It's a public place. I have as much right as anyone else to be there but they don't want to let me in. I tell them that I am looking for a gift for my daughter and that one of the ladies on the Council suggested that they might have something. They ask me who and I can't remember. I mean the room was full of them so I describe her. And they

look at me like I am simple or something. I say older Indian woman with salt and pepper hair just past her shoulder and they just smirk at me.

C: Rude

V: I know. But they let me in and I see these and immediately know that I must have one. And this little beauty just drew me to her.

C: You are very good with that thing.

V: I know. I was amazed. I mean it was like she was helping me to move her.

C: The puppet was?

V: Well, I don't mean really helping me. But I have never done anything like this and suddenly I pick up this little gal and immediately I knew how to work it. She seems so life-like.

C: It is amazing what you can make her do. When you are working the strings they are almost human, almost. How do you get her to do those things?

V: I don't know. It is almost like she is helping me bring her to life.

[both are transfixed by the actions of the marionette. They hear people outside the door and the moment with the puppet is gone. Vincent tries to get it back in the box to no avail. Enter Mr. I with a woman]

V: Hello. I will just be a minute. I was just showing the present that I got for my daughter. [Vincent tries to get the puppet back into the box but is completely incapable] This is what happened with the others as well. I can't seem to get them back into the box once I let them out. The old man who made them and his wife could put them back in place no problem. I must have wrecked half his stock trying to put them back in. Excuse me [he concentrates on the puppet] Like she has a mind of her own. It's almost like she doesn't want to go back in. [laughs] Just have to coax it into this spot...like this...then take this here...and...it's like I was just saying to Chastity here about the crows. You just have to be calm and let natural course of things develop. **[unsuccessful frustrated struggle and he puts the puppet and box aside]** We were talking about the black mass of crows that have squatted out there on your doorstep Mr. Ishy-mee?

Mr. I: Ishkwekamig

C: I even think I saw a couple of those crows with white spots. Strangest thing.

Mr. I: Corvus Albicollis, the white raven or pica pica of the crow (corvidae) family commonly known as Magpies.

[long pause]

S: Hm, so here we are and this is what it looks like. Are all the rooms like this one?

Mr. I: We cater to all sorts

S: Can you direct me to the bathroom?

Mr. I : If you were to go down this hall to the left, you would come to two doors. Neither door is marked but the door on the left will lead you through a passageway that will go past a series of grey doors. The 2nd grey door on your left is not marked but if you go through that door you will come to another passage with a series of grey doors. The 9th door on your left is not marked but if you go through that door...

S: never mind. I can wait. **[turns to others in the room]** Hello, I am...

Mr. I: This is Mrs. Stella Mikwam. She will be the Aboriginal negotiator for this session. She is 55 years old and has spent the last ten years in an unsatisfying marriage to her first husband, Jonathan. They have no children as Stella has spent most of her adult life pursuing her career as a lawyer. Her name means 'glasses' which would be funny since she wears glasses except this name means drinking glasses not wearing glasses. She dyes her hair and will not be seen outside without her high heel shoes on. This also goes for her make-up. This is Mr. Vincent Fox for Canada and Ms. Chastity Inez for the Province.

S: **[coming out of trance]** Thanks? Did you? Why?

Mr. I: It's what I must do.

C: Ms. Mikwam, it is a pleasure. Chastity Inez. I am glad you could take over and make it here on such short notice. It was odd what happened to the Other fellow.

Mr. I: Water. Phone, extra pads of paper and pens. Can I get you something else? Coffee? Tea? Juice? No. Nothing?

[all decline]

V: Me and Chasitivity were just discussing the crows outside. Did you see all the crows outside? Man, what racket they make. Must be thousands of them out there. I hate them.

S: I saw. Excuse me. I really must go to the bathroom. **[indicating Mr. I]** could you show me?

Mr. I: Certainly.

[they exit. Vincent and Chastity look at each other, turn away, adjust papers but do not speak. Nothing is said until S returns with Mr. I the door locks perceptibly behind her.]

V: So... the crows. Black bastards. Excuse my French. They make such a racket. Keeping people awake in the morning. No respect for property. They just show up and think that they own the place. You should see the mess they make on my coup. No regard for property. If they know the hours that I had to put in just to afford that little pile of nuts and bolts... you'd think that they would show some regard but no... they just squawk and shit and drop crap everywhere. Garbage from the sky. They make me so angry. Don't they make you just want to strangle them? What do you think of them? I read an article in the Globe talking about how these MURDERS just show up out of nowhere in brand new subdivisions and try to take over.

Mr. I: Common Raven: *Corvus corax*, Forest Raven: *Corvus tasmanicus*, Little Raven: *Corvus mellori*, Thick-billed raven: *Corvus crassirostris*. They are all territorial but recognize the right and need of others of the same species to share their space. Their domicile loci.

C: What?

V: Latin names for ravens.

C: No I mean the crows not ravens

S: Same thing.

C: I don't think so.

S: They are the same thing. I'm pretty sure.

V: No, ravens are bigger and have different beaks.

V: They are all the same to me. This city is under siege by the bastards. Excuse my French. Fuckers don't know when to quit. Forgive my language. They just make me so angry. I can't help it. You know what I mean?

C: Maybe we should get to work.

V: there should be some way of controlling them. To protect them. If we are not careful they could overpopulate themselves and end up causing damage to their territory.

C: Crows don't have territory; they're just opportunistic little thieves. Trying to take over neighborhoods. But I am taking care of that. I have an appointment with an exterminator company this afternoon. They say they can get them out of my yard and keep them out of my yard. They promise with a written guarantee.

S: Should we get started?

C: Oh, yes. Of Course. Vincent are you ready to get going?

V: Sure. Where were we?

C: Well, my notes from the last meeting indicate that really, we were looking to have something in writing from the Aboriginal group, your predecessor, Ms. Mikwam. Vincent, is that your understanding as well?

V: Yes, I seem to recall that you were to provide us with a written position and I have no record of that written position so I can only assume that one was not provided. Ms.

S: Mikwam.

V: Yes, sorry, Ms. Mikwam, do you have anything prepared?

S: No

C: Oh. Well then, I am unsure how to proceed.

V: **[smiling]** That is troubling. This meeting was about the agreement that we had in place. We were to meet and sign off. Really, that was the gist of this whole meeting. That was why we worked so hard to get this place in time to save this meeting. And you are not ready. Well, I don't know. The last negotiator didn't leave you any notes?

C: Well then we will just have to go back over it again but I don't want this to take too long. I have an appointment with the exterminator this afternoon. I believe I speak for everyone here when I say we were all under the impression that this was a done deal. We thought you were ready to sign. **[shakes her head]** Why am I wasting my time?

V: Don't be like that Chastity. She didn't know and it must be hard enough coming into this sort of thing cold. Chastity sometimes gets a little edgy but she is really a very nice person. **[to Chastity]** Right? Right?

C: Maybe we could still get through it. I have our position. Vincent, do you have your position?

V: Of course.

C: Well, if we could get all of this down and signed off today, the day may be a little longer but I think that it would be worth it. Don't you? Vincent? Stella?

[Mr. I steps forward and all fall into a trance]

Mr. I: It is said that among the Anishinabe, we have had seven prophets. Seven prophets appeared to the people at the fire. The First Prophet told the people that in the time of the First Fire they would leave their homes by the sea and follow the sign of the megis¹⁰². They would travel west into strange lands and find an island in the shape of a turtle. This island will be linked to the purification of the earth. They would stop seven times to create villages but they would know that their journey was complete when they found food growing on the water. If they did not leave, there would be suffering and they would be destroyed. They would be pursued and attacked by many other nations along the way.

[all coming out of trance]

S: So, what are the terms you are suggesting?

C: Same as before.

S: And that was?

C: It is not up to the province to mother you people through the process.

V: Chastity is right. You really have to take responsibility for yourself. We can't be bailing you out, making you look good, every time you have a little crisis with your people. I mean, you have your system. We have ours. Yours doesn't seem to work very well. We help when and how we can but...Look at us. We all lost out on the previous space due to those unusual circumstances but we managed to keep it together and meet with our obligation to the process. We are here ready to proceed. We found this place and made all the arrangements. We even incurred the extra expenses hoping we could settle this today. All we ask is that you do the same.

S: There were problems with our funding.

C: You can't let that hold you back or expect us to step in and deal with your administrative difficulties.

S: The funding was coming from your two offices.

C: Not my department.

V: Be that as it may. The law is settled.

¹⁰² The megis is a cowrie shell, through the megis, Kiche Manatoo, Creator, breathed life into all beings.

C: That is true.

V: The courts have said that we are to cover the court cost. And we have provided you with loans to address these negotiations because...well, the courts say we should negotiate. Now, you must admit. We have done everything in our power to resolve this.

S: We did not get the funding.

C: Not our Department! Take it up with the proper departments. We are here to finish this up and I have an appointment to see a man about some crows.

V: The whole point of this is that we just want to give you something to take care of yourself. We both feel that this has been going on for far too long. It is time that you stand on your own two feet. You can't depend on us forever. You have to make it on your own.

C: Right. We need certainty of our ownership.

V: Absolutely. And yours too Stella.

C: The federal government is willing to pay us to give you some of our land.

V: What?

C: **[coily]** Vincent, we've been over this.

V: But I thought we were sharing the burden.

C: No you pay us for our land.

V: **[trying to use the same tactic as they both did on Stella]** I am sure I recall at the previous meeting we agreed to sharing.

C: **[one upping Vincent]** No. I have it right here, in my notes. **[holding blank paper]** See. It says so right here. You even initialed it.

S: Can I see that?

V: No!

C: No! **[pause]** Solicitor brief privilege. Sorry.

V: I guess since I initialed it and everything.

C: That's right. You pay us for our land that we give up some of the rights to.

S: Some of the rights?

C: Well, yes. I mean it is still in our province. We have to protect ourselves. And there are certain things that are not on the table. You understand. The Royal Proclamation^{iv} clearly establishes our rights as a province to the lands in question.

V: But the Papal Bull^v gives us the right...

C: Royal Proclamation.

V: Papal Bull.

C: Proclamation!

V: Papal!

C: Proclamation!!!

V: BULL!!!

[lights fade]

Scene 2

[lights up. The following exchange between Vincent and Chastity occurs like B&D, S& M foreplay. There is a sexual energy between the two as they play this game.]

V: Papal Bull.

C: Royal Proclamation.

V: Papal Bull!

C: Royal Proclamation!

V: Look, the Papal Bull, *Inter Caetera* is the major foundation upon which all of subsequent legal doctrines regarding claims of empire in the "new world" are developed. The bull assigned to Castile the exclusive right to acquire territory, to trade in, or even to approach the lands lying west of the meridian situated one hundred leagues west of the Azores and Cape Verde Islands. An exception was made, however, for any lands actually possessed by any other Christian prince beyond this meridian prior to Christmas, 1492.

C: But where does the Pope get the right to decide who has what land.

V: He is the voice of God!

C: He is the "servant of the servant of God" and what god?

V: We've been through this.

C: Who exactly is that anyway? The servant of the servant. Is that like a man's man?

V: I am not even going to justify that with a response. I am saying nothing. [pause] Even the messenger of the word of THE God can not be questioned.

C: Because their word is the truth?

V: Yes

C: Without question?

V: Without question.

C: No doubt that what he says is beyond reproach

V: No doubt.

C: What about when the Pope changes his mind? Did God make a mistake? Did God get it wrong or did the servant just misinterpret, and shouldn't have God caught that if he is all-knowing? Or did the servant get it right but the servant's servant ...and still then...All-knowing? Should have caught it. This is bureaucracy of the worst kind. **[Vincent is silenced and Chastity's 'domination' continues]** The truth is that the Royal Proclamation established the constitutional framework for the negotiation. It was the first address in a contract of the lands that HAD been found. It set out a basis for government administration in the North America.

V: **[affirming]** The Bull did that.

C: Over potential land? That can't count. The Proclamation is founded on the Treaty of PARIS after King George III WON the Seven Years' War. Conquest. France ceded the land to Britain. Add to that the deals with the Hudson Bay Company for lands that they had explored and settled. THAT is the first real claim to the lands of North America.

V: Hudson Bay? They had no right to sell the lands in the first place.

C: It was a gift and a purchase.

V: In 1763? The same year as the war ended?

C: So?

V: So, the 1493 Bull was over 350 years earlier. All the rights to the lands of the Americas was granted to

C: The Pope had no authority to grant those lands. He didn't even know they were there. It isn't like he dropped a flag.

V: George had no authority to grant those lands.

C: KING George bought those lands from the Hudson Bay Company and conquered the French for the rest.

V: **[sexually charged as he dominates]** And where did the HBC get them from? The King who had no right to give them away in the first place. **[turning to continue his conquest with Stella]** Ms. Mikwam. Can I call you Stella? What is your opinion? Just between friends. Proclamation or Bull?

S: I am not your friend but this is all Bull.

V: **[to Chastity]** See, told you. She's mine.

C: **[pouty]** But we are working together. Working hard to get through this. To a new relationship. You are here because you are an intelligent woman. Strong and committed. You must have some opinion where title lies. Just put in your two cents worth. Just for fun. Who is right?

S: I think you are both doing a fine job of proving neither of them could have anything like title to our land.

V: But the Bull....grants...

S: Rights to the "barbarous nations" of the new world so that they could "be overthrown and brought to the faith."

C: Pardon me?

S: That is what the Bull says right? It is power given to overthrow the barbarians.

V: I guess. Yes that is what it was about.

S: But you didn't overthrow the barbarians, did you?

V: That isn't what the intention was.

C: Oh, I love this. Don't stop Stella dear.

S: **[ignoring Chastity]** Oh, I am pretty sure it was the intention. But if you had managed to properly overthrow the barbarians than you wouldn't have to sit here today trying to negotiate these lands still and with someone who just might be a heathen savage.

V: The point is that it is recognized in international law.

C: The Royal Proclamation is recognized in international law. The Bulls are just absurd.

V: the Bulls?

C: Yes.

V: How are the Bulls absurd? Show me they are unreasonable.

C: Providing to Spain all lands to the "west and south" of some imaginary line and granting all lands to the east and south of that line to Portugal.

V: So. That just proves my point.

C: That doesn't prove your point. They hadn't even discovered the land yet. It was just based on speculation that there may be land. Even then it was just because Alexander the VI was in bed with Spain.

V: He was the voice of God. He...

C: ...was the pole that secularized the papacy.

V: It was in his power and he provided the written documents. Hundreds of years before your Proclamation.

C: International law says that the only way to acquire land is by conquest, treaty or acquiescence. The Bulls go completely counter to international law. And they knew that the people were civilized because it was to teach them about God.

V: Oh please. Don't be throwing 'law' at this discussion. Unclean hands. George the Third is in no position to be pointing fingers.

C: It was ceded by France after the war. That means conquest and follows the rules of international law. The Bulls of Donation were just a favour from a secular greedy pope.

V: Well, first off the French didn't own the lands the Portuguese and Dutch did. The French couldn't cede the land. Hudson Bay couldn't sell the lands back to them because the British couldn't gift them to little Nephew Rupert in the first place. They weren't theirs to give away and so you can not buy it back and then somehow make good title. **[turning to Stella]** Isn't that right?

C: No, legally you can't take possession of lands that might be there. You have to physically be present. **[turning to Stella]** Right?

S: Look, I said don't let me stop you guys. You are doing great on your own destroying your claims to Indian land. Funny thing, the only thing you can agree on is that it isn't Indian land. But you both make great arguments for it not being Crown land.

C: We didn't say that!

V: No. no. no, it is Crown land. That goes without saying.

Mr. I: The story continues, the Second Prophet told the Anishinabe that they would lose their way and that the dreams of a little boy would point the way back to the true path.

The Third Prophet was a small boy and said the Anishinabe would find the true path to the lands where food grows upon the water.

[coming out of trance]

V: Mr. Iggy-walen. No that isn't right. Is that right? Sorry, I am truly very good with normal names. I do have trouble with foreign languages though. Almost didn't get the job.

C: The languages test?

V: That's the one. So, tell me your name again, please.

Mr. I: Ishkwekamig. It is not foreign, it is Anishinabe mowin: indigenous to this country.

C: Yes, well...maybe this would be a good time to take a morning break. Vincent?

V: I think we made some great progress. Shall we step outside ladies? For a smoke? Breath of fresh air?

C: Are those sky rats still out there? I can't wait to meet my exterminator and do my part. Do you know they charge by the head? I think it will be worth it. Though, I am trying to get the municipality to pitch in. It is their problem too.

Mr. I: They are out there still. I believe the numbers have increased since your arrival.

V: There must be hundreds out there now! Thank God I put my car in the underground. They would destroy the paintjob on my Lex. It cost a lot to pay for parking but I think it's the only way to protect what's yours. Did you leave your cars out on the street?

C: No, of course not.

S: Yes.

V: Did you want to move it? Get it away from those ravens?

S: No, I think its fine.

C: well, we will just stay in here and maybe get finished a little earlier.

[Mr. I enters with a tray of food and drinks. Lights fade.]

Scene 3 103

[Lights up. Stella and Vincent are sitting at table with food talking and eating. Chastity and Mr. I are over at side table. Chastity is attempting to find some food that she can eat without success]

C: Thank God. I am so hungry. I missed breakfast because my alarm didn't go off so I had to rush to get here on time. That put me right in the middle of the commute which messes everything up. You know I can make it in about 35 minutes if I don't have to fight the traffic but after 6:30 you're fighting the traffic the whole day. Leave the house at 6 and I wiz right through, leave at 6:30 and you make it okay; leave at 6:45 and you're 45 minutes late. That doesn't make sense. Time doesn't make sense. How can it be that leaving 15 minutes later makes you 45 minutes late? By the time that I got to the office, I had just enough time to get over here. Seven Starbucks, three Second Cups and Five Tim Hortons BUT the lines were so big that I couldn't stop and pick something up. Not that I would get anything from the Timmys but I had to get here on time. Is there a second tray coming? This appears to be just a bunch of meat and bread.

Mr.I: No.

C: Yes, there's rye and white and some fried dough thing and pita and it looks like a sourdough.

Mr.I.: No, there is no second tray. This is it.

C: But I am a vegetarian.

Mr.I: There appears to have been a misunderstanding or mix-up but "that is in the past and I had nothing to do with this so let's not cry over the milk that someone else spilt. Make do and make the best of the situation. Acquiescence is best for all. There will be extra meat and bread for you others as Ms. Chastity Inez refuses her portion.

C: I don't know what you call this.

Mr.I: Lunch

C: But where are the vegetables, the dips, the meat alternatives? What kind of standard are you setting up here?

Mr.I: Mere subsistence.

¹⁰³ For a better understanding of the ludicrousness of the government positions see section 91 and 92 of the Constitution Act 1982 and the work of Peter Hogg with regard to the division of powers.

C: [puts bread on a plate including a piece of bannock. Speaking under her breath]
How they expect anyone to function when this is all we are getting to eat is beyond me.

Mr.I: The Bannock is fried in animal fat.

C: What?

Mr.I: This one is Bannock and is fried in animal fat. If you are a vegetarian...

[Chastity picks the bannock up with her hand and puts it back onto the tray. Walks to the main table and sits down with the others]

C: I first became a vegetarian when I was at college. Trying to make it on my own, I would only take extra cash from my parents when I was desperate. I showed them that I could make choices and budget. That I didn't need to live by their standard and I could make do. [to Mr. I] Are you sure that there is nothing to put on this bread? [he shakes his head in the negative and she continues] It's funny, the choices that you make. I continued to smoke but gave up meat. I guess the withdrawal affect was easier to stand. And it was sort of bohemian. Now it's kind of trendy. It was a way to rebel but my parents would have none of it, especially my mom. I would come home fro the holidays and my mom would make a roast. 'Special for me.' Every time. I would tell her, mom, I don't eat meat and she would say, "well, just have a little piece." I would say, no and would ask 'what's wrong with my roast?!' I would say, I can't tell you because I don't eat meat! I don't eat meat of any kind! I don't eat meat products, I don't eat meat by-products. She would look confused and offer, "what about some fish sticks? I could get some ready quick, no fuss." How do you make them understand? No meat. Nothing with eyes or a pulse nothing that had walked, or swam or flew. And my dad would say, "what about oysters? You love those and they don't walk or fly or swim." I would loose it. Every time. "NOTHING WITH A PULSE!" My dad would smile as he ate his roast with gobs of horseradish and my mom would look worried and there would be a long silence and we would all listen to the sound of my dad masticating the cow and my mom would brighten up and turn to me and say, "how about just a little gravy?" I would shake my head as she asked "what's wrong with my gravy?" Every time. Every time.

[there is an uncomfortable pause which Vincent breaks while still chewing]

C: Can we get back to work?

V: To reiterate our respective positions, the objective of the federal government is clear. Significant change must be made to ensure Aboriginal peoples have greater control over their lives. The most just, reasonable and practical mechanism to achieve this is through negotiated agreements. This has little to do with the courts demanding that we negotiate. We want to. It is imperative that we ... work towards achieving change in pragmatic and responsible ways. The challenge to make this a reality rests on the commitment of all of

us, Canadians generally, governments and Aboriginal peoples alike.¹⁰⁴ To this end we welcome the discussion regarding Aboriginal Self-Government however, we see only issues that are intrinsic to your Aboriginal-ness and not counter to our Canadian sovereignty. There are a number of matters not on the table. Just things that are not inherent aspects of your Aboriginal nationhood. These include:

- divorce
- labour/training
- administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws
- penitentiaries and parole

But for our part we are will to look at a division of power that allows a discussion of everything else.

S: Okay, I would like to start with the environmental control over traditional territories.

V: Okay maybe I spoke out of turn. What I meant to say is that the Federal government is willing to consider a transfer of powers on all matters except those which are intrinsic to your Aboriginal-ness and not counter to our Canadian sovereignty which includes:

- divorce
- labour/training
- administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws
- penitentiaries and parole; and

things that are necessary for the protection of sovereignty. Canadian Sovereignty. These would include things like:

- environmental protection, assessment and pollution prevention
- fisheries co-management
- migratory birds co-management
- gaming
- emergency preparedness

¹⁰⁴ Taken from a joint statement by Honourable Ronald A. Irwin, Minister of Indian Affairs and Northern Development and Honourable Anne McLellan, Federal Interlocutor for Métis and Non-Status Indians in the Federal Policy Guide, "ABORIGINAL SELF-GOVERNMENT- The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government." Available at http://www.aicn-inac.gc.ca/pr/pub/sg/plcy_e.html last checked October 24, 2007.

C: That is awfully big of you guys to consider that amount of power exchange. [to Stella] There really is a whole lot left open for discussion, right?

V: Thank you, we thought so.

C: No really, I think you need to pat yourself on the back for looking at such far reaching changes. Don't you think so Stella? I mean the idea of limiting Canada's Federal Sovereign power is very brave.

V: Oh wait, no, you must have misunderstood. We can not address ANY powers not intrinsic to your Aboriginal-ness and not counter to our Canadian sovereignty like defence or external relations so aside from:

- divorce
- labour/training
- administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws
- penitentiaries and parole
- environmental protection, assessment and pollution prevention
- fisheries co-management
- migratory birds co-management
- gaming
- emergency preparedness

we of course also meant:

- international/diplomatic relations and foreign policy
- national defence and security
- security of national borders
- international treaty-making
- immigration, naturalization and aliens
- international trade, including tariffs and import/export controls

S: well all right, let's just address what we can for now.

V: I think that is a great approach. We really want you to understand the inherent Aboriginal rights that section 35 of the our Constitution protects and I believe that the best way to do that is to just lay all our cards on the table. A Principled approach

C: [nodding] That is so Harvard Negotiation Project.

V: I love Fisher.

C: Roger Fisher is a God. I base everything I do in the negotiation world on exactly what he tells me to do.

V: Have you read Nirenberg? "Getting Through to People"?

C: No, rather unfortunate name. **[laughing]** hehehe. **[pause]**

V: Stop, that isn't even funny.

C: Just saying. Nuremberg not noted for its negotiation skill.

V: You're bad....his is an older approach and does the....

C: No I didn't

V: Okay, okay...I just...he's the one did all that "plateau bargaining"?

C: No he Isn't.

V: Plateau Bargaining? Never heard of it.

C: Heard of what?

V: Plateau Bargaining

C: What's that?

V: You said **[catching on]**

C: You were thinking it, too.

V: You asked if he...

C: No

V: I said... and you...

C: NO

V: Than you...

C: What? WHAT?

V: **[getting the hint]** Gone.

[Vincent and Chastity laugh maniacally]

S: Could we...

C: Sorry

V: **[put out that Stella has stopped this fun]** So as I was saying the Federal position is that it is essential that everything be open for negotiation except of course those things that everybody sees as issues of National interest within power management and regulation of the national economy.

S: What does that mean?

C: oh you know dear things like....what does that mean?

V: [to C] well for example:

- regulation of the national business framework, fiscal and monetary policy
- a central bank and the banking system
- bankruptcy and insolvency
- trade and competition policy
- intellectual property
- incorporation of federal corporations
- currency
- maintenance of national law and order and substantive

none of these are anything that anyone else would want. I mean they are just the re-inventing the wheel things right? We already have them in place so instead of forcing the First Nation to do all of that work, on their own, over again, those things will just stay with the Feds.

C: Well, that just makes good sense, doesn't it Stella?

S: Can we talk about our need for our own criminal court?

V: Absolutely, that is what we are here for. To hash this whole messy, little quandary out so that everyone is happy. We are more than willing to let you look at addressing issues that do not involve any potential jail time.

S: So what is left on the table?

V: Well, If someone had stolen something under \$500 and it was a first offense you guys could be all over that.

C: Oh, I'm sorry but I think that you are stepping on provincial toes.

S: We were thinking more along the lines of control over and creation of our own laws and courts.

C: No, we oversee the physical courts, my dear.

V: And Criminal law is very serious stuff. You have absolutely no experience in dealing with those nasty rapists and murderers. Those are the sort of people that we can not have just running around because we gave away power to protect our people. I mean this is a much bigger issue than just you and us. This is every man, woman and child in Canada. We have a duty to protect them and protect you from making a grave error in attempting to take on way more than you can... or should....right now. So let's just say that we won't be talking about certain things...right now. Things like criminal law, including:

- offences and penalties under the Criminal Code and other criminal laws
- emergencies and the "peace, order and good government" power
- protection of the health and safety of all Canadians

and really just a few of those other federal undertakings and powers that really define us as a sovereign state, including:

- broadcasting and telecommunications
- aeronautics
- navigation and shipping
- maintenance of national transportation systems
- postal service
- census and statistics¹⁰⁵

From the Federal perspective everything else is fair game and should be open for discussion and negotiation.

S: So if I have this right, from the Federal government, we can talk about ANYTHING except:

- divorce
- labour/training

¹⁰⁵ Federal Policy Guide, "ABORIGINAL SELF-GOVERNMENT- The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government." Available at http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html last checked October 24, 2007.

- administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws
- penitentiaries and parole
- environmental protection, assessment and pollution prevention
- fisheries co-management
- migratory birds co-management
- gaming
- emergency preparedness
- international/diplomatic relations and foreign policy
- national defence and security
- security of national borders
- international treaty-making
- immigration, naturalization and aliens
- international trade, including tariffs and import/export controls
- regulation of the national business framework, fiscal and monetary policy
- a central bank and the banking system
- bankruptcy and insolvency
- trade and competition policy
- intellectual property
- incorporation of federal corporations
- currency
- maintenance of national law and order and substantive offences and penalties under the Criminal Code and other criminal laws
- emergencies and the "peace, order and good government" power
- protection of the health and safety of all Canadians
- broadcasting and telecommunications
- aeronautics
- navigation and shipping
- maintenance of national transportation systems
- postal service
- census and statistics¹⁰⁶

¹⁰⁶ Federal Policy Guide, "ABORIGINAL SELF-GOVERNMENT-

The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government." Available at http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html

last checked October 24, 2007.

C: When you put it that way it does seem pretty long doesn't it? [Stella nods] Shame on you Vincent. That is like some trick. I, for one, think that you should re-look at the way you guys are proceeding. Good for you Stella for noticing that. These Fed guys can sometimes be really deceitful. I wouldn't have even noticed. Now, for our part, the Province, is open for anything. Our list is not as extensive as our Federal counterpart. We are looking at it more holistically. No tricks. We are willing to look at addressing any power designated as under provincial jurisdiction. [cocky] That's right. We feel that the best way to move forward is to just let everyone work together. However...there is a few points that we stand strongly behind, namely... these are the principles that guide our negotiations:

- Private property, in the province, should not be expropriated for treaty settlements.
 - Settlement lands to the First Nation will be in fee simple. (it just makes things simpler for everyone if we are all on the same plateau)
- The terms and conditions of leases and licenses should be respected (by you);
- fair compensation for unavoidable disruption of commercial interests should be insured. (Canadians need that)
- Hunting, fishing and recreational opportunities on Crown land should be ensured for all our people. (We can't have one group privileged over others)
- Parks and protected areas should be maintained for the use and benefit of all people.
- Province-wide standards of resource management and environmental protection should continue to apply. (We need to ensure that the high provincial standard for the environment is kept up by you through our regulatory regime.¹⁰⁷)
- Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.
- The existing tax exemptions for Aboriginal people should be phased out.
- Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and the province.¹⁰⁸

But in everything else we are open to negotiate.

V: That seems very fair. After all none of us are going anywhere.

¹⁰⁷ This is being carried out through application of the *First Nations Commercial and Industrial Development Act* ("FNCIDA")

¹⁰⁸ See Minister of Aboriginal Relations & Reconciliation- Treaty Principles at <http://www.gov.bc.ca/arr/treaty/negotiating/principles.html> last checked December 4, 2007.

C: That's right, so we really don't want anyone here to feel burdened or held back, Okay?

V: Absolutely. We're all here to stay. None of us is going anywhere.

S: Okay.

C: Good, there are just a few things that are not on the table. So, if we could not talk about those, that would be great. Otherwise we are willing to delegate anything you wish to discuss.

[throughout Stella's talk here, the laughter of the other two grows from silent snicker to full out guffaws. Stella never reacts.]

S: For our position:

1. We are sovereign:
 - a. We have been here for all time;
 - b. We have always been at least as civilized as your people;
 - c. We have never been defeated in any international conflict with you; and
 - d. we are human.
2. We base our participation in this process on the understanding that we have Aboriginal rights under your Constitution and that these rights should be acknowledged before negotiations begin.
3. We are capable of managing our own affairs and governing our own actions. This must include some of what you are both describing as off the table.
4. We are not looking for power that is derived from your sovereign powers:
 - a. We can not accept delegated powers to act;
 - b. We must take on these powers as one with a right to wield them; and
 - c. To this end, it is our position that the municipalities are under provincial jurisdiction and therefore can not have a place at this table. Those issues which they deem to bring forward are issues that need be addressed between you outside this space.
5. Finally, we are here to create a relationship with you. What is written here is the beginning of that co-relation. We are not signing an end but a beginning of an association that will last forever.

[both simultaneously stop laughing and have serious deadpan faces]

V: What is forever?

S: As long as the grass grows and the rivers flow. Just like the treaties of the past stated. We are looking at a relationship between governments. A binding relationship.

V: [lecherously] Really?

S: Yes really. We are looking for a relationship which demands that every member of the society has a duty to act as fiduciary to every other member of the society. We want to be joined as part of your society and you to us. This can only be managed when every member of the society recognizes every other member as beneficiary of their fiduciary duty. This is for all the individuals in Canada, the province and our nation combined.

C: How is that even possible?

S: We have been doing just that for all time. We use what could be called a Communal Contract.

C: Well I can't see how individuals are going to buy into this.

S: The system we use as Aboriginals demands that individuals oversee the activities of each other. The state only exists as long as there are people within it. In Canada, it is the land that makes up the state. So that even without any people, no Canadians, there is still Canada on the map. Because for you, maps are the truth. For us, we believe that people are the truth. We want to be equal partners in this relationship.

C: Equal partners? Well, that is certainly a wide swath that you hope to be cutting yourself.

S: Yes.

C: No more land. We just don't have any more land to give.

S: You haven't given any yet. Your demand is that we give up our land, our 'burden' on your title'. You know why your court found that burden? Because the land is ours.

C: Was.

S: Isn't that what we are here for? To make those determinations?

C: An increased footprint may be workable but we must have it in fee simple and regular fee simple. We can move some crown land into the private sector and expand your holdings providing that the Feds are willing to compensate us. Vincent?

V: I think we could find something. But we don't really have a pot of money that we set aside to 'pay the Indians again.'

S: Again?

V: Let us just get this done. [to Chastity] We can work this out.

C: No. [to Stella] You are being ridiculous! We need to bring something reasonable back to our people. This is all very disappointing. We were so close with you predecessor.

V: You know Stella, this constant demand for the land is totally unproductive.

C: Our land is not on the table.

S: So what are we doing here? You demand that we settle. You demand certainty! Certainty of contract. Certainty of ownership. Certainty of social order. These are things that my people can not give up and still be a sovereign nation with your nation. Land ownership and nationhood are your rules, not ours.

C&V: YOU ARE NOT A NATION!

V: We are the nation! Canada! You are at most a nation like community in our nation. Like Quebec, maybe. That is not on the record. That statement is In Camera.

C: [offended] Like Quebec?

V: No, of course not like Quebec. Quebec is a real government.

S: So then what does that mean? How are my people government?

V: Your people. Your people have been my people for hundreds of years. Let's stop this semantic game and get some work done. You understand contract and ownership and property. Let's cut this noble savage crap and get this done. I am tired of innocence game you play of 'we didn't know. That is not what we meant. We have been wrongly represented. You owe us. They owe us. We are owed.' You want to be treated like equals? Well, here it is. The deal is on the table. What happened in the past is the past. Let's leave it there shall we? Chastity. Does that work for you? Chastity.

C: Vincent, I think that that was a little hard. I don't think that there is any place at this table for that type of attitude. I am sorry Stella. That was inappropriate of my colleague. [pause] Stella.

S: I think that we are done here.

V: You have to give us some certainty that you're not coming back.

S: Then you have to give us a deal that settles all the issues. The schools, the Cultural genocide, the rape, the land all of it. Then you can have certainty.

C: We are just here for the land issue dear.

V: But we need certainty. Right? You have to give us that

S: I can't

V: Can't or won't. They are very different things.

C: We are all here representing the same people. Canadians in all their forms whether in the Federal branch, the Provincial branch or Aboriginal ...[she recognizes that branch is not the correct word and is at a loss.] ...Canadians.

S: The difference is you represent the government. Branches of Canadian bureaucracy. I represent my people.

V: Now Canadians, all Canadians freely elect their representatives. We [indicating each other] are hired just like you to provide representation as fiduciaries. Our role is the same.

S: No you are agents for the fiduciary state. I am agent for my fiduciaries and my beneficiaries but I am also fiduciary and beneficiary.

C: Then I am pretty sure you are in conflict!

S: Touché.

S: My fiduciary duty comes from my citizenship in my nation.

C: membership.

S: Citizenship with my nation.

V: Canada?

S: My Aboriginal nation.

C: Now that isn't a 'nation' in the true sense of the word.

V: Mmmh, more like the Quebec 'nation-within-a-nation' sort of deal. But not like Quebec.

S: We are here to sign Treaty!

V: Yes, but not real Treaty.

S: But that is what it is called. We sign treaty!

C: But Treaty can only be signed with sovereign nations. It is a contract between nations

S: Exactly.

V: Exactly.

S: So that proves that we are sovereign.

V: So that proves that you can't be sovereign. Otherwise we would recognize you.

C: Yes we have never tried to deny recognition of any state that was a valid state.

S: By whose standard is 'validity' determined?

V&C: Every one. Every legitimate nation has the task of recognizing legitimate nations. That's the law.

S: When I was very young a stranger came to the door of our house. The stranger was offering piano lessons FREE OF CHARGE. We were poor but we did have a Piano, a baby Grand piano that was given to my great grandfather by another Chief from down south.He raped me. We tried to tell but eventually we were reprimanded and my mother was forced to pay a fine for causing a disturbance. The piano was confiscated and eventually I heard the stranger bought it and was offering PIANO LESSONS FREE OF CHARGE to all the children in the neighbourhood.

V: What happen?

S: What do you mean what happened? He raped me, he stole the one thing that my family kept despite everything. That goddamn piano took up a whole room. We couldn't move somewhere else. There was no way we could afford to move it. It took up all of the space in the house. This is the room that my mom and dad sleep in (with Steve my little brother and the baby, this is the living room that me and my 2 sisters share and this is the room that the piano has all to itself. No other furniture except a bench for the piano. Do you have any idea how big a baby Grand piano is? 7 of us in 2 rooms and the piano sleeping by itself. I hated it. The only thing I hated more was losing it.

S: They always ask where are you from? As to indicate to you that it is not here. You ask to show I am not from here. I am an other. Other reserves breathe a sigh when they know that you are not trying to be from them, not trying to come home to their land, their homes. To a place that doesn't have enough jobs or land or homes or money for those that are already there. Those that already belong. And so you try to go where you are told. To the place that I am told I belong. The place I am from. And the same is true there. Only there, there is not sigh. I am there to be a part of the land. I am there to make my mark on my home. And there is not enough. And I am too far removed because I learned the white way and if I disagree, I am too white. If I have a different way, I am too white. I have forgot the 'old ways' or the 'true ways' or I am not 'grassroots' I am not Indian.

V : I know exactly how you feel. I watched my mother die.

S: I'm sorry. But you do not know exactly how I feel. I am sorry for your loss. But it is not the same. Where were we?

V: I watched my mother die.

S: Okay, I'm finished. You don't understand and I am sorry for taking up your time.

V: She died in a white room.

C: What does that have the...th... with anything?

V: She lies dying in a white room with white sheets. She has white tubes that run to white machines. It appears someone, everyone is trying to remove, hide the mess that could be, should be, is her death. It becomes hard to recognize death when all of the indicators are gone. Filters in the walls constantly 'clean' the air, taking away the true smell of the dying. Her clothes are washed out, not the real colours of the past. Her hair is white, the black pushed out by all the knowledge that she holds. My grandfather used to tell us that that was why peoples hair went white, because knowledge was pushing out the colour. The white, in her case, made visible only after the chemo. As I look at her and the white all around her, I see for the first time the affects of the attempts to make her white. She appears as the purest of whites encased in a sheet of very thin amber. When I was a boy someone gave me an ant that was locked in a chunk of amber, I was told that it was caught in tree sap tens of millions of years before but it looked perfect. Sealed up. Secured from decay. Secured against infection. Infection from the outside world. From us. From the White world.

Mr. I: Amber comes from the fossilized resin of extinct *Hymenaea protera*, an ancient leguminous tree that once grew throughout the Caribbean region, Mexico, Central and South America more than 30 million years ago. ¹⁰⁹

V: Just like they did all the work to remove the dying; made it nearly impossible to tell the living mom and the dead mom, they tried to hide the red mom from my mom.

C: what red mom?

V: My mom...Cree. She was Cree. She left the reservation 50 years before she died and worked that whole time to be white. But never quite made it. People would ask if she was Pilipino or Italian or part Chinese. And she would tell them she was Scottish or Irish or English (whatever the nationality of her latest husband). Never Indian, never Cree. As a little girl her job at home was to tell anyone that came to the door that there were no Indian kids here. She was to tell everyone that this family was a white family. She took her job very seriously. I know that other Indians have told her that she sold out, that her parents were traitors to her people. What do you do?

¹⁰⁹ see: D.A. Grimaldi, *Amber: Window to the Past*, 1996.

Mr.I: The Fourth Prophet told the Anishinabeg to expect a new race of people who had light skin. The future of the Anishinabeg would be known by the face these people would wear. If they brought only their knowledge and good-will they would be like brothers. If they came in brotherhood, there would be magnificent change joining these two peoples to form a potent nation. Two other nations would join to make four and together they would become the mightiest nation of all. However, if the new race wore the face of death that there would be struggle and despair. The Prophet informed that the face of death would very similar to the face of brotherhood. "If they come carrying a weapon and if they seem to be suffering, beware. Behind this face is greed. You shall recognize the face of death if the rivers are poisoned and the fish are unfit to eat."

[Mr. I exits]

C: We should really finish up lunch and get back to work.

[lights fade]

Scene 4

[lights up]

C: Why does it always come back to this? It is always the same. We get so far in these negotiations and you don't like what you hear and so you bring up the race card. It always becomes about how wronged you were. How bad we are. How, at this point, we should just concede that you are excellent and we are shit.

S: That is not what I was saying at all.

C: We have all had bad things happen in our lives you know. At some point you have to take responsibility for yourself. Brush yourself off and get on with your life. You could do quite well for yourself if you would just let it go.

S: Let what go?

C: All the baggage that you carry. Both of you, now. About your childhood and your parents and how it was wrong what happened to your grandparents. I am sure that if I was willing to continually wallow in the bad parts of the past I could find bad things that happened to my 'ancestors' too. That is just life.

S: Those are your choices to make.

C: Don't you see how much easier it could be if you just let it go and got on with your life.

S: I can't

C: Why not?

S: I have a duty. To make sure that things are put right.

C: It seems to me you have more of a S'n'M streak than a duty.

S: You think I like this? You think I want to be the one that constantly brings up this crap? Do you have any idea what it is like to be the one that sat in class and had to listen to people exhale and mumble every time you put up your hand; exasperated by the fact that you have yet another comment on the Indian land issue or the Indian residential issue or the Indian incarceration rate or Indian profiling or that Indian is only one part of Aboriginal and that Aboriginal is a term put on the Indians which is a term put on the people. Do you have any idea how hard it is to raise your hand again. And listen to the crowd talk loud enough to make sure you know that you are wrecking their class and their day and their legal education by constantly bring up this stuff that just doesn't matter.

V: So stop.

S: I can't

C: Why not?

S: I have obligations.

V: To who?

C: What about your obligation to yourself?

S: My obligation to me is the obligation to make sure that this gets dealt with....properly.

V: You know Stella, I feel like we have a bond. There's a connection that I feel towards you. **[Throughout the next portion Vincent absent-mindedly plays with the puppet as he speaks. As Vincent makes the puppet dance. Stella starts to dance. Vincent and Chastity look at each other confused and then laugh. Vincent continues.]** Maybe we should get to signing those agreements. **[He stops dancing the doll and Stella stops dancing]** Chastity, what do you think?

C: I think that is a great idea.

S: I don't have the agreement. I was never told to have it. We talked about this earlier.

C: Well, we could use this one...if you're willing to sign off on it.

S: I would have to read through the terms.

V: It just says what we have all agreed to.

S: We haven't agreed to anything.

[Vincent starts dancing the doll and Stella follows suit.]

C: I think this agreement will be fine. We have it all written down. It will be historic. The start of a new relationship.

S: No. I can't

C: Can't or won't. They are very different things.

S: **[Still dancing]** Stop doing this, please.

V: **[Continues manipulating the puppet. Chastity puts out the papers to be signed.]** I am not doing anything to you. I am just playing with my daughter's puppet. I can not

see how that is affecting you. I have given you the ability to make your own choices. We have given you the ability to make your own choices. It is time to choice. Do the right thing. Let's finish this up and go home. It is the best thing for everyone. You can see that. This is you own choices. You have free will. Just choose to sign the paper and go home.

S: STOP!

[Silence]

Mr. I: If I may. We can all be rational here. These positions that each of you take will not move us forward in any way. If I can make a suggestion. **[Mr. I takes out two additional puppets that represent a man and a woman in business suits. The three nod their ascent. Mr. I walks over to Vincent and takes the puppet, he walks over to the door and locks it. Turns back to the group while spinning the strings of the marionettes together as he speaks the next section.]** What you must look for is an agreement. A concept of right. This idea must be shared by all of you. It must be applied universally and be general. For now, let none of your own self-interest or party interest affect your decisions. This is how we must start this exercise. You are the voices of your respective publics and stepping out of here you provide the final word. This is your purpose for being here. To determine the publicly recognized rights and obligations of your respective sovereign. We must determine the distribution of resources that are moderately scarce. So let us work together to prioritize these conflicting claims.¹¹⁰ Are we all in agreement? [All agree] Good

V: So how do we start this process?

Mr. I: You have already begun. Each of you has been explaining to the others your position. Now see how they can fit together and alter each other.

V: Mine can not change. There is one sovereign state. We, in right of Canada, are willing to negotiate out a Treaty. But we must see some commitment by the Autochtone nation. To that end we need to see some good faith. If their nation will give up all claims to the 10, 000 hectares, all claims to be self-governing, all claims to their own jurisdiction, all claims to their own justice system, all claims to their own child welfare, all claims to make a good living, we will provide them with a parcel of land that they can

¹¹⁰ These are Rawls' concept of right considerations, namely:

1. general in form
2. universal in application
3. publicly recognized
4. final authority
5. prioritizes conflicting claims

own in something like fee-simple without the right to sell the land. We will provide them with health benefits like other Canadians; we will give them access to our schools. We will make them just like Canadians. They will finally be equal before the law.

S: We will still be Indian before the law.

Mr. I : You are a rational man, Mr. Fox. Let us for a moment look at the interest that brings all of you to these negotiation rooms time and again. Remove the trappings of what will be in the Treaty. Tell us again what you look for.

V: Well, none of us are going anywhere!

Mr. I: And what does the Federal government of Canada see as the final word that you would have the public recognize regarding your sovereignty?

V: We can't continue this factioning. We are a melting pot, a cultural mosaic and we should not have any one group stand out for special consideration. We are all equal and we need to start treating each other that way. From this day forward, an equal playing field.

S: What about the advantage you already have? You're placement in the system? The privilege that that comes with being who you are?

V: I would give it all up today if I could. But I can't. We have done everything in our power to help you people but for you it is never enough. Try to see it from our perspective for a change.

Mr. I : A fine sentiment. Ms. Mikwam? I put the same question to you. What is it the Autochthon government wants from the other parties?

S: Justice. Plain and simple.

Mr. I : Not simple and though the word comes unadorned, it is a concept that is hardly plain or straightforward. It seems that justice is what you all seek. Providing simply general considerations, what is it that the Autochthon nation seeks?

S: Acknowledgement. And our place.

C: See, that is what always stalls these talks. We can and offer solutions. Straight answer to the problems we all face and you people always show up with generalizations and innuendo. We need answers. Solutions that are succinct and to the point.

Mr. I.: These are all general and sweeping? Mr. Inez, can you show us how to be succinct and to the point?

C: What? Us? The province is simply looking for certainty. We are willing to discuss the handing over of power to anything within our jurisdiction. We are willing to delegate power the same way we do for any other municipality. They need to take responsibility for themselves and become part of the real governments of Canada. We want them to take control of the power we delegate to them. There you have it.

Mr.I: There we have it. If you will allow me? Here, I hold a veil; this veil has certain powers that may help us down the road that you all profess to wish to travel. This veil may help in providing resolution. **[during this portion he wraps the puppets in the veil and places it on a table]** But there are many steps through many veils, like Salomé's Dance of the Seven Veils which cost John the Baptist his head After the dance, Herod offered his niece a reward of her choice. Salome requested John the Baptist's head on a platter. ¹¹¹ Though all this was "good law" the law of the Romans here was not good. As Salome unveiled herself, she exposed the corruption of the Roman law, the same law that you base your 'equitable' positions on. What the Veil of Blindness allows is a form of bystander apathy, a construction of acceptable social norms that allow favour to certain interest groups. The only way that a rational person can allow this inequality to occur while maintaining the mantra of 'all people created equal' (whether before the law, the state or the God of your choice) is to not recognize the systemic inequality that is inherent within the system. This acceptance of the status quo is a form of 'willful blindness' and within a Social Contract that espouses equal opportunity, impartiality, fairness and justice, it is compulsory that a Veil of Blindness be pulled aside and the truth exposed. The Veil of Blindness, when in place, allows for the fallacy to be perpetuated despite the outcry from the Other with regard to what they perceive as obvious disparity and discrimination. Obvious to the Other but obscured to the dominant class. The blindness to the prejudices that all sides hold must be recognized—through the tangible veil--and then exposed to the light with the removal of the veil.

Mr. I : When next we open that door, your lots are cast. The positions that were set down here are set and you must each accept what waits for you in your new life.

V: What the hell does that mean?

Mr. I: If you have chosen a "fair and just settlement" as you have described through the process to this point, it means that you will step out into a fair and just world. One of your making. If you have not, then your lot will be determined by the order in which you leave the room.

V: I'm a simple guy, could you just tell me. I need facts; not all this mumbo jumbo stuff.

Mr.I: Those are the facts. The world outside that door is changed. It will look much like the "fair and just" world that you were all willing to share knowing your standing and position in it. The negotiations have stalled once again because some are not feeling

¹¹¹ Matthew 14, and Account by Flavius Josephus found in *Antiquities of the Jews (Antiquitates Judaicae* in Latin) was a work published about 93-94

equal treatment. The others can not see the problem. I have provided a way to see that problem.

S: Like “It’s a Wonderful Life”

Mr.I: I think more along the long of “A Christmas Carol”. This room is a sanctuary from the world outside. You do not know what is going on out there right now. This room may be a sanctuary for the outside world. You three rational people will be responsible for the fates of the clients you represent. You will all sign off on the agreement today. There must be unanimous consent to the terms. Agreed?

V: We have been hammering this out for years, I don’t know what makes you think that today will be any different.

C: We are negotiators and I have personally been negotiating this deal for fifteen years. I have diligently worked to get this deal to a place that all sides could agree to. Are you suggesting that there has been something dubious in my work?

Mr. I: I only offer another way. You have tried fighting this out. You have tried working in a principled form. You have looked at negotiations to address interests, these interests have proven to be various, convergent, divergent, shared, compatible, and conflicting. You have paid and been paid to learn integrative bargaining, mutual gain bargaining, interest based negotiation, problem-solving negotiations, win-win bargaining, principle-based negotiations, open bargaining and the interest-based approach finding common ground and points of agreement as well as gulf that take you further apart. I am asking for a chance. A chance to give you a chance to unanimously adopt principles of justice basing your reasoning on general considerations.

S: How?

Mr. I: We know how, we want chance. Sorry old Indian joke. I am an old Indian. Could not resist.

V: So this is all just a joke?

Mr. I: No that was a joke this is serious.

C: Well, I don’t have time to play games. This is costing the tax payers money and I will not see their hard earned dollars wasted on frivolous games. **[she goes to the door but the door is locked]** Open this door. Open this door now!

Mr.I: Without knowing anything about your own personal situation.

S: What the hell does that mean? I know my situation. We just spent the last couple of hours telling the personal shit that brought us here. Just open the door and let us out. This whole day has resolved nothing. That is what I have to go back and tell my people. Nothing. Nothing again.

Mr. I: Such personal knowledge might tempt you to select principles of justice that will give you an unfair advantage - rigging the rules of the game.

V: This is not a game!

Mr. I: Isn't it? Isn't it very much like the game with the Ravens. They are disturbing you so how do we fix this problem. The raven problem. But what about if that problem became your client? What if they became protected tomorrow?

C: The crows are a pest. No one in their right mind would want those dirty noisy, thieving vermin around. They are a pest! Destroying them isn't hurting anyone!

Mr. I: what about the Raven?

C: This is progress! They are a nuisance in my new neighbourhood. We have to make way for progress. Right. Right?

S: (getting on board) Their old neighbourhood for millennium.

V: Birds don't have neighbourhoods! They are nomadic, savage. They must make way for progress...they don't use the land and they must make room for progress....(coming on board) they are just animals...just....I don't know.

C: I do. I have an appointment with an exterminator at 5 and I am not paying him overtime for this game.

Mr. I: I will promise that you can leave on time to meet your exterminator. Unaware of the talents or status you will inherit at birth, you are disembodied souls; you will create that just society. Ghosts ignorant of the machines you will haunt. You will walk into this new culture as Osh-ki-bi-ma-di-zeeg¹¹², a new people, knowing that you might be dealt a lousy social or genetic hand. If you agree that this is a reasonable conception of justice, I ask you to imagine this social contract drawn up by yourselves as agents for yourself negotiating under a veil of ignorance.

C: Don't give me any more of your Elder Sage bullshit. This is all that Rawls crap except with feathers and drums. You can't help the hand that you are dealt.

Mr. I: No you can't and you are right, it is Rawlsian. The Veil of Ignorance. This procedure of reasoning without personal biases Rawls refers to as "The Veil of Ignorance." This is his theory of justice. I ask you to indulge me.

¹¹² "the new people"

V: But this is just a game.

Mr.I: Open the door and see. The world has changed, I assure you. Are you willing to risk that it will still benefit you the way it did?

S: Well, I'm game. It was never a pony ride for my anyway. And this ain't my first rodeo.

V: I'm in.

C: Well, I'm NOT! This is crazy. We are professionals. We have been sent here to do a job. I want to do that job!

V: Didn't you tell us that you have been trying to negotiate this for fifteen years? What are you afraid of? That it will be over?

C: I! ...I....I...III'mmm in.

Mr. I: excellent. Let us begin.

S: Wait. I worked damn hard to get here. Now if this is all for real where does that leave me? I don't want to be stuck with even more bullshit at the end of the day trying this crazy idea and letting your scheme pull me under even more.

Mr. I: That would be unjust. You have an opportunity, in this room to eliminate discrimination. You are blank slates but we have innate differences in ability and therefore social justice is especially acute. If people differ in talents, people might find themselves in poverty in a non-prejudiced society even if they applied themselves to the fullest. That is an injustice. And ought to be rectified. The poorest could be said to deserve their station in life because they must have chosen to do less with their standard-issue talents and it could be overlooked if we do not recognize that people differ in their abilities. However, are women, Aboriginals or any other moral minority unable? The Fifth Prophet said of the fifth fire, "As this fire loses its heat there will come among the people those who promise great joy and salvation. If the people accept this promise and abandon the old ways, the struggle will continue for many generations. This promise is false and it will nearly destroy those who accept it."

The Sixth Prophet told them it would be clear that the promise accepted was false. "Those who were deceived by this promise will take their children away from the teachings of the elders. The elders will lose their purpose in life and many will become sick and die. Many people will be out of balance and the cup of life will become the cup of grief."

Scene 5

V: This is really not going anywhere. I understand your position but the truth is, and we all know it, that our mandate does not give us the power to either sign or approve anything this radically different. Even if I were to personally concede a point and even though I accept that you are right and it should be the way you suggest, I don't have that power.

C: Vincent is right, the Crown is not in a position to do anything this drastic and far-reaching. You can see our position, can't you?

S: We have always seen your position. Me and my client just feel like we are not being listened to.

C: But be realistic. We have governments to run, constituents to consider.

S: So do we.

Mr.I: The Seventh Prophet was much younger than the others. He said that there would come a time when all the words of the others would come to pass. In this time there will arise Osh-ki-bi-ma-di-zeeg¹¹³, a new people who will emerge from the clouds of illusion. They will retrace the steps of the ancestors and regain the treasures of the Anishanabe. The stories, will return.

V: Stella, come on. You know that it is not the same.

Mr. I: What if it was?

S: I am not ready to play more games, Mr. Ishkwekamig

Mr. I: If I may tell you a story.

V: No, I'm done. **[Vincent attempts to open the door but it is locked. He pulls on the door, demanding he be let out]** What the? What is wrong with this door? Mr. Ishkwekamig, the door won't open.

Mr. I: The Prophecy of the Seven Fires¹¹⁴ Promises the Original Instructions will be returned and the magic of the spiral will be regained.

¹¹³ "the new people"

¹¹⁴ For a more in-depth version see The Mishomis Book by Edward Benton Banai. Produced and distributed by: Indian Country Communications, Inc., Rt. 2, Box 2900-A, Hayward, WI 54843

V: Open the door!

C: Why won't the door open?

Mr. I: They will ask the Elders for guidance. But there will be much silence. Some will have forgotten, some will be afraid, some will be angry and some will not answer from the Shadowland. In the beginning my people, the Anishinabeg lived by the waters of what is now called the Atlantic Ocean.

C: [to Stella] You guys need to open this door or we will have you both charged!

S: You guys? You guys! Oh, the Indians, is that right?

C: I just don't like these games you are playing and want it stopped!

S: Whaneetum!¹¹⁵

V: Speak properly.

S: That is proper! Proper Hulcamanum.

Mr. I: They were numerous and prosperous and life was good.

C: I am warning you both, I will report you to the Law Society.

S: Because the Indians are all in this together, right? Picking on you. Well, there are three of us in the room and don't forget it. Right, Vincent?

V: But I...

C: I've known Vincent for years. I trust him. He is not like... he isn't...he's...

S: A good Indian?

V: Open the door?

Mr. I: The door will open when we are done.

C: We are done Mister!

Mr. I: NO! [pause] You will see. And we will finish...Before your five o'clock.

¹¹⁵ Hulcamanum for 'White person'

V: Well, okay but I'm warning you.

Mr. I: If the New People find trust in the circle. Wisdom will be found in dreams of the night and of the day. The sacred fire will burn bright once again. And those that were spoken of by the Fourth Prophet will be given a choice between two paths. If they choose the right path the Seventh Fire will light the Eighth Fire and there would be brotherhood and sisterhood. If they choose the wrong path, then the destruction they brought with them will come back to destroy everyone.

My name is Ishkwekamig, Nindaya'te Ishkwekamig. In your English language it would roughly translate to "I am possibly the end of this World", the door is open... it is time for you to decide the path for the seventh fire.

[All stand waiting for another to make the next move. Mr. I unwraps the puppets and disentangles them. He hands the three puppets to Vincent one at a time.]

Mr. I: The choice is yours. Outside the world is waiting. The raven is waiting. The trickster is waiting.

S: So what happens now?

Mr.I: Now you agree or disagree. Resolve or waiver. This, you selected for your daughter. It is a part of your history. A part of her history. You should tell her that history. This is a gift from me to your daughter. She is the future. She can see the world unfettered by the baggage you all carry.

C: The world is the same, right? That was just an exercise to get us to think, right? The world hasn't really changed?

Mr.I: The world has changed, for you. You can not unring a bell. The world outside is new.

C: What if I don't want it changed?

Mr. I: Stay.

C: I can't stay here.

Mr.I: Then go.

[The 3 negotiators look from one to the other. The ticking of a clock becomes audible. The ticking becomes louder and seems to transform into the beating of a drum. No one moves]

Mr. I: The choice is yours. ombi-?ate¹¹⁶ Osh-ki-bi-ma-di-zeeg. Ombi-?ate
Oshkibimadieeb bimaa.¹¹⁷

C: What happens if we step out right now?

Mr. I: You will have certainty.

V: I need certainty. You have to give us that. I have to know that the world hasn't
changed.

Mr. I: Step out and you will know. You will be certain.

V: I can't

Mr. I: Can't or won't. They are very different things.

V: eya.

C: what?

S: it means yes.

V: My granny kokum would say that when things were straight forward and no one got it.
It means yes? [Stella and Mr. I nod] It means yes. It seems so simple right now. How
did you make it so simply?

Mr.I: The Raven. The Crow. The Algonquin have one word, Kagagi; the Cherokee
have one word: Kalanu; the Cree have one word: Kakakiw; Lakota one word: Kangi
Tanka; Navajo one word: Gaagii; But the West has many, in Latin *Corvus corax*
coronoides ruficollis cryptoleucus rhipidurus tasmanicus mellori boreus crassirostris
albicollis. All the raven, the crow.

C: (to Vincent) We done? (he nods then shakes his head) Is that what you meant? (he
nods and shrugs) Well, I'll be jiggered. *L'enfer, c'est les autres*.¹¹⁸

Mr.I: The time has come. This is the end. Time is running out.

S: What!

¹¹⁶ Anishinabemowin meaning 'it is up to you to decide'

¹¹⁷ "it is up to you to live the way of the new people" [this is not a reference to the Europeans but
the people spoken of by the 7th Prophet]

¹¹⁸ From Sartre's play *No Exit*, usually translated as "Hell is other people"

C: No.

V: More time.

S: Yes more time please.

Mr.I: Step out with your decision. With your certainty.

S: No

C: More time. Please.

V: Yes more time.

Mr.I: NO! [long pause] it is 4:30. You Ms. Inez have an exterminator to meet.

C: I'm going. The ravens still need to be controlled. They are still pests. I have to deal with the problem. I'm going. [long pause] L'enfer, c'est les autres.

S: L'enfer, c'est les autres.

V: [nodding]. L'enfer, c'est les autres.

Mr. I: (with a Quebecoise accent) Oui. L'enfer, c'est les autres. Hell is other people.

[There is silence. Only the ticking of the clock is heard. It increases in volume until it is the drum beat room the beginning and then the song is sung again, stops abruptly and the clock ticking continues and fades with the lights.]

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Appendix I

¹ *The English Translation of the Bull Inter Caetera*

Alexander, bishop, servant of the servants of God, to the illustrious sovereigns, our very dear son in Christ, Ferdinand, king, and our very dear daughter in Christ, Isabella, queen of Castile, Leon, Aragon, Sicily, and Granada, health and apostolic benediction. Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. Wherefore inasmuch as by the favor of divine clemency, we, though of insufficient merits, have been called to this Holy See of Peter, recognizing that as true Catholic kings and princes, such as we have known you always to be, and as your illustrious deeds already known to almost the whole world declare, you not only eagerly desire but with every effort, zeal, and diligence, without regard to hardships, expenses, dangers, with the shedding even of your blood, are laboring to that end; recognizing also that you have long since dedicated to this purpose your whole soul and all your endeavors -- as witnessed in these times with so much glory to the Divine Name in your recovery of the kingdom of Granada from the yoke of the Saracens -- we therefore are rightly led, and hold it as our duty, to grant you even of our own accord and in your favor those things whereby with effort each day more hearty you may be enabled for the honor of God himself and the spread of the Christian rule to carry forward your holy and praiseworthy purpose so pleasing to immortal God. We have indeed learned that you, who for a long time had intended to seek out and discover certain islands and mainlands remote and unknown and not hitherto discovered by others, to the end that you might bring to the worship of our Redeemer and the profession of the Catholic faith their residents and inhabitants, having been up to the present time greatly engaged in the siege and recovery of the kingdom itself of Granada were unable to accomplish this holy and praiseworthy purpose; but the said kingdom having at length been regained, as was pleasing to the Lord, you, with the wish to fulfill your desire, chose our beloved son, Christopher Columbus, a man assuredly worthy and of the highest recommendations and fitted for so great an undertaking, whom you furnished with ships and men equipped for like designs, not without the greatest hardships, dangers, and expenses, to make diligent quest for these remote and unknown mainlands and islands through the sea, where hitherto no one had sailed; and they at length, with divine aid and with the utmost diligence sailing in the ocean sea, discovered certain very remote islands and even mainlands that hitherto had not been discovered by others; wherein dwell very many peoples living in peace, and, as reported, going unclothed, and not eating flesh. Moreover, as your aforesaid envoys are of opinion, these very peoples living in the said islands and countries believe in one God, the Creator in heaven, and seem sufficiently disposed to embrace the Catholic faith and be trained in good morals. And it is hoped that, were they instructed, the name of the Savior, our Lord Jesus Christ, would easily be introduced into the said countries and islands. Also, on one of the chief of these aforesaid islands the said Christopher has already caused to be put together and built a fortress fairly equipped, wherein he has stationed as garrison certain Christians, companions of his, who are to make search for

other remote and unknown islands and mainlands. In the islands and countries already discovered are found gold, spices, and very many other precious things of divers kinds and qualities. Wherefore, as becomes Catholic kings and princes, after earnest consideration of all matters, especially of the rise and spread of the Catholic faith, as was the fashion of your ancestors, kings of renowned memory, you have purposed with the favor of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith. Hence, heartily commending in the Lord this your holy and praiseworthy purpose, and desirous that it be duly accomplished, and that the name of our Savior be carried into those regions, we exhort you very earnestly in the Lord and by your reception of holy baptism, whereby you are bound to our apostolic commands, and by the bowels of the mercy of our Lord Jesus Christ, enjoin strictly, that inasmuch as with eager zeal for the true faith you design to equip and despatch this expedition, you purpose also, as is your duty, to lead the peoples dwelling in those islands and countries to embrace the Christian religion; nor at any time let dangers or hardships deter you therefrom, with the stout hope and trust in your hearts that Almighty God will further your undertakings. And, in order that you may enter upon so great an undertaking with greater readiness and heartiness endowed with the benefit of our apostolic favor, we, of our own accord, not at your instance nor the request of anyone else in your regard, but of our own sole largess and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde. With this proviso however that none of the islands and mainlands, found and to be found, discovered and to be discovered, beyond that said line towards the west and south, be in the actual possession of any Christian king or prince up to the birthday of our Lord Jesus Christ just past from which the present year one thousand four hundred and ninety-three begins. And we make, appoint, and depute you and your said heirs and successors lords of them with full and free power, authority, and jurisdiction of every kind; with this proviso however, that by this our gift, grant, and assignment no right acquired by any Christian prince, who may be in actual possession of said islands and mainlands prior to the said birthday of our Lord Jesus Christ, is hereby to be understood to be withdrawn or taken away. Moreover we command you in virtue of holy obedience that, employing all due diligence in the premises, as you also promise -- nor do we doubt your compliance therein in accordance with your loyalty and royal greatness of spirit -- you should appoint to the aforesaid mainlands and islands worthy, God-fearing, learned, skilled, and experienced men, in order to instruct the aforesaid inhabitants and residents in the Catholic faith and train them in good morals. Furthermore, under penalty of excommunication late sententie to be incurred ipso facto,

should anyone thus contravene, we strictly forbid all persons of whatsoever rank, even imperial and royal, or of whatsoever estate, degree, order, or condition, to dare, without your special permit or that of your aforesaid heirs and successors, to go for the purpose of trade or any other reason to the islands or mainlands, found and to be found, discovered and to be discovered, towards the west and south, by drawing and establishing a line from the Arctic pole to the Antarctic pole, no matter whether the mainlands and islands, found and to be found, lie in the direction of India or toward any other quarter whatsoever, the said line to be distant one hundred leagues towards the west and south, as is aforesaid, from any of the islands commonly known as the Azores and Cape Verde; apostolic constitutions and ordinances and other decrees whatsoever to the contrary notwithstanding. We trust in Him from whom empires and governments and all good things proceed, that, should you, with the Lord's guidance, pursue this holy and praiseworthy undertaking, in a short while your hardships and endeavors will attain the most felicitous result, to the happiness and glory of all Christendom. But inasmuch as it would be difficult to have these present letters sent to all places where desirable, we wish, and with similar accord and knowledge do decree, that to copies of them, signed by the hand of a public notary commissioned therefor, and sealed with the seal of any ecclesiastical officer or ecclesiastical court, the same respect is to be shown in court and outside as well as anywhere else as would be given to these presents should they thus be exhibited or shown. Let no one, therefore, infringe, or with rash boldness contravene, this our recommendation, exhortation, requisition, gift, grant, assignment, constitution, deputation, decree, mandate, prohibition, and will. Should anyone presume to attempt this, be it known to him that he will incur the wrath of Almighty God and of the blessed apostles Peter and Paul. Given at Rome, at St. Peter's, in the year of the incarnation of our Lord one thousand four hundred and ninety-three, the fourth of May, and the first year of our pontificate.

Gratis by order of our most holy lord, the pope.

June. For the referendary, For J. Bufolinus,

A. de Mucciarellis. A. Santoseverino.

L. Podocatharus.

Taken at http://www.kwabs.com/bull_of_1493.html reviewed on August 20,

2007.

Appendix II
A ROYAL PROCLAMATION

October 7, 1763

WHEREAS we have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace, concluded at Paris the 10th Day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great Seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

First — The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissing; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45 Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Châteaus, and the Coast of the Gulph of St. Lawrence to Cape Rosières, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly — The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola River; to the Northward by a Line drawn from that part of the said River where the Chatahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly — The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast; from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi; to the Northward by a Line drawn due East from that part of the River Mississippi which lies in 31 Degrees North Latitude, to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly — The Government of Grenada, comprehending the Island of that name, together with the Grenadines, and the Islands of Dominico, St. Vincent's and Tobago. And to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands. We have thought fit,

with the advice of our said Privy Council to put all that Coast, from the River St. John's to Hudson's Streights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John's [now known as Prince Edward Island] and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia. We have also, with the advice of our ivy Council aforesaid, annexed to our Province of Georgia all the Lands lying between the Rivers Alatomaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling of our said new Governments, that our loving Subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof, We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government: And We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute, with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our Said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.

We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies upon the Continent, full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgments, as have been appointed and

settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies.

And Whereas, We are desirous, upon all occasions, to testify our Royal Sense and Approbation of the Conduct and bravery of the Officers and Soldiers of our Armies, and to reward the same, We do hereby command and empower our Governors of our said Three new Colonies, and all other our Governors of our several Provinces on the Continent of North America, to grant without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; viz.

To every Person having the Rank of a Field Officer—5,000 Acres.

To every Captain—3,000 Acres.

To every Subaltern or Staff Officer—2,000 Acres.

To every Non-Commission Officer—200 Acres.

To every Private Man—50 Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships of War in North America at the times of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds — We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions: as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid.

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.

And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement: but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie: and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose: And we do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And we do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such

Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And we do further expressly conjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the Crime was committed, of which they stand accused, in order to take their Trial for the same.

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

God Save the King

<http://www.ushistory.org/declaration/related/proc63.htm> last checked August 25,

2007

Appendix III
CONSTITUTION OF THE IROQUOIS NATIONS:
The Great Binding Law, Gayanashagowa

1. I am Dekanawidah and with the Five Nations' Confederate Lords I plant the Tree of Great Peace. I plant it in your territory, Adodarhoh, and the Onondaga Nation, in the territory of you who are Firekeepers.

I name the tree the Tree of the Great Long Leaves. Under the shade of this Tree of the Great Peace we spread the soft white feathery down of the globe thistle as seats for you, Adodarhoh, and your cousin Lords.

We place you upon those seats, spread soft with the feathery down of the globe thistle, there beneath the shade of the spreading branches of the Tree of Peace. There shall you sit and watch the Council Fire of the Confederacy of the Five Nations, and all the affairs of the Five Nations shall be transacted at this place before you, Adodarhoh, and your cousin Lords, by the Confederate Lords of the Five Nations.

2. Roots have spread out from the Tree of the Great Peace, one to the north, one to the east, one to the south and one to the west. The name of these roots is The Great White Roots and their nature is Peace and Strength.

If any man or any nation outside the Five Nations shall obey the laws of the Great Peace and make known their disposition to the Lords of the Confederacy, they may trace the Roots to the Tree and if their minds are clean and they are obedient and promise to obey the wishes of the Confederate Council, they shall be welcomed to take shelter beneath the Tree of the Long Leaves.

We place at the top of the Tree of the Long Leaves an Eagle who is able to see afar. If he sees in the distance any evil approaching or any danger threatening he will at once warn the people of the Confederacy.

3. To you Adodarhoh, the Onondaga cousin Lords, I and the other Confederate Lords have entrusted the caretaking and the watching of the Five Nations Council Fire.

When there is any business to be transacted and the Confederate Council is not in session, a messenger shall be dispatched either to Adodarhoh, Hononwirehtonh or Skanawatih, Fire Keepers, or to their War Chiefs with a full statement of the case desired to be considered. Then shall Adodarhoh call his cousin (associate) Lords together and consider whether or not the case is of sufficient importance to demand the attention of the Confederate Council. If so,

Adodarhoh shall dispatch messengers to summon all the Confederate Lords to assemble beneath the Tree of the Long Leaves.

When the Lords are assembled the Council Fire shall be kindled, but not with chestnut wood¹, and Adodarhoh shall formally open the Council.

Then shall Adodarhoh and his cousin Lords, the Fire Keepers, announce the subject for discussion.

The Smoke of the Confederate Council Fire shall ever ascend and pierce the sky so that other nations who may be allies may see the Council Fire of the Great Peace.

Adodarhoh and his cousin Lords are entrusted with the Keeping of the Council Fire.

4. You, Adodarhoh, and your thirteen cousin Lords, shall faithfully keep the space about the Council Fire clean and you shall allow neither dust nor dirt to accumulate. I lay a Long Wing before you as a broom. As a weapon against a crawling creature I lay a staff with you so that you may thrust it away from the Council Fire. If you fail to cast it out then call the rest of the United Lords to your aid.

5. The Council of the Mohawk shall be divided into three parties as follows: Tekarihoken, Ayonhwhathah and Shadokariwade are the first party; Sharenhowaneh, Deyoenhegwenh and Oghrenghrehgowah are the second party, and Dehennakrineh, Aghstawenserenthah and Shoskoharowaneh are the third party. The third party is to listen only to the discussion of the first and second parties and if an error is made or the proceeding is irregular they are to call attention to it, and when the case is right and properly decided by the two parties they shall confirm the decision of the two parties and refer the case to the Seneca Lords for their decision. When the Seneca Lords have decided in accord with the Mohawk Lords, the case or question shall be referred to the Cayuga and Oneida Lords on the opposite side of the house.

6. I, Dekanawidah, appoint the Mohawk Lords the heads and the leaders of the Five Nations Confederacy. The Mohawk Lords are the foundation of the Great Peace and it shall, therefore, be against the Great Binding Law to pass measures in the Confederate Council after the Mohawk Lords have protested against them.

No council of the Confederate Lords shall be legal unless all the Mohawk Lords are present.

7. Whenever the Confederate Lords shall assemble for the purpose of holding a council, the Onondaga Lords shall open it by expressing their gratitude

to their cousin Lords and greeting them, and they shall make an address and offer thanks to the earth where men dwell, to the streams of water, the pools, the springs and the lakes, to the maize and the fruits, to the medicinal herbs and trees, to the forest trees for their usefulness, to the animals that serve as food and give their pelts for clothing, to the great winds and the lesser winds, to the Thunderers, to the Sun, the mighty warrior, to the moon, to the messengers of the Creator who reveal his wishes and to the Great Creator who dwells in the heavens above, who gives all the things useful to men, and who is the source and the ruler of health and life.

Then shall the Onondaga Lords declare the council open.

The council shall not sit after darkness has set in.

8. The Firekeepers shall formally open and close all councils of the Confederate Lords, and they shall pass upon all matters deliberated upon by the two sides and render their decision.

Every Onondaga Lord (or his deputy) must be present at every Confederate Council and must agree with the majority without unwarrantable dissent, so that a unanimous decision may be rendered.

If Adodarhoh or any of his cousin Lords are absent from a Confederate Council, any other Firekeeper may open and close the Council, but the Firekeepers present may not give any decisions, unless the matter is of small importance.

9. All the business of the Five Nations Confederate Council shall be conducted by the two combined bodies of Confederate Lords. First the question shall be passed upon by the Mohawk and Seneca Lords, then it shall be discussed and passed by the Oneida and Cayuga Lords. Their decisions shall then be referred to the Onondaga Lords, (Fire Keepers) for final judgement.

The same process shall obtain when a question is brought before the council by an individual or a War Chief.

10. In all cases the procedure must be as follows: when the Mohawk and Seneca Lords have unanimously agreed upon a question, they shall report their decision to the Cayuga and Oneida Lords who shall deliberate upon the question and report a unanimous decision to the Mohawk Lords. The Mohawk Lords will then report the standing of the case to the Firekeepers, who shall render a decision as they see fit in case of a disagreement by the two bodies, or confirm the decisions of the two bodies if they are identical. The Fire Keepers shall then report their decision to the Mohawk Lords who shall announce it to the open council.

11. If through any misunderstanding or obstinacy on the part of the Fire Keepers, they render a decision at variance with that of the Two Sides, the Two Sides shall reconsider the matter and if their decisions are jointly the same as before they shall report to the Fire Keepers who are then compelled to confirm their joint decision.

12. When a case comes before the Onondaga Lords (Fire Keepers) for discussion and decision, Adodarho shall introduce the matter to his comrade Lords who shall then discuss it in their two bodies. Every Onondaga Lord except Hononwiretonh shall deliberate and he shall listen only. When a unanimous decision shall have been reached by the two bodies of Fire Keepers, Adodarho shall notify Hononwiretonh of the fact when he shall confirm it. He shall refuse to confirm a decision if it is not unanimously agreed upon by both sides of the Fire Keepers.

13. No Lord shall ask a question of the body of Confederate Lords when they are discussing a case, question or proposition. He may only deliberate in a low tone with the separate body of which he is a member.

14. When the Council of the Five Nation Lords shall convene they shall appoint a speaker for the day. He shall be a Lord of either the Mohawk, Onondaga or Seneca Nation.

The next day the Council shall appoint another speaker, but the first speaker may be reappointed if there is no objection, but a speaker's term shall not be regarded more than for the day.

15. No individual or foreign nation interested in a case, question or proposition shall have any voice in the Confederate Council except to answer a question put to him or them by the speaker for the Lords.

16. If the conditions which shall arise at any future time call for an addition to or change of this law, the case shall be carefully considered and if a new beam seems necessary or beneficial, the proposed change shall be voted upon and if adopted it shall be called, "Added to the Rafters".

Rights, Duties and Qualifications of Lords

17. A bunch of a certain number of shell (wampum) strings each two spans in length shall be given to each of the female families in which the Lordship titles are vested. The right of bestowing the title shall be hereditary in the family of the females legally possessing the bunch of shell strings and the strings shall be the token that the females of the family have the proprietary right to the Lordship title for all time to come, subject to certain restrictions hereinafter mentioned.

18. If any Confederate Lord neglects or refuses to attend the Confederate Council, the other Lords of the Nation of which he is a member shall require their

War Chief to request the female sponsors of the Lord so guilty of defection to demand his attendance of the Council. If he refuses, the women holding the title shall immediately select another candidate for the title.

No Lord shall be asked more than once to attend the Confederate Council.

19. If at any time it shall be manifest that a Confederate Lord has not in mind the welfare of the people or disobeys the rules of this Great Law, the men or women of the Confederacy, or both jointly, shall come to the Council and upbraid the erring Lord through his War Chief. If the complaint of the people through the War Chief is not heeded the first time it shall be uttered again and then if no attention is given a third complaint and warning shall be given. If the Lord is contumacious the matter shall go to the council of War Chiefs. The War Chiefs shall then divest the erring Lord of his title by order of the women in whom the titleship is vested. When the Lord is deposed the women shall notify the Confederate Lords through their War Chief, and the Confederate Lords shall sanction the act. The women will then select another of their sons as a candidate and the Lords shall elect him. Then shall the chosen one be installed by the Installation Ceremony.

When a Lord is to be deposed, his War Chief shall address him as follows:

"So you, _____, disregard and set at naught the warnings of your women relatives. So you fling the warnings over your shoulder to cast them behind you.

"Behold the brightness of the Sun and in the brightness of the Sun's light I depose you of your title and remove the sacred emblem of your Lordship title. I remove from your brow the deer's antlers, which was the emblem of your position and token of your nobility. I now depose you and return the antlers to the women whose heritage they are."

The War Chief shall now address the women of the deposed Lord and say:

"Mothers, as I have now deposed your Lord, I now return to you the emblem and the title of Lordship, therefore repossess them."

Again addressing himself to the deposed Lord he shall say:

"As I have now deposed and discharged you so you are now no longer Lord. You shall now go your way alone, the rest of the people of the Confederacy will not go with you, for we know not the kind of mind that possesses you. As the Creator has nothing to do with wrong so he will not come to rescue you from the precipice of destruction in which you have cast yourself. You shall never be restored to the position which you once occupied."

Then shall the War Chief address himself to the Lords of the Nation to which the deposed Lord belongs and say:

"Know you, my Lords, that I have taken the deer's antlers from the brow of _____, the emblem of his position and token of his greatness."

The Lords of the Confederacy shall then have no other alternative than to sanction the discharge of the offending Lord.

20. If a Lord of the Confederacy of the Five Nations should commit murder the other Lords of the Nation shall assemble at the place where the corpse lies and prepare to depose the criminal Lord. If it is impossible to meet at the scene of the crime the Lords shall discuss the matter at the next Council of their Nation and request their War Chief to depose the Lord guilty of crime, to "bury" his women relatives and to transfer the Lordship title to a sister family.

The War Chief shall address the Lord guilty of murder and say:

"So you, _____ (giving his name) did kill _____ (naming the slain man), with your own hands! You have committed a grave sin in the eyes of the Creator. Behold the bright light of the Sun, and in the brightness of the Sun's light I depose you of your title and remove the horns, the sacred emblems of your Lordship title. I remove from your brow the deer's antlers, which was the emblem of your position and token of your nobility. I now depose you and expel you and you shall depart at once from the territory of the Five Nations Confederacy and nevermore return again. We, the Five Nations Confederacy, moreover, bury your women relatives because the ancient Lordship title was never intended to have any union with bloodshed. Henceforth it shall not be their heritage. By the evil deed that you have done they have forfeited it forever.."

The War Chief shall then hand the title to a sister family and he shall address it and say:

"Our mothers, _____, listen attentively while I address you on a solemn and important subject. I hereby transfer to you an ancient Lordship title for a great calamity has befallen it in the hands of the family of a former Lord. We trust that you, our mothers, will always guard it, and that you will warn your Lord always to be dutiful and to advise his people to ever live in love, peace and harmony that a great calamity may never happen again."

21. Certain physical defects in a Confederate Lord make him ineligible to sit in the Confederate Council. Such defects are infancy, idiocy, blindness, deafness, dumbness and impotency. When a Confederate Lord is restricted by any of these conditions, a deputy shall be appointed by his sponsors to act for him, but in case of extreme necessity the restricted Lord may exercise his rights.

22. If a Confederate Lord desires to resign his title he shall notify the Lords of the Nation of which he is a member of his intention. If his coactive Lords refuse to accept his resignation he may not resign his title.

A Lord in proposing to resign may recommend any proper candidate which recommendation shall be received by the Lords, but unless confirmed and nominated by the women who hold the title the candidate so named shall not be considered.

23. Any Lord of the Five Nations Confederacy may construct shell strings (or wampum belts) of any size or length as pledges or records of matters of national or international importance.

When it is necessary to dispatch a shell string by a War Chief or other messenger as the token of a summons, the messenger shall recite the contents of the string to the party to whom it is sent. That party shall repeat the message and return the shell string and if there has been a summons he shall make ready for the journey.

Any of the people of the Five Nations may use shells (or wampum) as the record of a pledge, contract or an agreement entered into and the same shall be binding as soon as shell strings shall have been exchanged by both parties.

24. The Lords of the Confederacy of the Five Nations shall be mentors of the people for all time. The thickness of their skin shall be seven spans -- which is to say that they shall be proof against anger, offensive actions and criticism. Their hearts shall be full of peace and good will and their minds filled with a yearning for the welfare of the people of the Confederacy. With endless patience they shall carry out their duty and their firmness shall be tempered with a tenderness for their people. Neither anger nor fury shall find lodgement in their minds and all their words and actions shall be marked by calm deliberation.

25. If a Lord of the Confederacy should seek to establish any authority independent of the jurisdiction of the Confederacy of the Great Peace, which is the Five Nations, he shall be warned three times in open council, first by the women relatives, second by the men relatives and finally by the Lords of the Confederacy of the Nation to which he belongs. If the offending Lord is still obdurate he shall be dismissed by the War Chief of his nation for refusing to conform to the laws of the Great Peace. His nation shall then install the candidate nominated by the female name holders of his family.

26. It shall be the duty of all of the Five Nations Confederate Lords, from time to time as occasion demands, to act as mentors and spiritual guides of their people and remind them of their Creator's will and words. They shall say:

"Hearken, that peace may continue unto future days!

"Always listen to the words of the Great Creator, for he has spoken.

"United people, let not evil find lodging in your minds.

"For the Great Creator has spoken and the cause of Peace shall not become old.

"The cause of peace shall not die if you remember the Great Creator."

Every Confederate Lord shall speak words such as these to promote peace.

27. All Lords of the Five Nations Confederacy must be honest in all things. They must not idle or gossip, but be men possessing those honorable qualities that make true royaneh. It shall be a serious wrong for anyone to lead a Lord into trivial affairs, for the people must ever hold their Lords high in estimation out of respect to their honorable positions.

28. When a candidate Lord is to be installed he shall furnish four strings of shells (or wampum) one span in length bound together at one end. Such will constitute the evidence of his pledge to the Confederate Lords that he will live according to the constitution of the Great Peace and exercise justice in all affairs.

When the pledge is furnished the Speaker of the Council must hold the shell strings in his hand and address the opposite side of the Council Fire and he shall commence his address saying: "Now behold him. He has now become a Confederate Lord. See how splendid he looks." An address may then follow. At the end of it he shall send the bunch of shell strings to the opposite side and they shall be received as evidence of the pledge. Then shall the opposite side say:

"We now do crown you with the sacred emblem of the deer's antlers, the emblem of your Lordship. You shall now become a mentor of the people of the Five Nations. The thickness of your skin shall be seven spans -- which is to say that you shall be proof against anger, offensive actions and criticism. Your heart shall be filled with peace and good will and your mind filled with a yearning for the welfare of the people of the Confederacy. With endless patience you shall carry out your duty and your firmness shall be tempered with tenderness for your people. Neither anger nor fury shall find lodgement in your mind and all your words and actions shall be marked with calm deliberation. In all of your deliberations in the Confederate Council, in your efforts at law making, in all your official acts, self interest shall be cast into oblivion. Cast not over your shoulder behind you the warnings of the nephews and nieces should they chide you for any error or wrong you may do, but return to the way of the Great Law which is just and right. Look and listen for the welfare of the whole people and have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground -- the unborn of the future Nation."

29. When a Lordship title is to be conferred, the candidate Lord shall furnish the cooked venison, the corn bread and the corn soup, together with other necessary things and the labor for the Conferring of Titles Festival.

30. The Lords of the Confederacy may confer the Lordship title upon a candidate whenever the Great Law is recited, if there be a candidate, for the Great Law speaks all the rules.

31. If a Lord of the Confederacy should become seriously ill and be thought near death, the women who are heirs of his title shall go to his house and lift his crown of deer antlers, the emblem of his Lordship, and place them at one side. If the Creator spares him and he rises from his bed of sickness he may rise with the antlers on his brow.

The following words shall be used to temporarily remove the antlers:

"Now our comrade Lord (or our relative Lord) the time has come when we must approach you in your illness. We remove for a time the deer's antlers from your brow, we remove the emblem of your Lordship title. The Great Law has decreed that no Lord should end his life with the antlers on his brow. We therefore lay them aside in the room. If the Creator spares you and you recover from your illness you shall rise from your bed with the antlers on your brow as before and you shall resume your duties as Lord of the Confederacy and you may labor again for the Confederate people."

32. If a Lord of the Confederacy should die while the Council of the Five Nations is in session the Council shall adjourn for ten days. No Confederate Council shall sit within ten days of the death of a Lord of the Confederacy.

If the Three Brothers (the Mohawk, the Onondaga and the Seneca) should lose one of their Lords by death, the Younger Brothers (the Oneida and the Cayuga) shall come to the surviving Lords of the Three Brothers on the tenth day and console them. If the Younger Brothers lose one of their Lords then the Three Brothers shall come to them and console them. And the consolation shall be the reading of the contents of the thirteen shell (wampum) strings of Ayonhwhathah. At the termination of this rite a successor shall be appointed, to be appointed by the women heirs of the Lordship title. If the women are not yet ready to place their nominee before the Lords the Speaker shall say, "Come let us go out." All shall leave the Council or the place of gathering. The installation shall then wait until such a time as the women are ready. The Speaker shall lead the way from the house by saying, "Let us depart to the edge of the woods and lie in waiting on our bellies."

When the women title holders shall have chosen one of their sons the Confederate Lords will assemble in two places, the Younger Brothers in one place and the Three Older Brothers in another. The Lords who are to console the mourning Lords shall choose one of their number to sing the Pacification Hymn as they journey to the sorrowing Lords. The singer shall lead the way and the Lords and the people shall follow. When they reach the sorrowing Lords they

shall hail the candidate Lord and perform the rite of Conferring the Lordship Title.

33. When a Confederate Lord dies, the surviving relatives shall immediately dispatch a messenger, a member of another clan, to the Lords in another locality. When the runner comes within hailing distance of the locality he shall utter a sad wail, thus: "Kwa-ah, Kwa-ah, Kwa-ah!" The sound shall be repeated three times and then again and again at intervals as many times as the distance may require. When the runner arrives at the settlement the people shall assemble and one must ask him the nature of his sad message. He shall then say, "Let us consider." Then he shall tell them of the death of the Lord. He shall deliver to them a string of shells (wampum) and say "Here is the testimony, you have heard the message." He may then return home.

It now becomes the duty of the Lords of the locality to send runners to other localities and each locality shall send other messengers until all Lords are notified. Runners shall travel day and night.

34. If a Lord dies and there is no candidate qualified for the office in the family of the women title holders, the Lords of the Nation shall give the title into the hands of a sister family in the clan until such a time as the original family produces a candidate, when the title shall be restored to the rightful owners.

No Lordship title may be carried into the grave. The Lords of the Confederacy may dispossess a dead Lord of his title even at the grave.

Election of Pine Tree Chiefs

35. Should any man of the Nation assist with special ability or show great interest in the affairs of the Nation, if he proves himself wise, honest and worthy of confidence, the Confederate Lords may elect him to a seat with them and he may sit in the Confederate Council. He shall be proclaimed a 'Pine Tree sprung up for the Nation' and shall be installed as such at the next assembly for the installation of Lords. Should he ever do anything contrary to the rules of the Great Peace, he may not be deposed from office -- no one shall cut him down -- but thereafter everyone shall be deaf to his voice and his advice. Should he resign his seat and title no one shall prevent him. A Pine Tree chief has no authority to name a successor nor is his title hereditary.

Names, Duties and Rights of War Chiefs

36. The title names of the Chief Confederate Lords' War Chiefs shall be:

Ayonwaehs, War Chief under Lord Takarihoken (Mohawk)
Kahonwahdironh, War Chief under Lord Odatshedeh (Oneida)
Ayendes, War Chief under Lord Adodarhoh (Onondaga)
Wenenhs, War Chief under Lord Dekayonh (Cayuga)
Shoneradowaneh, War Chief under Lord Skanyadariyo (Seneca)

The women heirs of each head Lord's title shall be the heirs of the War Chief's title of their respective Lord.

The War Chiefs shall be selected from the eligible sons of the female families holding the head Lordship titles.

37. There shall be one War Chief for each Nation and their duties shall be to carry messages for their Lords and to take up the arms of war in case of emergency. They shall not participate in the proceedings of the Confederate Council but shall watch its progress and in case of an erroneous action by a Lord they shall receive the complaints of the people and convey the warnings of the women to him. The people who wish to convey messages to the Lords in the Confederate Council shall do so through the War Chief of their Nation. It shall ever be his duty to lay the cases, questions and propositions of the people before the Confederate Council.

38. When a War Chief dies another shall be installed by the same rite as that by which a Lord is installed.

39. If a War Chief acts contrary to instructions or against the provisions of the Laws of the Great Peace, doing so in the capacity of his office, he shall be deposed by his women relatives and by his men relatives. Either the women or the men alone or jointly may act in such a case. The women title holders shall then choose another candidate.

40. When the Lords of the Confederacy take occasion to dispatch a messenger in behalf of the Confederate Council, they shall wrap up any matter they may send and instruct the messenger to remember his errand, to turn not aside but to proceed faithfully to his destination and deliver his message according to every instruction.

41. If a message borne by a runner is the warning of an invasion he shall whoop, "Kwa-ah, Kwa-ah," twice and repeat at short intervals; then again at a longer interval.

If a human being is found dead, the finder shall not touch the body but return home immediately shouting at short intervals, "Koo-weh!"

Clans and Consanguinity

42. Among the Five Nations and their posterity there shall be the following original clans: Great Name Bearer, Ancient Name Bearer, Great Bear, Ancient Bear, Turtle, Painted Turtle, Standing Rock, Large Plover, Deer, Pigeon Hawk, Eel, Ball, Opposite-Side-of-the-Hand, and Wild Potatoes. These clans distributed through their respective Nations, shall be the sole owners and holders of the soil of the country and in them is it vested as a birthright.

43. People of the Five Nations members of a certain clan shall recognize every other member of that clan, irrespective of the Nation, as relatives. Men and women, therefore, members of the same clan are forbidden to marry.

44. The lineal descent of the people of the Five Nations shall run in the female line. Women shall be considered the progenitors of the Nation. They shall own the land and the soil. Men and women shall follow the status of the mother.

45. The women heirs of the Confederated Lordship titles shall be called Royaneh (Noble) for all time to come.

46. The women of the Forty Eight (now fifty) Royaneh families shall be the heirs of the Authorized Names for all time to come.

When an infant of the Five Nations is given an Authorized Name at the Midwinter Festival or at the Ripe Corn Festival, one in the cousinhood of which the infant is a member shall be appointed a speaker. He shall then announce to the opposite cousinhood the names of the father and the mother of the child together with the clan of the mother. Then the speaker shall announce the child's name twice. The uncle of the child shall then take the child in his arms and walking up and down the room shall sing: "My head is firm, I am of the Confederacy." As he sings the opposite cousinhood shall respond by chanting, "Hyenh, Hyenh, Hyenh, Hyenh," until the song is ended.

47. If the female heirs of a Confederate Lord's title become extinct, the title right shall be given by the Lords of the Confederacy to the sister family whom they shall elect and that family shall hold the name and transmit it to their (female) heirs, but they shall not appoint any of their sons as a candidate for a title until all the eligible men of the former family shall have died or otherwise have become ineligible.

48. If all the heirs of a Lordship title become extinct, and all the families in the clan, then the title shall be given by the Lords of the Confederacy to the family in a sister clan whom they shall elect.

49. If any of the Royaneh women, heirs of a titleship, shall wilfully withhold a Lordship or other title and refuse to bestow it, or if such heirs abandon, forsake or despise their heritage, then shall such women be deemed buried and their family extinct. The titleship shall then revert to a sister family or clan upon application and complaint. The Lords of the Confederacy shall elect the family or clan which shall in future hold the title.

50. The Royaneh women of the Confederacy heirs of the Lordship titles shall elect two women of their family as cooks for the Lord when the people shall assemble at his house for business or other purposes.

It is not good nor honorable for a Confederate Lord to allow his people whom he has called to go hungry.

51. When a Lord holds a conference in his home, his wife, if she wishes, may prepare the food for the Union Lords who assemble with him. This is an honorable right which she may exercise and an expression of her esteem.

52. The Royaneh women, heirs of the Lordship titles, shall, should it be necessary, correct and admonish the holders of their titles. Those only who attend the Council may do this and those who do not shall not object to what has been said nor strive to undo the action.

53. When the Royaneh women, holders of a Lordship title, select one of their sons as a candidate, they shall select one who is trustworthy, of good character, of honest disposition, one who manages his own affairs, supports his own family, if any, and who has proven a faithful man to his Nation.

54. When a Lordship title becomes vacant through death or other cause, the Royaneh women of the clan in which the title is hereditary shall hold a council and shall choose one from among their sons to fill the office made vacant. Such a candidate shall not be the father of any Confederate Lord. If the choice is unanimous the name is referred to the men relatives of the clan. If they should disapprove it shall be their duty to select a candidate from among their own number. If then the men and women are unable to decide which of the two candidates shall be named, then the matter shall be referred to the Confederate Lords in the Clan. They shall decide which candidate shall be named. If the men and the women agree to a candidate his name shall be referred to the sister clans for confirmation. If the sister clans confirm the choice, they shall refer their action to their Confederate Lords who shall ratify the choice and present it to their cousin Lords, and if the cousin Lords confirm the name then the candidate shall be installed by the proper ceremony for the conferring of Lordship titles.

Official Symbolism

55. A large bunch of shell strings, in the making of which the Five Nations Confederate Lords have equally contributed, shall symbolize the completeness of the union and certify the pledge of the nations represented by the Confederate Lords of the Mohawk, the Oneida, the Onondaga, the Cayuga and the Seneca, that all are united and formed into one body or union called the Union of the Great Law, which they have established.

A bunch of shell strings is to be the symbol of the council fire of the Five Nations Confederacy. And the Lord whom the council of Fire Keepers shall appoint to speak for them in opening the council shall hold the strands of shells in his hands when speaking. When he finishes speaking he shall deposit the strings

on an elevated place (or pole) so that all the assembled Lords and the people may see it and know that the council is open and in progress.

When the council adjourns the Lord who has been appointed by his comrade Lords to close it shall take the strands of shells in his hands and address the assembled Lords. Thus will the council adjourn until such time and place as appointed by the council. Then shall the shell strings be placed in a place for safekeeping.

Every five years the Five Nations Confederate Lords and the people shall assemble together and shall ask one another if their minds are still in the same spirit of unity for the Great Binding Law and if any of the Five Nations shall not pledge continuance and steadfastness to the pledge of unity then the Great Binding Law shall dissolve.

56. Five strings of shell tied together as one shall represent the Five Nations. Each string shall represent one territory and the whole a completely united territory known as the Five Nations Confederate territory.

57. Five arrows shall be bound together very strong and each arrow shall represent one nation. As the five arrows are strongly bound this shall symbolize the complete union of the nations. Thus are the Five Nations united completely and enfolded together, united into one head, one body and one mind. Therefore they shall labor, legislate and council together for the interest of future generations.

The Lords of the Confederacy shall eat together from one bowl the feast of cooked beaver's tail. While they are eating they are to use no sharp utensils for if they should they might accidentally cut one another and bloodshed would follow. All measures must be taken to prevent the spilling of blood in any way.

58. There are now the Five Nations Confederate Lords standing with joined hands in a circle. This signifies and provides that should any one of the Confederate Lords leave the council and this Confederacy his crown of deer's horns, the emblem of his Lordship title, together with his birthright, shall lodge on the arms of the Union Lords whose hands are so joined. He forfeits his title and the crown falls from his brow but it shall remain in the Confederacy.

A further meaning of this is that if any time any one of the Confederate Lords choose to submit to the law of a foreign people he is no longer in but out of the Confederacy, and persons of this class shall be called "They have alienated themselves." Likewise such persons who submit to laws of foreign nations shall forfeit all birthrights and claims on the Five Nations Confederacy and territory.

You, the Five Nations Confederate Lords, be firm so that if a tree falls on your joined arms it shall not separate or weaken your hold. So shall the strength of the union be preserved.

59. A bunch of wampum shells on strings, three spans of the hand in length, the upper half of the bunch being white and the lower half black, and formed from equal contributions of the men of the Five Nations, shall be a token that the men have combined themselves into one head, one body and one thought, and it shall also symbolize their ratification of the peace pact of the Confederacy, whereby the Lords of the Five Nations have established the Great Peace.

The white portion of the shell strings represent the women and the black portion the men. The black portion, furthermore, is a token of power and authority vested in the men of the Five Nations.

This string of wampum vests the people with the right to correct their erring Lords. In case a part or all the Lords pursue a course not vouched for by the people and heed not the third warning of their women relatives, then the matter shall be taken to the General Council of the women of the Five Nations. If the Lords notified and warned three times fail to heed, then the case falls into the hands of the men of the Five Nations. The War Chiefs shall then, by right of such power and authority, enter the open concil to warn the Lord or Lords to return from the wrong course. If the Lords heed the warning they shall say, "we will reply tomorrow." If then an answer is returned in favor of justice and in accord with this Great Law, then the Lords shall individually pledge themselves again by again furnishing the necessary shells for the pledge. Then shall the War Chief or Chiefs exhort the Lords urging them to be just and true.

Should it happen that the Lords refuse to heed the third warning, then two courses are open: either the men may decide in their council to depose the Lord or Lords or to club them to death with war clubs. Should they in their council decide to take the first course the War Chief shall address the Lord or Lords, saying: "Since you the Lords of the Five Nations have refused to return to the procedure of the Constitution, we now declare your seats vacant, we take off your horns, the token of your Lordship, and others shall be chosen and installed in your seats, therefore vacate your seats."

Should the men in their council adopt the second course, the War Chief shall order his men to enter the council, to take positions beside the Lords, sitting bewteen them wherever possible. When this is accomplished the War Chief holding in his outstretched hand a bunch of black wampum strings shall say to the erring Lords: "So now, Lords of the Five United Nations, harken to these last words from your men. You have not heeded the warnings of the women relatives, you have not heeded the warnings of the General Council of women and you have not heeded the warnings of the men of the nations, all urging you to return to the right course of action. Since you are determined to resist and to withhold justice

from your people there is only one course for us to adopt." At this point the War Chief shall let drop the bunch of black wampum and the men shall spring to their feet and club the erring Lords to death. Any erring Lord may submit before the War Chief lets fall the black wampum. Then his execution is withheld.

The black wampum here used symbolizes that the power to execute is buried but that it may be raised up again by the men. It is buried but when occasion arises they may pull it up and derive their power and authority to act as here described.

60. A broad dark belt of wampum of thirty-eight rows, having a white heart in the center, on either side of which are two white squares all connected with the heart by white rows of beads shall be the emblem of the unity of the Five Nations.²

The first of the squares on the left represents the Mohawk nation and its territory; the second square on the left and the one near the heart, represents the Oneida nation and its territory; the white heart in the middle represents the Onondaga nation and its territory, and it also means that the heart of the Five Nations is single in its loyalty to the Great Peace, that the Great Peace is lodged in the heart (meaning the Onondaga Lords), and that the Council Fire is to burn there for the Five Nations, and further, it means that the authority is given to advance the cause of peace whereby hostile nations out of the Confederacy shall cease warfare; the white square to the right of the heart represents the Cayuga nation and its territory and the fourth and last white square represents the Seneca nation and its territory.

White shall here symbolize that no evil or jealous thoughts shall creep into the minds of the Lords while in Council under the Great Peace. White, the emblem of peace, love, charity and equity surrounds and guards the Five Nations.

61. Should a great calamity threaten the generations rising and living of the Five United Nations, then he who is able to climb to the top of the Tree of the Great Long Leaves may do so. When, then, he reaches the top of the tree he shall look about in all directions, and, should he see that evil things indeed are approaching, then he shall call to the people of the Five United Nations assembled beneath the Tree of the Great Long Leaves and say: " A calamity threatens your happiness."

Then shall the Lords convene in council and discuss the impending evil.

When all the truths relating to the trouble shall be fully known and found to be truths, then shall the people seek out a Tree of Ka-hon-ka-ah-go-nah,³ and when they shall find it they shall assemble their heads together and lodge for a time between its roots. Then, their labors being finished, they may hope for happiness for many days after.

62. When the Confederate Council of the Five Nations declares for a reading of the belts of shell calling to mind these laws, they shall provide for the reader a specially made mat woven of the fibers of wild hemp. The mat shall not be used again, for such formality is called the honoring of the importance of the law.

63. Should two sons of opposite sides of the council fire agree in a desire to hear the reciting of the laws of the Great Peace and so refresh their memories in the way ordained by the founder of the Confederacy, they shall notify Adodarho. He then shall consult with five of his coactive Lords and they in turn shall consult with their eight brethern. Then should they decide to accede to the request of the two sons from opposite sides of the Council Fire, Adodarho shall send messengers to notify the Chief Lords of each of the Five Nations. Then they shall despatch their War Chiefs to notify their brother and cousin Lords of the meeting and its time and place.

When all have come and have assembled, Adodarhoh, in conjunction with his cousin Lords, shall appoint one Lord who shall repeat the laws of the Great Peace. Then shall they announce who they have chosen to repeat the laws of the Great Peace to the two sons. Then shall the chosen one repeat the laws of the Great Peace.

64. At the ceremony of the installation of Lords if there is only one expert speaker and singer of the law and the Pacification Hymn to stand at the council fire, then when this speaker and singer has finished addressing one side of the fire he shall go to the oposite side and reply to his own speech and song. He shall thus act for both sidesa of the fire until the entire ceremony has been completed. Such a speaker and singer shall be termed the "Two Faced" because he speaks and sings for both sides of the fire.

65. I, Dekanawida, and the Union Lords, now uproot the tallest pine tree and into the cavity thereby made we cast all weapons of war. Into the depths of the earth, down into the deep underearth currents of water flowing to unknown regions we cast all the weapons of strife. We bury them from sight and we plant again the tree. Thus shall the Great Peace be established and hostilities shall no longer be known between the Five Nations but peace to the United People.

Laws of Adoption

66. The father of a child of great comliness, learning, ability or specially loved because of some circumstance may, at the will of the child's clan, select a name from his own (the father's) clan and bestow it by ceremony, such as is provided. This naming shall be only temporary and shall be called, "A name hung about the neck."

67. Should any person, a member of the Five Nations' Confederacy, specially esteem a man or woman of another clan or of a foreign nation, he may choose a name and bestow it upon that person so esteemed. The naming shall be in accord with the ceremony of bestowing names. Such a name is only a temporary one and shall be called "A name hung about the neck." A short string of shells shall be delivered with the name as a record and a pledge.

68. Should any member of the Five Nations, a family or person belonging to a foreign nation submit a proposal for adoption into a clan of one of the Five Nations, he or they shall furnish a string of shells, a span in length, as a pledge to the clan into which he or they wish to be adopted. The Lords of the nation shall then consider the proposal and submit a decision.

69. Any member of the Five Nations who through esteem or other feeling wishes to adopt an individual, a family or number of families may offer adoption to him or them and if accepted the matter shall be brought to the attention of the Lords for confirmation and the Lords must confirm adoption.

70. When the adoption of anyone shall have been confirmed by the Lords of the Nation, the Lords shall address the people of their nation and say: "Now you of our nation, be informed that such a person, such a family or such families have ceased forever to bear their birth nation's name and have buried it in the depths of the earth. Henceforth let no one of our nation ever mention the original name or nation of their birth. To do so will be to hasten the end of our peace.

Laws of Emigration

71. When any person or family belonging to the Five Nations desires to abandon their birth nation and the territory of the Five Nations, they shall inform the Lords of their nation and the Confederate Council of the Five Nations shall take cognizance of it.

72. When any person or any of the people of the Five Nations emigrate and reside in a region distant from the territory of the Five Nations Confederacy, the Lords of the Five Nations at will may send a messenger carrying a broad belt of black shells and when the messenger arrives he shall call the people together or address them personally displaying the belt of shells and they shall know that this is an order for them to return to their original homes and to their council fires.

Rights of Foreign Nations

73. The soil of the earth from one end of the land to the other is the property of the people who inhabit it. By birthright the Ongwehonneh (Original beings) are the owners of the soil which they own and occupy and none other may hold it. The same law has been held from the oldest times.

The Great Creator has made us of the one blood and of the same soil he made us and as only different tongues constitute different nations he established different hunting grounds and territories and made boundary lines between them.

74. When any alien nation or individual is admitted into the Five Nations the admission shall be understood only to be a temporary one. Should the person or nation create loss, do wrong or cause suffering of any kind to endanger the peace of the Confederacy, the Confederate Lords shall order one of their war chiefs to reprimand him or them and if a similar offence is again committed the offending party or parties shall be expelled from the territory of the Five United Nations.

75. When a member of an alien nation comes to the territory of the Five Nations and seeks refuge and permanent residence, the Lords of the Nation to which he comes shall extend hospitality and make him a member of the nation. Then shall he be accorded equal rights and privileges in all matters except as after mentioned.

76. No body of alien people who have been adopted temporarily shall have a vote in the council of the Lords of the Confederacy, for only they who have been invested with Lordship titles may vote in the Council. Aliens have nothing by blood to make claim to a vote and should they have it, not knowing all the traditions of the Confederacy, might go against its Great Peace. In this manner the Great Peace would be endangered and perhaps be destroyed.

77. When the Lords of the Confederacy decide to admit a foreign nation and an adoption is made, the Lords shall inform the adopted nation that its admission is only temporary. They shall also say to the nation that it must never try to control, to interfere with or to injure the Five Nations nor disregard the Great Peace or any of its rules or customs. That in no way should they cause disturbance or injury. Then should the adopted nation disregard these injunctions, their adoption shall be annuled and they shall be expelled.

The expulsion shall be in the following manner: The council shall appoint one of their War Chiefs to convey the message of annulment and he shall say, "You (naming the nation) listen to me while I speak. I am here to inform you again of the will of the Five Nations' Council. It was clearly made known to you at a former time. Now the Lords of the Five Nations have decided to expel you and cast you out. We disown you now and annul your adoption. Therefore you must look for a path in which to go and lead away all your people. It was you, not we, who committed wrong and caused this sentence of annulment. So then go your way and depart from the territory of the Five Nations and from the Confederacy."

78. Whenever a foreign nation enters the Confederacy or accepts the Great Peace, the Five Nations and the foreign nation shall enter into an agreement and

compact by which the foreign nation shall endeavor to persuade other nations to accept the Great Peace.

Rights and Powers of War

79. Skanawatih shall be vested with a double office, duty and with double authority. One-half of his being shall hold the Lordship title and the other half shall hold the title of War Chief. In the event of war he shall notify the five War Chiefs of the Confederacy and command them to prepare for war and have their men ready at the appointed time and place for engagement with the enemy of the Great Peace.

80. When the Confederate Council of the Five Nations has for its object the establishment of the Great Peace among the people of an outside nation and that nation refuses to accept the Great Peace, then by such refusal they bring a declaration of war upon themselves from the Five Nations. Then shall the Five Nations seek to establish the Great Peace by a conquest of the rebellious nation.

81. When the men of the Five Nations, now called forth to become warriors, are ready for battle with an obstinate opposing nation that has refused to accept the Great Peace, then one of the five War Chiefs shall be chosen by the warriors of the Five Nations to lead the army into battle. It shall be the duty of the War Chief so chosen to come before his warriors and address them. His aim shall be to impress upon them the necessity of good behavior and strict obedience to all the commands of the War Chiefs. He shall deliver an oration exhorting them with great zeal to be brave and courageous and never to be guilty of cowardice. At the conclusion of his oration he shall march forward and commence the War Song and he shall sing:

Now I am greatly surprised
And, therefore I shall use it --
The power of my War Song.
I am of the Five Nations
And I shall make supplication
To the Almighty Creator.
He has furnished this army.
My warriors shall be mighty
In the strength of the Creator.
Between him and my song they are
For it was he who gave the song
This war song that I sing!

82. When the warriors of the Five Nations are on an expedition against an enemy, the War Chief shall sing the War Song as he approaches the country of the enemy and not cease until his scouts have reported that the army is near the enemies' lines when the War Chief shall approach with great caution and prepare for the attack.

83. When peace shall have been established by the termination of the war against a foreign nation, then the War Chief shall cause all the weapons of war to be taken from the nation. Then shall the Great Peace be established and that nation shall observe all the rules of the Great Peace for all time to come.

84. Whenever a foreign nation is conquered or has by their own will accepted the Great Peace their own system of internal government may continue, but they must cease all warfare against other nations.

85. Whenever a war against a foreign nation is pushed until that nation is about exterminated because of its refusal to accept the Great Peace and if that nation shall by its obstinacy become exterminated, all their rights, property and territory shall become the property of the Five Nations.

86. Whenever a foreign nation is conquered and the survivors are brought into the territory of the Five Nations' Confederacy and placed under the Great Peace the two shall be known as the Conqueror and the Conquered. A symbolic relationship shall be devised and be placed in some symbolic position. The conquered nation shall have no voice in the councils of the Confederacy in the body of the Lords.

87. When the War of the Five Nations on a foreign rebellious nation is ended, peace shall be restored to that nation by a withdrawal of all their weapons of war by the War Chief of the Five Nations. When all the terms of peace shall have been agreed upon a state of friendship shall be established.

88. When the proposition to establish the Great Peace is made to a foreign nation it shall be done in mutual council. The foreign nation is to be persuaded by reason and urged to come into the Great Peace. If the Five Nations fail to obtain the consent of the nation at the first council a second council shall be held and upon a second failure a third council shall be held and this third council shall end the peaceful methods of persuasion. At the third council the War Chief of the Five nations shall address the Chief of the foreign nation and request him three times to accept the Great Peace. If refusal steadfastly follows the War Chief shall let the bunch of white lake shells drop from his outstretched hand to the ground and shall bound quickly forward and club the offending chief to death. War shall thereby be declared and the War Chief shall have his warriors at his back to meet any emergency. War must continue until the contest is won by the Five Nations.

89. When the Lords of the Five Nations propose to meet in conference with a foreign nation with proposals for an acceptance of the Great Peace, a large band of warriors shall conceal themselves in a secure place safe from the espionage of the foreign nation but as near at hand as possible. Two warriors shall accompany the Union Lord who carries the proposals and these warriors shall be especially cunning. Should the Lord be attacked, these warriors shall hasten back

to the army of warriors with the news of the calamity which fell through the treachery of the foreign nation.

90. When the Five Nations' Council declares war any Lord of the Confederacy may enlist with the warriors by temporarily renouncing his sacred Lordship title which he holds through the election of his women relatives. The title then reverts to them and they may bestow it upon another temporarily until the war is over when the Lord, if living, may resume his title and seat in the Council.

91. A certain wampum belt of black beads shall be the emblem of the authority of the Five War Chiefs to take up the weapons of war and with their men to resist invasion. This shall be called a war in defense of the territory.

Treason or Secession of a Nation

92. If a nation, part of a nation, or more than one nation within the Five Nations should in any way endeavor to destroy the Great Peace by neglect or violating its laws and resolve to dissolve the Confederacy, such a nation or such nations shall be deemed guilty of treason and called enemies of the Confederacy and the Great Peace.

It shall then be the duty of the Lords of the Confederacy who remain faithful to resolve to warn the offending people. They shall be warned once and if a second warning is necessary they shall be driven from the territory of the Confederacy by the War Chiefs and his men.

Rights of the People of the Five Nations

93. Whenever a specially important matter or a great emergency is presented before the Confederate Council and the nature of the matter affects the entire body of the Five Nations, threatening their utter ruin, then the Lords of the Confederacy must submit the matter to the decision of their people and the decision of the people shall affect the decision of the Confederate Council. This decision shall be a confirmation of the voice of the people.

94. The men of every clan of the Five Nations shall have a Council Fire ever burning in readiness for a council of the clan. When it seems necessary for a council to be held to discuss the welfare of the clans, then the men may gather about the fire. This council shall have the same rights as the council of the women.

95. The women of every clan of the Five Nations shall have a Council Fire ever burning in readiness for a council of the clan. When in their opinion it seems necessary for the interest of the people they shall hold a council and their decisions and recommendations shall be introduced before the Council of the Lords by the War Chief for its consideration.

96. All the Clan council fires of a nation or of the Five Nations may unite into one general council fire, or delegates from all the council fires may be appointed to unite in a general council for discussing the interests of the people. The people shall have the right to make appointments and to delegate their power to others of their number. When their council shall have come to a conclusion on any matter, their decision shall be reported to the Council of the Nation or to the Confederate Council (as the case may require) by the War Chief or the War Chiefs.

97. Before the real people united their nations, each nation had its council fires. Before the Great Peace their councils were held. The five Council Fires shall continue to burn as before and they are not quenched. The Lords of each nation in future shall settle their nation's affairs at this council fire governed always by the laws and rules of the council of the Confederacy and by the Great Peace.

98. If either a nephew or a niece see an irregularity in the performance of the functions of the Great Peace and its laws, in the Confederate Council or in the conferring of Lordship titles in an improper way, through their War Chief they may demand that such actions become subject to correction and that the matter conform to the ways prescribed by the laws of the Great Peace.

Religious Ceremonies Protected

99. The rites and festivals of each nation shall remain undisturbed and shall continue as before because they were given by the people of old times as useful and necessary for the good of men.

100. It shall be the duty of the Lords of each brotherhood to confer at the approach of the time of the Midwinter Thanksgiving and to notify their people of the approaching festival. They shall hold a council over the matter and arrange its details and begin the Thanksgiving five days after the moon of Dis-ko-nah is new. The people shall assemble at the appointed place and the nephews shall notify the people of the time and place. From the beginning to the end the Lords shall preside over the Thanksgiving and address the people from time to time.

101. It shall be the duty of the appointed managers of the Thanksgiving festivals to do all that is needed for carrying out the duties of the occasions.

The recognized festivals of Thanksgiving shall be the Midwinter Thanksgiving, the Maple or Sugar-making Thanksgiving, the Raspberry Thanksgiving, the Strawberry Thanksgiving, the Cornplanting Thanksgiving, the Corn Hoeing Thanksgiving, the Little Festival of Green Corn, the Great Festival of Ripe Corn and the complete Thanksgiving for the Harvest.

Each nation's festivals shall be held in their Long Houses.

102. When the Thansgiving for the Green Corn comes the special managers, both the men and women, shall give it careful attention and do their duties properly.

103. When the Ripe Corn Thanksgiving is celebrated the Lords of the Nation must give it the same attention as they give to the Midwinter Thanksgiving.

104. Whenever any man proves himself by his good life and his knowledge of good things, naturally fitted as a teacher of good things, he shall be recognized by the Lords as a teacher of peace and religion and the people shall hear him.

The Installation Song

105. The song used in installing the new Lord of the Confederacy shall be sung by Adodarhoh and it shall be:

"Haii, haii Agwah wi-yoh " " A-kon-he-watha " " Ska-we-ye-se-go-wah " " Yon-gwa-wih " " Ya-kon-he-wa-tha
Haii, haii It is good indeed " " (That) a broom, -- " " A great wing, " " It is given me " " For a sweeping instrument."

106. Whenever a person properly entitled desires to learn the Pacification Song he is privileged to do so but he must prepare a feast at which his teachers may sit with him and sing. The feast is provided that no misfortune may befall them for singing the song on an occasion when no chief is installed.

Protection of the House

107. A certain sign shall be known to all the people of the Five Nations which shall denote that the owner or occupant of a house is absent. A stick or pole in a slanting or leaning position shall indicate this and be the sign. Every person not entitled to enter the house by right of living within it upon seeing such a sign shall not approach the house either by day or by night but shall keep as far away as his business will permit.

Funeral Addresses

108. At the funeral of a Lord of the Confederacy, say: Now we become reconciled as you start away. You were once a Lord of the Five Nations' Confederacy and the United People trusted you. Now we release you for it is true that it is no longer possible for us to walk about together on the earth. Now, therefore, we lay it (the body) here. Here we lay it away. Now then we say to you, 'Persevere onward to the place where the Creator dwells in peace. Let not the things of the earth hinder you. Let nothing that transpired while yet you lived hinder you. In hunting you once took delight; in the game of Lacrosse you once took delight and in the feasts and pleasant occasions your mind was amused, but now do not allow thoughts of these things to give you trouble. Let not your

relatives hinder you and also let not your friends and associates trouble your mind. Regard none of these things.'

"Now then, in turn, you here present who were related to this man and you who were his friends and associates, behold the path that is yours also! Soon we ourselves will be left in that place. For this reason hold yourselves in restraint as you go from place to place. In your actions and in your conversation do no idle thing. Speak not idle talk neither gossip. Be careful of this and speak not and do not give way to evil behavior. One year is the time that you must abstain from unseemly levity but if you can not do this for ceremony, ten days is the time to regard these things for respect."

109. At the funeral of a War Chief, say:

"Now we become reconciled as you start away. You were once a War Chief of the Five Nations' Confederacy and the United People trusted you as their guard from the enemy." (The remainder is the same as the address at the funeral of a Lord).

110. At the funeral of a Warrior, say:

"Now we become reconciled as you start away. Once you were a devoted provider and protector of your family and you were ever ready to take part in battles for the Five Nations' Confederacy. The United People trusted you." (The remainder is the same as the address at the funeral of a Lord).

111. At the funeral of a young man, say:

"Now we become reconciled as you start away. In the beginning of your career you are taken away and the flower of your life is withered away." (The remainder is the same as the address at the funeral of a Lord).

112. At the funeral of a chief woman, say:

"Now we become reconciled as you start away. You were once a chief woman in the Five Nations' Confederacy. You once were a mother of the nations. Now we release you for it is true that it is no longer possible for us to walk about together on the earth. Now, therefore, we lay it (the body) here. Here we lay it away. Now then we say to you, 'Persevere onward to the place where the Creator dwells in peace. Let not the things of the earth hinder you. Let nothing that transpired while you lived hinder you. Looking after your family was a sacred duty and you were faithful. You were one of the many joint heirs of the Lordship titles. Feastings were yours and you had pleasant occasions. . .'" (The remainder is the same as the address at the funeral of a Lord).

113. At the funeral of a woman of the people, say:

"Now we become reconciled as you start away. You were once a woman in the flower of life and the bloom is now withered away. You once held a sacred position as a mother of the nation. (Etc.) Looking after your family was a sacred duty and you were faithful. Feastings . . . (etc.)" (The remainder is the same as the address at the funeral of a Lord).

114. At the funeral of an infant or young woman, say:

"Now we become reconciled as you start away. You were a tender bud and gladdened our hearts for only a few days. Now the bloom has withered away . . . (etc.) Let none of the things that transpired on earth hinder you. Let nothing that happened while you lived hinder you." (The remainder is the same as the address at the funeral of a Lord).⁴

115. When an infant dies within three days, mourning shall continue only five days. Then shall you gather the little boys and girls at the house of mourning and at the funeral feast a speaker shall address the children and bid them be happy once more, though by a death, gloom has been cast over them. Then shall the black clouds roll away and the sky shall show blue once more. Then shall the children be again in sunshine.

116. When a dead person is brought to the burial place, the speaker on the opposite side of the Council Fire shall bid the bereaved family cheer their minds once again and rekindle their hearth fires in peace, to put their house in order and once again be in brightness for darkness has covered them. He shall say that the black clouds shall roll away and that the bright blue sky is visible once more. Therefore shall they be in peace in the sunshine again.

117. Three strings of shell one span in length shall be employed in addressing the assemblage at the burial of the dead. The speaker shall say:

"Hearken you who are here, this body is to be covered. Assemble in this place again ten days hence for it is the decree of the Creator that mourning shall cease when ten days have expired. Then shall a feast be made."

Then at the expiration of ten days the speaker shall say:

"Continue to listen you who are here. The ten days of mourning have expired and your minds must now be freed of sorrow as before the loss of a relative. The relatives have decided to make a little compensation to those who have assisted at the funeral. It is a mere expression of thanks. This is to the one who did the cooking while the body was lying in the house. Let her come forward and receive this gift and be dismissed from the task."

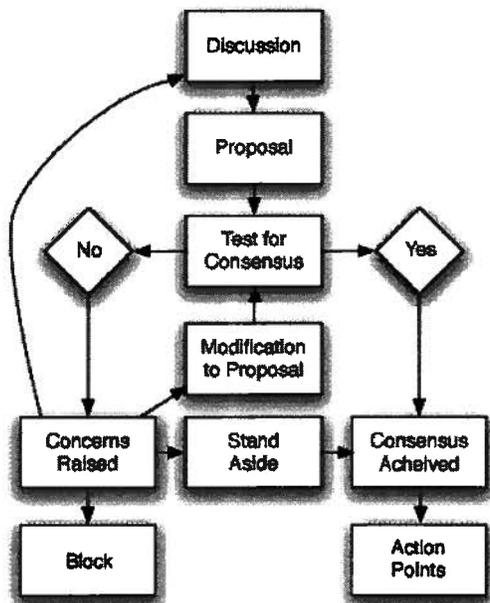
In substance this shall be repeated for every one who assisted in any way until all have been remembered.

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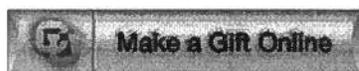
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A peace that comes from fear and not from the heart is the opposite of peace. — Gersonides

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