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“This is not a Peace Pipe”: Towards An Understanding of Aboriginal Sovereignty



Dale A. Turner

Department of Philosophy,
McGill University, Montréal

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Abstract

This dissertation attempts to show that Aboriginal peoples' ways of thinking have not been recognized by early colonial European political thinkers. I begin with an examination of Kymlicka's political theory of minority rights and show that, although Kymlicka is a strong advocate of the right of Aboriginal self-government in Canada, he fails to consider Aboriginal ways of thinking within his own political system. From an Aboriginal perspective this is not surprising. However, I claim that Kymlicka opens the conceptual space for the inclusion of Aboriginal voices. The notion of "incorporation" means that Aboriginal peoples became included in the Canadian state and in this process their Aboriginal sovereignty was extinguished. Aboriginal peoples question the legitimacy of such a claim. A consequence of the Canadian government unilaterally asserting its sovereignty over Aboriginal peoples is that Aboriginal ways of thinking are not recognized as valuable within the legal and political discourse of sovereignty. In chapters two through five, respectively, I examine the Valladolid debate of 1550 between the Spanish monk Bartolome de Las Casas and Juan Sepulveda, The Great Law of Peace of the Iroquois Confederacy, Thomas Hobbes's distinction between the state of nature and a civil society, and Alexis de Tocqueville's account of democracy in America. Each of the examples, except for The Great Law of Peace, generate a philosophical dialogue that includes judgments about Aboriginal peoples. However, none of these European thinkers considers the possibility that Aboriginal voices could play a valuable role in shaping their political thought. To show the value of an Aboriginal exemplar of political thinking I consider the Iroquois Great Law of Peace. The Iroquois view of political sovereignty respects the diversity of voices found within a political relationship. This was put into practice and enforced in early colonial northeast America until the power dynamic shifted between the Iroquois and the European newcomers. I finish this dissertation with a brief discussion about the role that Aboriginal intellectuals can play in bringing their voices into the dominant legal and political discourse of sovereignty. I use the notion of a "mediator" taken from James Tully's *Strange Multiplicity* and ask who is an Aboriginal mediator. I conclude that Aboriginal people must embrace the language of legal-political discourse of sovereignty in more imaginative ways for the simple reason that they need this knowledge and skills to survive.

Résumé

Cette thèse cherche à montrer que les modes d'expression de la pensée autochtone n'ont pas été reconnus par les penseurs politiques européens du début de la colonisation. Je commence par examiner la théorie politique des droits des minorités de Will Kymlicka et montre que bien que Kymlicka soit un ardent défenseur du droit à l'autonomie gouvernementale pour les peuples autochtones du Canada, il n'envisage pas d'inclure les modes d'expression de la pensée autochtone dans son propre système politique. D'un point de vue autochtone, ceci n'est guère surprenant. Toutefois, je soutiens que Kymlicka ouvre un espace conceptuel pour l'inclusion des voix autochtones. Le concept d'«incorporation» signifie que les peuples autochtones ont été inclus dans l'État canadien et que dans ce processus la souveraineté autochtone a été anéantie. Les peuples autochtones questionnent la légitimité d'une telle déclaration. Une des conséquences de cette décision du gouvernement canadien d'imposer unilatéralement sa souveraineté sur les peuples autochtones est que les modes d'expression de la pensée autochtone ne sont pas reconnus comme ayant de la valeur au sein du discours légal et politique sur la souveraineté. Dans les chapitres deux à cinq, j'examine respectivement le débat de Valladolid en 1550 entre l'espagnol Bartolomé de Las Casas et Juan Sepulveda, la Grande loi de paix de la confédération Iroquois la distinction de Thomas Hobbes entre l'État de nature et la société civile, ainsi que les travaux d'Alexis de Tocqueville sur la démocratie en Amérique. Chacun de ces exemples, sauf la Grande loi de Paix, génère un dialogue philosophique intégrant des appréciations sur les peuples autochtones. Cependant, aucun de ces penseurs européens n'envisage la possibilité que les voix autochtones puissent jouer un rôle important dans la formation de leur pensée politique. Pour faire ressortir la valeur exemplaire de la pensée politique autochtone, j'examine la Grande loi de paix iroquoise. La position des iroquois sur souveraineté politique respecte la diversité des voix existantes dans les relations politiques. Ceci a été mis en pratique et renforcé au début de la colonisation de l'est de l'Amérique du Nord jusqu'à que ce la dynamique du pouvoir se modifie entre les iroquois et les nouveaux arrivants européens. Je termine la thèse avec une brève discussion concernant rôle que peuvent jouer les intellectuels autochtones en exprimant leurs voix dans le discours légal et politique sur la souveraineté. Je recours au concept de «personne médiatrice» tel que développé par James Tully dans son livre *Strange multiplicity* et me demande qui est la personne médiatrice chez les autochtones. J'en arrive à la conclusion que les peuples autochtones doivent adopter le langage du discours légal et politique de la souveraineté dans des modes plus imaginatifs parce qu'ils ont besoin de cette connaissance et de cette habilité pour leur survivance.

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Chapter One:

Liberalism's Last Stand: Aboriginal Sovereignty and Minority Rights

We have discarded our broken arrows and our empty quivers, for we know what served us in the past can never serve us again...It is only with tongue and speech that I can fight my people's war.

Chief Dan George
My Heart Soars

Whatever else he denounces in our culture he is certain that it still possesses the moral resources which he requires in order to denounce it. Everything else may be, in his eyes, in disorder; but the language of morality is in order, just as it is. That he too may be being betrayed by the very language he uses is not a thought available to him.

Alasdair MacIntyre
After Virtue

Introduction

Aboriginal rights, as they are entrenched in the *Canadian Constitution Act, 1982*, can be interpreted as rights that are accorded to Aboriginal peoples by virtue of their membership in minority cultures.¹ This characterization of Aboriginal rights, derived from various forms of political liberalism, does not recognize Aboriginal political sovereignty. Sovereignty does not play an important role in determining the content of Aboriginal special rights because it simply does not exist within the framework of liberal thought.² Political liberalism accords legitimate political sovereignty only to the provincial and the federal governments. Aboriginal rights, then, if they exist at all, are subsumed within the superior forms of sovereignty held by the provincial and federal governments.

The purpose of this chapter is to argue against this liberal characterization of Aboriginal rights. Since most Aboriginal communities claim that their so-called special rights flow from their legitimate political sovereignty,³ I shall take issue with the liberal claim that Aboriginal rights imply a type of minority right. Further, I shall offer an explanation as to why most Aboriginal peoples themselves do not subscribe to political liberalism's justification of their rights as minority rights. In view of Aboriginal understandings of their political sovereignty, justice demands that contemporary, and future, policy makers should include Aboriginal voices in

drafting legislation and policies that concern the welfare of Aboriginal peoples.

From an Aboriginal perspective, it seems unfortunate that an investigation into the meaning of Aboriginal sovereignty must begin with an examination of political liberalism. This is necessary because Aboriginal conceptions of sovereignty are not fully recognized as legitimate by the federal and provincial governments in Canada. As Kymlicka states in *Liberalism, Community, and Culture*:

For better or worse, it is predominantly non-Aboriginal judges and politicians who have the ultimate power to protect and enforce Aboriginal rights, and so it is important to find a justification of them that such people can recognize and understand. Aboriginal people have their own understanding of self-government drawn from their own experience, and that is important. But it is also important, politically, to know how non-Aboriginal Canadians - Supreme Court Justices, for example - will understand Aboriginal rights and relate them to their own experiences and traditions...on the standard interpretation of liberalism, Aboriginal rights are viewed as matters of discrimination and/or privilege, not of equality. They will always, therefore, be viewed with the kind of suspicion that led liberals like Trudeau to advocate their abolition. Aboriginal rights, at least in their robust form, will only be secure when they are viewed, not as competing with liberalism, but as an essential component of liberal political practice.⁴

I agree with Kymlicka that Aboriginal rights "in their robust form" do not have to compete with liberalism. But it is not simply a matter of waking liberals from their dogmatic slumbers in order to show them that Aboriginal sovereignty makes sense in the language of political liberalism: Aboriginal

peoples have tried for over five hundred years to make colonial governments recognize the legitimacy of Aboriginal sovereignty.

I will use Kymlicka's classification of Aboriginal rights of governance as a special class of minority rights to show that his theory of minority rights necessitates the inclusion, and recognition, of Aboriginal explanations of political sovereignty. So, in one sense, I am contributing to the rich tradition of Aboriginal voices that have presented arguments in favour of Aboriginal sovereignty. I differ from my predecessors in that I am not justifying or generating a theory of Aboriginal sovereignty at all; rather I am going to engage a generous version of political liberalism to show that it fails *unless* it recognizes Aboriginal conceptions of political sovereignty. But my goals are not solely philosophical: I believe that Aboriginal conceptions of political sovereignty must be included in political liberalism's justification of Aboriginal rights so that the racist and oppressive public policies that have held Aboriginal peoples captive for over one hundred and thirty years can be changed. One way of renewing a just relationship, and more importantly renewing hope in Indian Country, is for non-Aboriginal peoples to understand better the significance of Aboriginal sovereignty. The precise content of a theory of Aboriginal sovereignty, however, will remain open, as indeed it should; Aboriginal sovereignty is best understood by listening to the diverse voices of Aboriginal peoples themselves.

My discussion will fall into two parts. I shall begin with a brief discussion of Will Kymlicka's liberal theory of minority rights. For Kymlicka, Aboriginal rights are considered to be a special class of rights within a general theory of minority rights. Therefore, he argues, Aboriginal rights do not pose a problem for political liberalism, as they can be subsumed within a more general liberal theory of rights. Kymlicka's liberalism arguably offers the most generous accommodation of Aboriginal rights within contemporary political liberalism; in fact, Kymlicka is a strong advocate of Aboriginal self-government. In the second section, I will examine more closely Kymlicka's characterization of Aboriginal communities as "national minorities," that somehow became "incorporated" into the Canadian state. Kymlicka himself points out that this notion of incorporation is problematic and fraught with historical injustice, but I shall emphasize that developing a thorough understanding of what I call "Aboriginal incorporation" goes to the heart of our understandings of Aboriginal sovereignty and especially of how we ought to characterize the historical relationship between Aboriginal peoples and the European newcomers.

While I cannot provide, in the limited space of this chapter, or indeed this thesis, a fully developed account of Aboriginal sovereignty, I shall suggest what I take to be a more fruitful way of approaching the complex issue of Aboriginal sovereignty without discarding Kymlicka's political liberalism. Essentially, in this chapter I will take Kymlicka up on his idea of Aboriginal

incorporation to show that a thorough investigation of the meaning of this concept requires a radical shift in our understandings of historical interpretation, political sovereignty, and most importantly, Aboriginal peoples' place within their colonial societies.

*Kymlicka On the Liberal Theory Of Minority Rights*⁵

Kymlicka begins *Liberalism, Community, and Culture* by stating that he will examine the "broader account of the relationship between the individual and society."⁶ In other words, he is interested in the individual's sense of belonging to a community and, therefore, to a culture. He proposes to defend an interpretation of liberalism, influenced by Rawls and Dworkin, against communitarian objections that it possesses only a "thin" theory of culture.⁷ Communitarians mean by this objection that contemporary liberal theorists attach little value to the role that culture plays in shaping an individual's moral and political identity. Contemporary liberalism is supposedly unable to generate a rich, or "thick", theory of culture, given the diversity of cultures prevalent in most constitutional democracies.⁸ There are two distinct problems within the liberal-communitarian debate that Kymlicka wants to examine: first, there are the communitarian critiques demanding thick theories of culture, second, there is the failure of both liberals and communitarians to deal with the diversity of cultures.

Kymlicka focuses on liberalism as a normative political philosophy, examining what he takes to be the fundamental moral commitments made by a liberal political theory. The philosophical issue at hand is to determine what an individual's essential interest is when she deliberates about her moral status in the world. For Kymlicka, our essential interest is the fact that we attempt to live a good life; that is, we value most those things that a good life contains. However, the current set of beliefs we hold to be of most value may be the wrong ones. Therefore, it is imperative that we be able to deliberate so that we can change our minds (when we come to consider certain beliefs that we have held to be inimical to the good life). So, for Kymlicka, our essential interest is living *the* good life-- as opposed to the life we currently believe to be good.⁹ Next, according to Kymlicka, we must revise these beliefs from "the inside." An individual can lead a good life only if she makes choices according to the values that she holds to be true. Kymlicka has two preconditions for what he takes to be the necessary conditions for the fulfillment of our essential interest in leading a good life. First, we must lead our life from the inside, that is, from the set of beliefs we value as the best for our pursuit of the good life. Second, we must be free to question these beliefs.¹⁰

Kymlicka introduces culture into his theory because we must evaluate our beliefs from within the context of a culture. In his earlier book *Liberalism, Community, and Culture*, he does not offer a substantive

understanding of culture, because he is not interested in exploring culture *per se*, but rather in establishing a set of rationally devised cultural conditions: "... individuals must have the cultural *conditions* conducive to acquiring an awareness of different views of the good life, and to acquiring the ability to intelligently examine and reexamine these views."¹¹ These cultural conditions must allow individuals to live their lives from the inside; further, these individuals must have the freedom to question their beliefs in "the light of whatever information and examples and arguments our culture can provide." The culture Kymlicka is referring to as "ours" is the one that has shown great concern for the rights of individuals. The liberal's explicit interest in the individual has forged the traditional liberal concerns for, as Kymlicka states, "education, freedom of expression, freedom of press, artistic freedom, etc."¹²

Kymlicka offers a more substantive discussion of culture in his recent *Multicultural Citizenship: A Liberal Theory of Minority Rights*:

The sort of culture that I will focus on is a *societal culture* - that is, a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language.¹³

Further, a societal culture is one that is "institutionally" embodied. It is clear that Kymlicka has the same type of community in mind here as he offered in *Liberalism, Community, and Culture*; specifically, a legitimate

societal culture is one that is “modern” and shares a common identity with an underlying commitment to individual equality and opportunity.¹⁴ This type of societal culture's public policies are guided by three imperatives: first, the government must treat people as equals; second, the government must treat all individuals with equal concern and respect; and, third, the government must provide each individual with the appropriate liberties and resources needed to examine and act on their beliefs. These criteria constitute a liberal conception of justice. So for Kymlicka, it is of the utmost importance that an individual choose what is best for the good life and that she be free to act on these choices:

for meaningful individual choice to be possible, individuals need not only access to information, the capacity to reflectively evaluate it, and freedom of expression and association. They also need access to a societal culture. Group-differentiated measures that secure and promote this access may, therefore, have a legitimate role to play in a liberal theory of justice.¹⁵

Cultural membership, then, is a primary good in Kymlicka's liberalism.¹⁶ Because culture is a primary good for all individuals, governments ought to protect, or preserve, the integrity of the plurality of cultures from which individuals make their choices. Kymlicka identifies “two broad patterns of cultural diversity”. In the first instance,

... cultural diversity arises from the *incorporation* of *previously* self-governing, territorially concentrated cultures into a larger state. These incorporated cultures, which I call ‘national minorities’, typically wish to maintain themselves as distinct societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure their survival as distinct societies.¹⁷

The second pattern of cultural diversity arises out of “individual and familial immigration.” Essentially immigrants came into Canada under the assumption that they were going to become part of the existing societal culture; in a sense, they left behind their own societal cultures in order to join another. One of the main arguments of *Multicultural Citizenship* is that national minorities have stronger claims to group-differentiated rights than cultures that have immigrated to Canada from other parts of the world. In the Canadian context, the national minorities consist of the English newcomers, French newcomers, and Aboriginal peoples.

Kymlicka claims that national minorities, as *previously* self-governing cultures, *incorporated* to form the Canadian state. He adds:

the incorporation of different nations into a single state may be involuntary, as occurs when one cultural community is invaded and conquered by another, or is ceded from one imperial power to another, or when its homeland is overrun by colonizing settlers.¹⁸

From an Aboriginal perspective the Canadian state came into existence by means of all three practices: some Aboriginal communities were conquered,¹⁹ some communities ceded powers to the British Crown and later the Canadian governments, and many communities were simply overrun by colonial newcomers. Of course, the three practices were not exclusive to each other as most Aboriginal communities experienced all three forms of incorporation. I shall return to the issue of Aboriginal incorporation later; first I shall take a

closer look at Kymlicka's justification for the special rights held by national minorities.

In chapter six of *Multicultural Citizenship*, "Justice and Minority Rights," Kymlicka provides what he takes to be overlapping arguments for the justification of minority rights, or group-differentiated rights, within a liberal democratic state. He discusses three arguments for the recognition of minority rights: the equality argument, the argument from historical agreement, and the diversity argument. As we shall see shortly, Kymlicka's theory is driven by the equality argument, as the historical agreement and diversity arguments, although meritorious on their own, ultimately depend on the equality argument for normative support.

Kymlicka's major motive in providing three overlapping justifications for minority rights is to show that the concept of "benign neglect" is untenable for political liberalism. Advocates of the benign neglect view argue that recognition of universal individual rights resolves any problems associated with demands for special cultural recognition--on this view, substantive differences between cultures are unproblematic because the state grants the same package of rights to all individuals. Group-differentiated rights advocates, however, argue that there are substantive differences between the diversity of cultures and that legitimate recognition of this diversity requires the state to allocate different packages of rights accordingly. Kymlicka argues that "the state unavoidably promotes certain cultural

identities, and thereby disadvantages others. Once we recognize this, we need to rethink the justice of minority rights claims."²⁰ The equality argument is intended to resolve the conflict between the benign neglect view of rights and the group-differentiated rights view.²¹

The normative role of equality, in Kymlicka's equality argument, now functions on the level of the national minorities. Since cultural membership is a primary good *and* Aboriginal peoples constitute a national minority, they are accorded special rights by the state--where the state is implicitly understood as *the* ultimate legitimate expression of political sovereignty. Aboriginal rights are a legitimate class of rights since liberals give credence to the intuition that prior occupancy has at least some normative weight in a theory of justice; indeed, this intuition generates the legitimacy of a national minority in Kymlicka's theory.²² The special rights that Aboriginal peoples possess are rights of governance, one of three forms of group-differentiated rights in Kymlicka's theory of minority rights. These rights--the inherent rights that are legitimate from the initial formation of the Canadian state--are the strongest form of group rights in Kymlicka's classification of minority rights. The other forms of group-differentiated rights - ethnic rights and special representation rights - are allocated to certain groups who arrived after the formation of the Canadian state and do not entail rights of governance.²³

Kymlicka's equality argument can be briefly summarized as follows. National minorities (Aboriginal peoples, the English, and the French) are the

fundamentally privileged sovereign groups in Kymlicka's characterization of the Canadian multinational state. National minorities have rights of governance because they were the initial legitimate entities that formed the multinational state of Canada. However, for various reasons, the national minorities relinquished, or transferred, certain powers to the larger political union. Kymlicka notes that the creation of the multinational state may not have arisen from a just context; however, this poses no significant problem for his theory because his view of the political relationship *today* is premised on the fundamental political recognition of equality between the incorporating national minorities. I believe that this assumption goes to the core of the meaning of Canadian sovereignty, and especially Aboriginal sovereignty.

I want to point out, though, that there are two normative dimensions to Kymlicka's theory of minority rights and it is important to keep them separate. First, there is the cultural dimension. Aboriginal cultures, because they are unfairly vulnerable to the cultural influences of the dominant culture, are afforded special rights in order to protect the integrity of their societal cultures. Because Aboriginal peoples constitute a kind of collective their special rights are premised on the fact that cultural membership is a primary good *and* Aboriginal cultures are vulnerable to the unfair influences of the dominant culture. This is largely the context from which liberals have discussed the legitimacy of collective rights for groups.

The second normative dimension to Kymlicka's theory of minority rights involves the language of political sovereignty. Although Kymlicka does not use the word "sovereignty" the language of political sovereignty is nonetheless brought into his theory when he introduces the concept of a national minority. National minorities are defined as communities that were self-governing at the time of incorporation. Aboriginal communities constitute national minorities because normative weight is given to the fact that Aboriginal peoples occupied Canada first, therefore they were self-governing societies. Thus, the status of Aboriginal peoples as a national minority is based on the assumption of their previous self-governance, or sovereignty.

Both of these normative dimensions (cultural minority and national minority) are at work in Kymlicka's justification for Aboriginal rights of governance. However, liberals have discussed Aboriginal rights mostly in the language of cultural protection, rather than in the language of Aboriginal sovereignty. Kymlicka is right to bring into the discussion the fact that Aboriginal peoples constitute a national minority, but there is no good reason for Aboriginal sovereignty, implicit in their status as a national minority, to disappear from the discussion of Aboriginal rights of governance in a contemporary context. If we take seriously the claim that Aboriginal peoples were self-governing nations before contact then we must re-examine our understandings of Aboriginal incorporation. This is because Aboriginal

incorporation calls into question the nature of the formation of the Canadian state. Although Kymlicka is sensitive to the fact that Aboriginal peoples have suffered greatly throughout the history of the relationship, he nonetheless sidesteps the issue of Aboriginal incorporation. Interestingly, both the cultural and sovereignty normative dimensions of Kymlicka's theory yield interpretations that advocate Aboriginal rights of governance, though, I will claim that the second interpretation offers a more fruitful approach for capturing Aboriginal understandings of their sovereignty.

The cultural dimension of Kymlicka's theory does support Aboriginal sovereignty. Because Aboriginal peoples constitute a national minority, it follows that if our theory of justice deems it necessary, then rights of governance can be accorded to them. Since culture is a primary good for all individuals, including Aboriginal individuals, the state ought to ensure policies that protect the integrity of all cultures. Since Aboriginal cultures are unfairly vulnerable to decimation by the overpowering dominant culture in Canada, justice demands that they be accorded special rights. Within a distributive theory of justice, these special rights *may* be rights of governance.

But it is important to note that the rights accorded to Aboriginal groups are justified only "if there actually is a disadvantage with respect to cultural membership, and if the rights actually serve to rectify the disadvantage."

Kymlicka adds:

One could imagine a point where the amount of land reserved for indigenous peoples would not be necessary to provide reasonable external protections, but rather would simply provide unequal opportunities to them. Justice would then require that the holdings of indigenous peoples be subject to the same redistributive taxation as the wealth of other advantaged groups, so as to assist the less well off in society. In the real world, of course, most indigenous peoples are struggling to maintain the bare minimum of land needed to sustain the viability of their communities. But it is possible that their land holdings could exceed what justice allows.²⁴

The point behind this passage, as Kymlicka goes on to explain in the accompanying footnote, is that he places Aboriginal rights squarely in a theory of distributive justice. Aboriginal cultures, as national minorities, can exercise their rights of governance only to the extent that they do not offset the balance of fairness between the remaining cultures in Canada. This added proviso leads to a weaker form of Aboriginal sovereignty because the rights of Aboriginal governance are recognized only to the extent that they do not trump the sovereignty of the Canadian state. Aboriginal peoples argue that limiting their rights in this ahistorical way misrecognizes the source of their rights of governance.²⁵

Aboriginal Incorporation and Aboriginal Sovereignty

I suggest that Aboriginal perspectives must be included in the discourse about their rights. We retain Aboriginal communities as national minorities; but then focus on the problem of Aboriginal incorporation in order to

determine the *current* political status of *particular* Aboriginal communities. This is because many Aboriginal communities maintain that they are *still* self-governing nations, and Aboriginal peoples have not, in fact, relinquished, or ceded, any powers to the state.²⁶ Aboriginal incorporation calls into question our understandings of Aboriginal peoples' political relationships with the Canadian state. From this perspective, Aboriginal rights of governance can be recognized in a much deeper sense than in the first interpretation. This is because Aboriginal sovereignty does not have to dissipate after the formation of the Canadian state; more importantly, it lies in the forefront of any current discussion about Aboriginal rights.

This historical approach differs from the first in that it facilitates a stronger conception of Aboriginal sovereignty, something like that provided by the Gitksan people. They believe that "the ownership of territory is a marriage of the Chief and the land. Each Chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. The land, the plants, the animals and the people all have spirit- they all must be shown respect. That is the basis of our law." The "voice" that arises within a strong conception of Aboriginal sovereignty arises directly from the community itself; that is, from the people who hold the traditional knowledge of their community and are recognized by their citizens as legitimately expressing the meaning of their political sovereignty.²⁷

However, for Canadian governments, recognition of a strong conception of

Aboriginal sovereignty entails acceptance of the possibility that there are Aboriginal communities in Canada that remain sovereign. Canadian governments have refused to recognize Aboriginal sovereignty in any form; until Aboriginal peoples participate as equals in the discourse that determines the meaning of their political sovereignty, and the rights of governance that follow from that sovereignty, legislative instruments and the meaning of rights as found in section 35(1) of the *Constitution* will remain mysterious and elusive for policy makers.²⁸

Of course this does not bring us any closer to the meaning of Aboriginal sovereignty. The first step we must take to better understand what Aboriginal peoples mean by sovereignty is to investigate the historical relationship itself.²⁹ But it matters significantly how we go about this investigation. For example, Kymlicka uses the word "incorporation" to capture the historical significance of the early period of the relationship. This word choice constitutes an interpretation of history. Such interpretations play pivotal roles in determining the meaning of Aboriginal sovereignty. The frustrating problem for Aboriginal peoples is that their interpretations of history have not been recognized as legitimate. I will return to this problem throughout the course of my thesis, but for now I want to focus on contemporary political liberalism. A liberal theory of rights, in the context of Aboriginal peoples, functions ahistorically: it begins from a rationally constructed theory of distributive justice that bestows a set of fundamental rights to all individuals

and, as a consequence, a set of special rights to individuals who belong to minority cultures. As I have tried to show by looking at Kymlicka's theory of minority rights, it is possible for a version of political liberalism to recognize that some Aboriginal communities are self-governing nations, but there remains a substantive difference over the meaning of Aboriginal sovereignty. This difference may not mean much to liberals and Aboriginal policy makers, as a liberal theory of justice has, in some sense, distributed fairly special rights to Aboriginal peoples. However, sovereignty lies at the very core of Aboriginal existence, and history is the main source for understanding the meaning of the complex nature of Aboriginal political sovereignty.³⁰

Kymlicka does allow historical interpretations to find their way into a liberal theory of justice when he invokes his second argument in favour of group-differentiated rights. The argument from historical agreement is meant to provide additional normative support to the more fundamental equality argument, while addressing the issues surrounding the dissolution of Aboriginal sovereignty. Kymlicka points out that proponents of group-differentiated rights have had difficulties convincing opponents with historical arguments. He states:

Those people who think that group-differentiated rights are unfair have not been appeased by pointing to agreements that were made by previous generations in different circumstances, often undemocratically and in conditions of substantial inequality in bargaining power.

He goes on to ask "Why should not governments do what principles of equality require now, rather than what outdated and often unprincipled agreements require?"³¹

Kymlicka's answer is to question a fundamental assumption underlying the equality argument. "The equality argument assumes that the state must treat its citizens with equal respect. But there is a prior question of determining which citizens should be governed by which states." This raises an extremely serious problem for political liberalism. If we invoke the equality argument without looking at history, we gloss over the fact that Aboriginal peoples became citizens in many different ways, most of them unjust. More importantly, in some communities, Aboriginal peoples simply are not citizens of the Canadian state.³² Canadian political leaders, policy makers, and especially judges of the Canadian state, have unilaterally assumed that, for better or worse, Canada's Aboriginal peoples have become citizens of Canada in the fullest sense of its meaning. Essentially, this is how Kymlicka uses the term incorporation as his theory implicitly subsumes the fact that Aboriginal peoples have become citizens of the Canadian state and, more importantly, that they *may* have relinquished their original sovereignty in this process of incorporation.³³

This is where Kymlicka's concept of incorporation becomes most important and useful for my investigation of Aboriginal sovereignty. If the incorporation process was unjust, as Kymlicka suggests was the case for many

Aboriginal communities, we have to re-assess the validity of Aboriginal incorporation in a much fuller investigation. It is not enough to leave the investigation with the claim that the incorporation was unjust, therefore the Canadian state should accord Aboriginal peoples special rights to rectify past wrongs. This leads to Waldron's view of "superseding" historical injustice, which, along with Melvin Smith's views of "one law for all people," treats Aboriginal peoples with a fundamental disrespect in that it does not allow them to speak for themselves.³⁴

The relevant issue for Aboriginal peoples is not whether we ought to rectify past injustices in order to balance the scales of a liberal distributive justice system, but how governments can come to recognize the legitimacy of Aboriginal sovereignty in order to renew the political relationship on more just foundations.³⁵ Kymlicka's theory can be interpreted in a way that at least makes room for Aboriginal peoples to speak for themselves. This is an important first step for political liberalism, but it is only the first step. As I will try to show in the next few chapters, history, and especially Western philosophy, have not been kind to Aboriginal voices, so it is very important that Aboriginal voices be listened to and respected as philosophically legitimate participants in the discourse about Aboriginal sovereignty.

I have used this chapter as a jumping off point in order to examine, in chapters two, four, and five, how a few of the most influential European philosophers have characterized Aboriginal peoples. I will show that these

philosophers developed a discourse *about* Aboriginal peoples that did not require Aboriginal participation. This lack of philosophical participation is significant because it demonstrates that some Europeans in early colonial America cared very little about Aboriginal ways of thinking.³⁶ It is my hope that by engaging in this investigation that we may begin to set out on a path that examines the concept of Aboriginal sovereignty in a richer, more inclusive, discourse.

To put it simply, if we want to understand better the meaning of what is commonly termed “tribal, or Aboriginal, sovereignty” then it is a necessary condition that we have to *listen* to what Aboriginal peoples have to say about it. This inclusion, itself a problematic concept that requires explanation, does not mean that anything will get done in practice, or that understanding will automatically follow merely by including Aboriginal voices in philosophical discourse. Tribal sovereignty is a normative political concept for several overlapping reasons: Aboriginal peoples assert it, constitutions recognize it, comprehensive and specific land claims are negotiated because of it, and public policies have been designed and implemented to undermine it. Yet, Aboriginal peoples and their colonial governments assert seemingly incommensurable views as to its meaning. In chapter six, I shall return to Kymlicka’s liberal theory of minority rights and refer to the value of Iroquoian political philosophy, outlined in chapter three, in order to suggest

ways to generate a more inclusive listening environment within an agonic, and heavily legislated, political society.

In summary, I have attempted to argue in this chapter that political liberalism's characterization of Aboriginal rights of governance does not require the participation of Aboriginal peoples in order to determine the content of their "special" rights. This is because Aboriginal rights of governance are justified within a theory of distributive justice that does not recognize fully the legitimacy of Aboriginal sovereignty. Aboriginal peoples argue that their rights of governance flow from their political sovereignty, and they ought to be recognized by the Canadian governments (this is the significance of section 35(1) of the Constitution). It is precisely this fact of Aboriginal experience that the Canadian governments have refused to recognize in any serious fashion. I have suggested that Kymlicka's theory of minority rights, however, can be reformulated in a way that brings the Aboriginal voice into the dominant, non-Aboriginal, discourse of Aboriginal rights of governance. However, to do so in a just way requires a re-examination of Aboriginal incorporation between Aboriginal peoples and the Canadian state. The meaning of Aboriginal incorporation is problematic because Aboriginal interpretations have not been recognized by their dominant colonial governments; therefore, it matters how we go about understanding its meaning.

Endnotes

¹ The two relevant sections I am referring to in the *Constitution Act, 1982* are sections 15 and 35. Section 15(1) reads: Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. However, in section 15(2) a provision is made for affirmative action programs which can, in a sense, trump the rights laid out in section 15(1). Section 35 pertains specifically to Aboriginal peoples, section 35(1) reads: The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed. The exact meaning and content of Aboriginal rights that are "hereby recognized and affirmed" remains controversial; which has the consequence of confusing the relationship between the basic rights of equality spelled out in section 15 and the Aboriginal rights protected by section 35.

² I am using the concept of Aboriginal, or tribal, sovereignty in this thesis to capture, albeit crudely, the special relationship that Aboriginal peoples have to their territories. While I would argue that this special relationship also means "ownership" in the Western legal tradition, in this thesis, I simply want Aboriginal sovereignty to be understood as it is articulated in the languages and traditions of Aboriginal peoples themselves. For example, the Gitksan and Wet'suwet'en hereditary Chiefs characterize their sovereignty by stating that "the ownership of territory is a marriage of the Chief and the land. Each Chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. The land, the plants, the animals and the people all have spirit - they all must be shown respect. That is the basis of our law." Gisday Wa and Delgam Uukw, *The Spirit in the Land: Statements of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia 1987-1990* (Gabriola, B.C.: Reflections, 1992).

³ For accounts of Aboriginal conceptions of sovereignty see Gerald Alfred, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism in Canada* (Oxford: Oxford University Press, 1995); Russell Barsh and James Youngblood Henderson. *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980); Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: M.G. Hurtig, 1969); Mark Dockstator, *Towards an Understanding of Aboriginal Self-Government: A Proposed Theoretical Model and Illustrative Factual Analysis* (J.D Thesis, Faculty of Law, York University, North York, 1993); Oren Lyons, et al eds. *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light Publishing, 1992); Antonia Mills, *Eagle Down is Our Law: Witsuwit'en Law,*

Feasts, and Land Claims (Vancouver: University of British Columbia Press, 1994); Mary Ellen Turpel-Lafond, *First Nations' Resistance: Post-Colonial Law* (Toronto: University of Toronto Press, forthcoming); Wub-E-Ke-Niew. *We Have the Right to Exist* (New York: Black Thistle Press, 1995).

⁴ Will Kymlicka, *Liberalism, Community, and Culture*. (Oxford: Oxford University Press, 1989), p.154) Hereby cited as "LCC".

⁵ I shall draw mainly from two sources: LCC and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*. (Oxford: Oxford University Press, 1995). Hereby cited as "MC". See also his "Liberal Individualism and Liberal Neutrality" *Ethics* 99 (4 (1989), 883-905; *Contemporary Political Philosophy: An Introduction*. (Oxford: Oxford University Press, 1990); "Liberalism and the Politicization of Ethnicity" *Canadian Journal of Law and Jurisprudence* 4 (2) (1991), 239-56; "The Rights of Minority Cultures: Reply to Kukathas" *Political Theory* 20 (1) (1992), 140-46; "Two Models of Pluralism and Tolerance" *Analyse und Kritik* 14 (1) (1992), 33-56; "Group Representation in Canadian Politics" In *Equity and Community: The Charter, Interest Advocacy, and Representation*, edited by L. Seidle (Montreal: Institute for Research on Public Policy, 1993); "Reply to Modood" *Analyse und Kritik* 15 (1) (1993), 92-6; "Concepts of Community and Social Justice" in *Global Environmental Change and Social Justice*, edited by F. Hampson and J. Reppy. (forthcoming); "Dworkin on Freedom and Culture" In *Reading Dworkin*, edited by J. Burley (Oxford: Oxford University Press, 1995); "Misunderstanding Nationalism" *Dissent* Winter (1995) (130-7); Will Kymlicka and W.J. Norman, "Return of the Citizen" *Ethics* 104 (2) (1994) 352-81.

⁶ LCC, p.1.

⁷ Kymlicka mainly draws from the following texts: Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977) and Ronald Dworkin, *A Matter of Principle* (London: Harvard University Press, 1985). For John Rawls see *A Theory of Justice*, (Cambridge Mass.: Harvard University Press, 1971) and *Political Liberalism*, (New York: Columbia University Press, 1993).

⁸ For a few of the "standard" communitarian critiques of liberalism see Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981); Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); Charles Taylor, *Sources of the Self* (Cambridge: Cambridge University Press, 1990); Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983). For a good summary of the liberal-communitarian debate see Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford: Blackwell Publishers, 1992). See also Catharine Mackinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1991) and Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990). For a discussion about "thick" and "thin" conceptions of culture

see Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973) especially chapter 1 "Thick Description: Toward an Interpretive Theory of Culture") and James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge, Mass.: Harvard University Press, 1988) especially Chapter 12 "Identity in Mashpee")

⁹ LCC, p.12. See also MC ch. 5.

¹⁰ LCC, p.13. and MC p.81.

¹¹ LCC, p.13 (emphasis added).

¹² Ibid, p.13.

¹³ MC, p.76 (emphasis added).

¹⁴ Ibid, p.76-77.

¹⁵ Ibid, p.84.

¹⁶ See LCC, Ch. 8. On p.166 Kymlicka says "Rawls's own argument for the importance of liberty as a primary good is also an argument for the importance of cultural membership as a good."

¹⁷ MC, p.10 (emphasis added).

¹⁸ Ibid, p.11.

¹⁹ Strictly speaking, at least in the Canadian legal and political context, Aboriginal peoples were never conquered. I take conquered to be the most destructive form of the "overrun" practice of colonization. For example, the Beothuck of Newfoundland can be said to have been conquered, but only to the extent that they no longer exist. From an Aboriginal perspective as long as an Aboriginal community is occupying a homeland they remain unconquered.

²⁰ MC, p.108.

²¹ This difference of philosophical opinion lies at the centre of contemporary debates in political liberalism. For views of the 'benign neglect' approach see Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (New York: Basic Books, 1975) and Nathan Glazer, *Ethnic Dilemmas: 1964-1982*. (Cambridge: Harvard University Press, 1983). In the Aboriginal context see Melvin H. Smith, *Our Home or Native Land?: What Governments' Aboriginal Policy is Doing to Canada* (Victoria: Crown Western Press, 1995). For example, Smith states "...a new native policy must be built on the twin principles of jurisdictional integration for natives within the mainstream of Canadian society, thus enhancing a sense of self reliance and personal achievement, and on the principle of equality under the law consistent with the rule of law and the Constitution. Moreover, such a policy must be formulated and implemented absent any sense of collective guilt over what may have happened in times past. Until now, this sense of guilt has been allowed to hang like a pall over all effects at native policy reform" p.264.

²² Kymlicka includes the English and the French as holding prior occupancy because they were self-governing entities at the time of the formation of the Canadian state; however, Aboriginal peoples think of prior occupancy in the context of the time *before* the arrival of the Europeans. The difference between the two interpretations is that in Kymlicka's view we don't question the legitimacy of French and English sovereignty before the time of Confederation.

²³ The distinction between Aboriginal peoples and immigrants is important for Kymlicka as it lays out the differences of political powers each holds within the Canadian state; in Kymlicka's theory, immigrant groups are not entitled to rights of self-governance.

²⁴ MC, p.110.

²⁵ See Olive Patricia Dickason, ed. *The Native Imprint: The Contribution of First Peoples to Canada's Character*. Vol. 1: To 1815 (Canada: Athabasca University, 1995) and especially Volume 1 *Looking Forward, Looking Back* of Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*. 5 vols. (Ottawa: Minister of Supply and Services, 1996).

²⁶ For example, see Walter Hildebrandt, Dorothy First Rider, and Sarah Carter, *Treaty 7 Elders and Tribal Council: The True Spirit and Original Intent of Treaty 7* (Montreal: McGill-Queen's University Press, 1996); Don Monet, and Skanu'u (Ardythe Wilson), *Colonialism on Trial: Indigenous Land Rights and the Gitksan and Wet'suwet'en Sovereignty Case*. (Gabriola Island, B.C.: New Society Publishers, 1992).

²⁷ For the purposes of my argument, I assume that a legitimate entity can represent the citizenship of a First Nation in negotiations with the provincial and federal governments. I am aware that I have simplified the process in which a "legitimate" voice arises from within a First Nation; however, for the most part, First Nations peoples can and do have legitimate forms of political representation.

²⁸ For example, Aboriginal leaders are used as "consultants" in First Ministers Conferences; that is, they do not speak for themselves about the content of their "special" rights, just as they are excluded from the discussions concerning Aboriginal policy and legislative processes.

²⁹ In particular see James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995) and Royal Commission on Aboriginal Peoples *Report of the Royal Commission on Aboriginal Peoples*. 5 vols. (Ottawa: Minister of Supply and Services, 1996) especially volume 1.

³⁰ This is why the Royal Commission began its final report with an examination of the historical relationship. I also believe, from my experience working at the Royal Commission, that one of the main reasons for the delay in submitting the final report was that the Commissioners

needed time to work through some of the consequences of asserting that contemporary views of Aboriginal sovereignty have been distorted by particular interpretations of history. The Commission wanted to include Aboriginal interpretations of history, but had to do so within a largely non-Aboriginal intellectual and political environment that assumes that Aboriginal interpretations do not count as legitimate.

³¹ MC, p.116.

³² I mean this in the way Western political theorists construe the meaning of "citizen". For example, *Black's Law Dictionary* defines citizens as "members of community inspired to a common goal, who, in associated relations, submit themselves to rules of conduct for the promotion of general welfare and conservation of individual as well as collective rights." Henry John Campbell (St. Paul, Minn.: West Publishing Company, 1968).

³³ I say that Aboriginal peoples *may* have relinquished their sovereignty because Kymlicka leaves it as an open issue whether the possibility exists that some communities remain sovereign, for example the Cree of Northern Quebec, the Mohawk of Kahnawake, and the Gitksan Wet'suwet'en of British Columbia.

³⁴ Waldron's argument basically states that although the lands taken from Aboriginal peoples may have been unjustly taken at some time in the distant past, it does not follow that Aboriginal peoples have just claims to these lands at the present time. He argues that the rights of Aboriginal peoples, and their moral claims of ownership to their lands, have somehow been superseded by time itself. Now that many generations of European settlers have settled on Aboriginal lands, it is the Europeans who have legitimate moral claims of ownership, and are, in a sense, innocent victims in the recent surge of Aboriginal land claims. Waldron's view ignores the significance of the political relationship between Aboriginal peoples and the European newcomers: his argument amounts to a philosophical slight of hand designed, not just to condone the stealing of Aboriginal lands, but to absolve contemporary governments of responsibility for taking action to resolve outstanding Aboriginal lands claims.

³⁵ Of course, this is not to say that compensation ought not play a role in renewing the relationship.

³⁶ I say "some" because there were, and are, Europeans who embraced Aboriginal ways of thinking. However, some of the more well known European philosophers, for example, Las Casas, Hobbes, Locke, Rousseau, and Tocqueville, whose work is considered to be part of the Western "Canon," had views of Aboriginal peoples that are worthy of closer examination.

Chapter Two:

Indian Identity in the Valladolid Debate of 1550

If then I know not the meaning of the voice, I shall be to him that speaketh a barbarian, and he that speaketh will be a barbarian unto me.

1 Corinthians 14 [11]

This is the oppressor's language yet I need it to talk to you.

Adrienne Rich

Introduction

In this chapter I shall examine a philosophical debate that occurred in Spain—the Valladolid debate of 1550. Essentially, the main purpose of the debate was to determine the identity of the “Indians” of the New World.¹ This was of paramount importance to the Spanish because the possibility existed that the Spanish did not have the right to wage war against the Indians. If such a view were true, it would have had enormous economic and political consequences for the lands and peoples of the New World. Therefore, the Spanish Crown, or in the very least a small faction of Spanish intellectual society, had to prove to themselves that they were acting in a moral and just fashion as they expanded their empire across the vast lands of the New World.

The Valladolid debate reveals much about the way educated Europeans understood the indigenous peoples of the New World. One side of the debate was represented by the Aristotelian scholar Juan Gines Sepulveda. Basically, he articulated the view that the Europeans were naturally superior to the barbaric uncivilized Indians. On the other side of the debate, represented by the Dominican monk Bartolomé de Las Casas, were those who respected the cultures and traditions of the Indians, with the caveat that as long as Indians remained non-Christians, they remained uncivilized, and therefore inferior to Europeans.

Las Casas and Sepulveda represent diametrically opposed European voices that have determined the limits of a discourse *about* indigenous peoples for over four hundred years. Indigenous peoples did not directly participate in the Valladolid debate of 1550 because, quite simply, they were thought inferior, and therefore unnecessary. Both sides agreed that Aboriginal languages, cultures, and traditions did not measure up to the standards of the more civilized European cultures. The European characterizations of the Indians in the Valladolid debate were safely constructed within the theological and philosophical traditions of sixteenth-century Europe. The purpose of this chapter is not so much to explain this European philosophical context, but to show how this dialogue reveals the inadequacy of Eurocentric traditions for framing the identity, rights, and sovereignty of the indigenous peoples of the New World.

Of course it is much easier to make this point from within a twentieth-century context; nonetheless, this does not mean the conclusions drawn from such an investigation are not useful. I will go on to make use of my examination of the Valladolid debate in the ensuing chapters to show that the exclusionary dialogue between Las Casas and Sepulveda has been repeated in different forms throughout the relationship between the Europeans and the indigenous peoples of the New World. That is, many of the Eurocentric discourses, such as the discourse of rights and sovereignty, that have developed since the time of contact are not what I call "indigenous inclusive." This in itself may not be such an interesting philosophical claim,

but the consequences of such a view has had drastic, devastating effects on the lives of all indigenous peoples. This is because discourses--such as rights, political sovereignty, nationhood, and justice--shape the public policies that dominate virtually every aspect of indigenous life.

So I begin at the beginning, where the relationship is in its most nascent form. William Carlos Williams' has said that "History begins for us with murder and enslavement, not with discovery" and this does not simply apply to the practical world of indigenous people. Indigenous peoples experienced a domination of what Robert Allen Warrior has labeled as their "intellectual sovereignty."² Over the next four chapters I shall examine different ways in which the Eurocentric intellectual traditions have been used to silence indigenous intellectual sovereignty. In the final chapter I shall say something about possible ways for indigenous peoples to recover, and renew, the rich and valuable intellectual traditions that were once their only sources for philosophical inquiry.

A Very Brief History of the Destruction of the Indies

To begin, I want to give some indication of what happened in the New World from the arrival of Columbus in 1492 up to the time of the Valladolid debate of 1550. During this brief period of just 58 years the lives of the indigenous people of the New World were changed forever. Spanish "conquistadors" brought disease and destruction, *hidalgos*³ brought

aristocracy, slavery, and European concepts of class division, and Catholic priests brought the so-called truth of the Christian religion. All three classes of colonists served to set the stage for the gradual, or in some places not so gradual, annihilation of the indigenous peoples of the New World.

The main reason the Valladolid debate came about was because the Indian population had declined in such drastic numbers that the Spanish landowners were beginning to worry about who would be able to do all of the back-breaking work required for their ever expanding search for wealth in the New World. In a little over fifty years, Spain's possessions had grown to include not simply the outlying islands in the Caribbean, but all of Mexico, central America, parts of North America, and most of South America. From the 1520's on, largely because of the tireless work of the Dominicans in the New World and Spain, there was a growing concern amongst the Spanish intellectual elite that perhaps the Spanish could not justify their heinous acts of violence against the Indians. In 1549, Charles V called for a halt to all military actions in the New World in order to take a closer examination of the Indian problem in the New World.

In the political environment of this growing "public" concern the debate was instigated so that some of Spain's most learned theologians could gather and reflect on two questions: first, the puzzling nature of the Indians in the New World and, second, whether Spain was justified in waging war against them. The Valladolid debate is unique in that it represents the first time in history that a conquering nation had stopped military actions in order to

consider whether their actions were morally justified. But we must bear in mind the fact that the conquest had proceeded without interruption for 58 years leading up to the debate. Regardless of the debate's outcome, the political and social reality of the indigenous peoples of the New World had changed drastically forever.

Virtually every non-native schoolchild is taught that America was "discovered" by Christopher Columbus. However, few are taught that the period of initial contact was characterized by unfettered violence, rampant disease, and the extortion of indigenous lands. Of course, "Columbus's Discovery of the New World" has a nicer ring to it than "The Castilian invasion of the Bahamas."⁴ It is well beyond the scope of this chapter to provide a detailed account of the Spanish presence in the New World from 1492 to 1550. In this short discussion, I want to highlight these three defining characteristics of the early relationship in order to show how it served to silence the voices of indigenous peoples.⁵

When Columbus and the Spanish conquistadors returned to the shores of Hispaniola for the second time in early January of 1494, they had every intention of staying. Columbus immediately set out to build a capital, Isabella, in honour of the Queen. But things did not go well for the Spaniards. Soon after landing, a fierce sickness broke out amongst the crew. This sickness, thought to have been influenza carried over by pigs brought

from the Canary Islands, merely slowed the Spaniards' quest for wealth, but it literally destroyed the local Indian population.⁶

Europeans had built up a tolerance to many of the diseases they brought to the New World; the Indians, however, had absolutely no defenses against diseases like dysentery, smallpox, measles, yellow fever, and influenza. These diseases were to move across the New World with disastrous effects.⁷

Migration of man and his maladies is the chief cause of epidemics. And when migration takes place, those creatures who have been longest in isolation suffer most, for their genetic material has been least tempered by the variety of world diseases...Medical historians guess that few of the first rank killers among the diseases are native to the Americas.

Oviedo gives a typical account of the effects of disease in the New World:

So many Indians died that they could not be counted, all through the land the Indians lay dead everywhere. The stench was very great and pestiferous.⁸

The smallpox pandemic of 1519 which was reported to have killed between a third to a half of all the Indians started in Santo Domingo and quickly moved across the islands and on to the mainland. Bishop Diego de Landa reported that "a pestilence seized them, characterized by great pustules, which rotted their bodies with a great stench, so that the limbs fell to pieces in four or five days."⁹

Although disease played an enormous role in destroying indigenous communities, it was only part of the whole story of destruction. As the Spaniards moved into the lands of Hispaniola they were motivated by stories of unlimited amounts of gold and wealth that simply lay ready for the taking. The Spaniards were willing to undertake any violence against Indians that

served to satiate their obsessive greed for gold and wealth. In late 1494, Columbus fell ill for a few months and his crew went wild. It was reported that over 50,000 Indians died during Columbus's illness.¹⁰ Nothing changed after Columbus regained his strength. In March of 1495, Columbus led several hundred of his heavily armed men, and several especially vicious war dogs, into the countryside of Hispaniola. This became a typical Spanish method of attack. Las Casas writes of one of these raids:

Once the Indians were in the woods, the next step was to form squadrons and pursue them, and whenever the Spaniards found them, they pitilessly slaughtered everyone like sheep in a corral. It was a general rule among Spaniards to be cruel; not just cruel, but extraordinarily cruel so that harsh and bitter treatment would prevent Indians from daring to think of themselves as human beings or having a minute to think at all. So they would cut an Indian's hands and leave them dangling by a shred of skin and they would send him on saying "Go now, spread the news to your chiefs." They would test their swords and their manly strength on captured Indians and place bets on the slicing off of heads or the cutting of bodies in half with one blow. They burned or hanged captured chiefs.¹¹

The terror unleashed against the Indians of Hispaniola has been well documented.¹² Las Casas was an eyewitness to many of these atrocities and gives account after account of the brutal violence at the hands of the Spaniards. Tzvetan Todorov's *The Conquest of America*, and especially David Stannard's *American Holocaust*, are recent studies filled with nauseating accounts--of which a few are cited below--of the Spanish brutalities against the Indians.

A Spaniard, in whom the devil is thought to have clothed himself, suddenly drew his sword. Then the whole hundred drew theirs and began to rip open the bellies, to cut and kill those lambs -men, women, children and old folk, all of whom were seated, off guard and frightened, watching the mares and

the Spaniards. And within two credos, not a man of all of them remains alive.¹³

The Spaniards cut off the arm of one, the leg or hip of another, and from some their heads at one stroke, like butchers cutting up beef and mutton for market. Six hundred, including the cacique, were thus slain like brute beasts...Vasco ordered forty of them to be torn to pieces by dogs.¹⁴

Some Indians they burned alive; they cut off the hands, noses, tongues, and other members of some; they threw others to the dogs; they cut off the breasts of women.¹⁵

And this Diego de Landa says that he saw a tree near the town from whose branches a captain hanged many Indian women, and from their feet he also hanged the infant children...There the Spaniards committed the most unheard of cruelties; they cut off hands, arms, and legs, and women's breasts; and they threw the Indians into deep lakes, and stabbed the children because they could not walk as fast as their mothers.¹⁶

In 1492, the number of Indians in Hispaniola was estimated to be about eight million. By the end of 1496, in just four years, the population had dropped to almost half. By the time of the Valladolid debate in 1550, the Indians of Hispaniola and its outlying smaller islands had been extinct for 25 years.¹⁷

In addition to the disease and violence, most Indians were forced into slavery. The Spanish hidalgos were not the type of people to do their own labour, so the Indians were parceled out as part of the land to the new immigrants. In this sense, the hidalgos thought of the Indians as no better than slaves. However, there were legal problems with classifying the Indians as slaves. The problem was that the Indians were technically considered to be vassals of the Spanish Crown. Therefore, like Spanish peasants back in Spain, Indians were nominally free. The Spanish landowners argued, however, that

the Indians were an integral part of their property who did not carry any special rights or privileges.

The difference of opinion about Indian legal classification was not all that significant in practice. Spanish attempts to rectify the problem of the Indian's place in the New World gave rise to two practices: the first was deadly, the second was deadly and, for lack of a better adjective, strange. The first practice, called the *encomienda*,¹⁸ was a way for the Spanish to argue that the Indians could be free, while for all practical purposes, enslaving them. The owners of the parceled lands, called *encomenderos*, were given grants that included an allotment of Indians. The reasoning was that the papal bulls of donation insisted that the Indians had to be Christianized.¹⁹ The most effective way to facilitate this assimilation process was to deny the Indians, for their own good, their freedom in order that they might labour, without wages, in the company of their Christian masters. The Royal order read:

Because of the excessive liberty the Indians have been permitted, they flee from Christians and do not work. Therefore they are to be compelled to work, so that the kingdom and the Spaniards may be enriched, and the Indians Christianized.²⁰

By "excessive liberty," the Spanish meant that Indians had lived in uncivilized non-Christian societies before the arrival of the Spanish. They were believed to have lived as the wild beasts, exercising their freedom within an anarchic state of disorder. The Spanish, on the other hand, were morally governed by the dictates of the Christian religion. Freedom, exercised within this higher more enlightened state of Christian order, justified the Spanish authority in the New World.

The other peculiar practice involved a royal document, called the "*requirimiento*" or "requirement," which was basically a charter legitimating the conquest of the New World. It was a formal "request" that the Indians accept the fact that the Spanish had every right to be in the New World; further, the Indians were requested to submit themselves to Christianity or be annihilated. The document was read aloud before entering an Indian community for the first time. Usually, it was read on the outskirts of town with no one listening but the Spanish. The conquistadors could then proceed in good conscience and destroy the community. Lewis Hanke writes:

...the requirement was read to trees and empty huts when no Indians were to be found. Captains muttered its theological phrases into their beard on the edge of sleeping Indian settlements, or even a league away before the starting the formal attack, and at times some leathered-lunged Spanish notary hurled its sonorous phrases after the Indians as they fled into the mountains. Once it was read in camp before the soldiers to the beat of the drum. Ship captains would sometimes have the document read from the deck as they approached an island, and at night would send out enslaving expeditions, whose leaders would shout the traditional Castilian war cry "Santiago!" rather than read the Requirement before they attacked the near-by villages. Sometimes Indian messengers were sent to "require" other Indians.²¹

As incredible as it sounds, the requirement was taken quite seriously by the Spanish Crown. But in practice it was nothing more than a perfunctory obligation, something to get out of the way in order to get on with killing and destroying Indians.

By 1518, the Spanish had moved on to the mainland so that Cortés could attempt the wholesale annihilation of the Aztec empire in Mexico.²²

The tempestuous adventures of Hernando Cortés have taken on an almost

mythical status in Mexican folklore.²³ In truth, the story of Cortés's destruction of Tenochtitlan, the immense city in the Aztec empire, which was founded in 1325,²⁴ is a paradigm of the behavior of the Spanish in the New World. Cortés and his men marched into the city to which they could not believe their eyes:

When we saw so many cities and villages built in the water and other great towns built on dry land and that straight and level causeway going towards [Tenochtitlan], we were amazed and said that it was like the enchantments they tell of in the legend of Amadis, on account of the great towers and [temples] and buildings rising from the water, and all built of masonry. And some of our soldiers even asked whether the things that we saw were not a dream.²⁵

Cortés was escorted into the great city and was received with gifts of peace and friendship. The Aztecs, not unknown for their own violent ways of war, had no reason to fear the Spanish as it was the recognized Mesoamerican custom that war had to be declared under strict conditions of diplomacy which involved mutual agreement as to exactly what was at stake in the ensuing battle. Cortés's men were fully aware of such protocol, but chose to take full advantage of their position. They surprised their hosts during a religious ceremony and proceeded to murder the dancers, along with many of the city's inhabitants. Ultimately, they destroyed the city.²⁶ Las Casas writes of this event:

The nobles were totally absorbed in what they were doing and had no thought for their own safety when the soldiers drew their swords and shouting: 'For Saint James, and at 'em, men!' proceeded to slice open the lithe and naked bodies of the dancers and to spill their noble blood. Not one dancer was left alive, and the same story was repeated in the other squares throughout the city. This series of events caused horror, anguish and bitterness throughout the land; the whole nation was plunged into mourning and, until the end of time, or at least as

long as a few of these people survive, they will not cease to tell and re-tell, in their areitos and dances, just as we do at home in Spain with our ballads, this sad story of a massacre which wiped out their entire nobility, beloved and respected by them for generations and generations.²⁷

Almost as deadly as the Spanish violence was the smallpox *bacillus* Cortés and his men introduced to the peoples of Mexico. Cortés's secretary wrote:

Those who did survive, having scratched themselves, were left in such a condition that they frightened the others with the many deep pits on their faces, hands and bodies. And then came famine, not because of the want of bread, but of meal, for women do nothing but grind maize between two stones and bake it. The women, then, fell sick of the smallpox, bread failed, and, many died of hunger. The corpses stank so horribly that no one would bury them; the streets were filled with them; and it is even said that the officials, in order to remedy this situation, pulled the houses down to cover the corpses.²⁸

Once again, disease and violence played their now familiar roles in the Spanish "conquest." The whole story of Cortés's destruction in Mexico is beyond the scope of this discussion, but it is important to note that the entire invasion of Mexico was completed by the time Sepulveda and Las Casas met to debate whether the war in the New World was morally justified.

The Spanish conquistadors did not stop their conquest in Mexico. From central Mexico, men like Alvarado, Guzman, and de Vaca went north, while Pizarro, and others, moved south into what is now called Central and South America to continue the campaign against the natives. In either direction, the results were the same--massive devastation of indigenous communities. Pizzaro was especially cruel to the Indians:

[he would] take Indians in chains to carry what the conquistadors had pillaged...when the Indians grew exhausted, they cut off their heads without untying them from their chains, leaving the roads full of dead bodies, with the utmost cruelty.²⁹

The population declines in these areas are all dismally similar. By the time the Spanish moved down to Peru, Chile, and Brazil there were other European nations involved in the colonial expansion into the New World. Before contact, the Incas of Peru and Chile had an estimated population of 9,000,000 to 14,000,000 people. Colonial practices of violent warfare and murder, coupled with the effects of introducing new diseases, virtually wiped out the Incan Empire. Across the Americas the peoples and civilizations were different, but the stories of their encounters with the Europeans were startlingly consistent in their violence. Pedro de Leon writes:

...if a man had need of one pig, he killed twenty; if four Indians were wanted, he took a dozen...there were many Spaniards who made the poor Indians carry their whores in hammocks borne on their shoulders. Were one ordered to enumerate the great evils, injuries, robberies, oppression, and ill treatment inflicted on the natives during these operations...there would be no end of it...for they thought no more of killing Indians than if they were useless beasts.³⁰

By the end of the sixteenth century the population of the Incan Empire had fallen by 94 percent--this means that between 8,500,000 and 13,500,000 indigenous people perished in less than 100 years of contact with Europeans.³¹ In 1549, one year before the Valladolid debate, the Portuguese moved into what is now called Brazil. The story is much the same here as it was in other parts of the New World--death and destruction of all the indigenous communities the Europeans encountered. David Stannard sums up the first

century of contact between Europeans and indigenous peoples of the New World:

By the time the sixteenth century had ended perhaps 200,000 Spaniards had moved their lives to the Indies, to Mexico, to Central America, and points further to the south. In contrast, by that time, somewhere between 60,000,000 and 80,000,000 natives from those lands were dead. Even then, the carnage was not over.³²

Unfortunately, this summary has been short, and to some degree, nasty. However, it will serve to afford at least some idea of the background for the Valladolid debate. In the context of the destruction of Indian communities in the New World, the debate over the nature of the Indian's place in the European intellectual universe can be viewed as more of a postmortem than a fruitful philosophical debate. This does not mean that the debate was insignificant or meaningless; to the contrary, it was taken very seriously by its European participants. Although the legitimacy of the colonial practices in the New World was hotly debated in Spain during the early 16th century, my point is that nowhere in this debate were indigenous peoples involved except as objects of study, commodities for a slave market, or as innocent victims of Spanish violence.

The Valladolid debate of 1550

Language, your Majesty, is the instrument of Empire.
- Bishop Avala to Queen Isabela

The "junta", or council, was called by Emperor Charles V in 1550-51 to consider whether Spain's presence in the New World was morally sanctioned. The council itself consisted of several reputable Spanish theologians whose function was to listen to competing arguments then submit their assessment to the King in the form of a report that contained the junta's recommendations for institutional change.³³ In a sense, the Valladolid debate can be viewed as the first "Royal Commission on Aboriginal Peoples." Unfortunately, the text of the policy recommendations of the junta, apparently summarized by Cano, has been lost in the Spanish bureaucratic archives.

The first debater the council heard was the Aristotelian scholar and humanist Juan Gines de Sepulveda. He argued in his dialogue, *Democrates II*,³⁴ that the use of violence against the Indians in the New World was morally justified. Further, the brutalities brought to bear on the Indians were not only necessary, but morally sanctioned by appealing to the basic tenets of sixteenth century natural law theory. Much of Sepulveda's arguments relied on the work of John Mair and Palacios Rubios whose arguments were supported by three main sources: Aristotle's theory of natural slavery, the Bible, and natural law theory.³⁵

Ironically, Bartolomé de Las Casas used many of the same sources as Sepulveda to defend the rights of the Indians. Las Casas argued, however, that the Indians were simply ignorant of Christianity, through no fault of

their own, and they must be converted, as was taught by St. Paul, by peaceful and not violent means.³⁶ However, while Las Casas and Sepulveda held different opinions about the rights of the Indians, they shared a common assumption in that they did not object to the legitimacy of the Spanish presence in the New World. Sepulveda argued that the Indians could be treated as animals; therefore, they were rationally incapable of conversion. Since they were irrational and non-Christians, Sepulveda concluded that the Indians were inhuman. It followed that the Spanish were under no moral obligation to treat Indians as human beings. The consequences of believing such a view, as I have briefly shown in the previous section, were devastating to Indian communities. Las Casas, on the other hand, argued that the Indians were human, and capable of peaceful conversion by means of a proper education. Las Casas had faith in the idea that if the Spanish could simply show the Indians that a Christian life was a spiritually and morally superior way of life, then the Indians, because they were inherently rational, would convert to Christianity. Las Casas was a strong vocal opponent of the tactic of using violence as a way of spreading the Gospel. However, despite his pacific method of conversion, Las Casas and Sepulveda agreed that the Spanish had God's blessing to be in the New World.

Sepulveda presented four arguments in a little over three hours to the council.³⁷ In short they are summarized below.

First, war against the Indians was justified because the Indians were barbarous, uncivilized, unteachable, and lacking a civil government.

Second, war against the Indians was justified as punishment for their crimes against the natural law - especially the crimes of idolatry and human sacrifice.

Third, war could be waged unconditionally and indiscriminately against the Indians in order to free the innocent.

Finally, war against the Indians was justified as a means of extending the boundaries of the Christian religion and of opening the way for those who proclaim and preach the gospel.³⁸

It is well beyond the scope of this discussion to provide a thorough analysis of Sepulveda's four arguments, especially since Las Casas meticulously dismantled each one and subsequently published his counter-arguments in two volumes.³⁹ I shall instead briefly examine the first argument where Sepulveda claims that the Indians are uncivilized barbarians. The distinction between Europeans as civilized and Indians as barbarians is one of the most important themes to consider when analyzing European discourse about the Indians of the New World. This is because the dichotomy between the civil and the barbaric established a normative language about Indian identity that has remained part of the intellectual landscape for over five hundred years. The civilized/barbarian distinction does most of the philosophical work in Sepulveda's argument; more importantly, the distinction sets up the argument that can then be used to legitimate the *dominium* of the Spanish Crown in the New World.

If the essential nature of the Indians could be classified as non-human, then the Indians could not be accorded with a moral status. In other words, Indians would fall outside the moral domain, a domain held exclusively by human beings. The Indians would then be no different than wild animals.

More importantly, since only men could own property, it followed that the Indians could not possess rights of property, or *dominium*, over the lands of the New World. The Spanish, then, had every right to claim the lands of the New World.

Las Casas countered that the Indians were barbarians only in the sense that they were “non-Christians” and spoke different languages from the Spanish. Through no fault of their own, the Indians lacked the revelation of Christianity, so their cultures, although legitimate and rationally constructed as far as natural laws go, could not be fully enlightened until they embraced Christianity. The Indian cultures were, therefore, *in potentia* to the extent that they could only become truly happy if they embraced Christianity.

Sepulveda argued that the Spanish people constituted a superior culture; therefore, by appealing to rational constructs called natural laws, they could rule over the naturally inferior Indian cultures. Aristotle's theory of natural slavery in the *Politics* provided the philosophical justification for Sepulveda's argument, and it is worth examining in closer detail.

In the *Politics*, Aristotle attempts to answer the question of how the state ought to be ruled. He begins by claiming that there is a natural order in the way human beings organize themselves. The state is the highest form of social and political organization, and consequently it achieves the highest good, since “everyone always acts in order to obtain that which they think good.”⁴⁰

We must therefore look at the elements of which the state is composed, in order that we may see in what the different kinds of

rule differ from one another, and whether any scientific result can be attained about each one of them.⁴¹

Aristotle believes that the universe is governed by natural power relationships such as strong over weak, master over slave, husband over wife, and father over children. This claim is factual and in agreement with his statement from the *Physics* "that as all material bodies in the universe are in motion, each one must be moved by another that is more powerful than itself, the entire universe being set in motion by a Prime Mover who is alone unmoved."⁴² The fundamental unit of the state is the family, and it can be broken down into three basic power relationships: master and slave, husband and wife, and father and children. These power relationships are analogous to the relationship between the whole and the part; more importantly for Aristotle, they are also analogous to the relationship between the soul and the body. This is important since the soul ought to dominate over the body as the rational mind over the passions. "The rule of the soul over the body, and the mind over the passionate, is natural and expedient; whereas the equality of the two or the rule of the inferior is always harmful."⁴³

A "slave by nature" is a person whose rational part of his soul does not rule over his passions: "For he who can be, and therefore is, another's, and he who participates in reason enough to apprehend, but not to have, is a slave by nature." A natural slave can participate in reason to "some" extent, but is not able to rule over his own passions as the master is able to do. The slave is better off existing under the rule of a master since he is incomplete on his own. Only under the rule of a master can a natural slave attain his true and

just function in the state. Both master and slave share a common interest: the well being of the master and the slave relationship. In this sense, there is a kind of "friendship" between the master and slave that nurtures, and justifies, the power relationship between the two: the power dynamic is just because it is natural and expedient.

However, as Las Casas was to point out, there are two senses in which Aristotle uses the concept of slavery. Aristotle states that "there is a slave or slavery by convention as well as by nature."⁴⁴ Slaves by convention arise out of the spoils of war, so it is possible for one to become enslaved by the victors of a just war. But slavery in the context of a just war is contingent, whereas the relationship between the master and slave is not of the same quality of rule when the slave is a "slave by nature." In this kind of natural relationship, the slave belongs to the master, but the master does not belong to the slave in the same way. I mentioned above that slaves can participate in reason to "some" extent. The main difference between the master and the slave is that the master possesses "practical wisdom" or *phronesis*. To attain *phronesis* means that one can reason in ways that are expedient and that one acts from within a context that has consolidated his life experience to the point where he always acts appropriately. The master is already whole, while the slave is incomplete, and therefore, merely a part of the whole. Slaves are essentially the property of the master where

the abuse of this authority is injurious to both: for the interests of part and whole, of body and soul, are the same, and the slave is a part of the master, a living but separated part of his bodily frame. Hence, where the relation of master and slave between them is natural they

are friends and have a common interest, but where it rests merely on convention and force the reverse is true.⁴⁵

The first person to use Aristotle's theory of natural slavery in the context of the Indians in the New World was John Mair. Mair was an influential Scottish theologian who was a member of the prestigious College de Montaigu at Paris. In 1510 he argued that the use of force against the Indians was justified because the Indians were, in Aristotle's sense, slaves by nature.⁴⁶ Although the Indians had been free before contact with Europeans, Mair defined their freedom as anarchic, "unfettered," like that of a wild animal in nature. Once the Indians came into contact with the Europeans, as Mair argued, they "naturally" fell under the rule of the Spanish because of their incompleteness, in Aristotelian terms. By this argument it was the Indians' good fortune to be able to embrace the natural superiority of Spanish rule as they now gained hopes of becoming truly happy.

Mair's classification of the Indians as slaves by nature is significant for two reasons. First, he brought the subject of the Indians under the authority of the reputable classical philosopher Aristotle. This was a radical change in thinking for sixteenth-century Spain since most of the authoritative sources came from works rooted in traditional Christian theology. Second, by invoking Aristotle as an authority, Mair introduced the language of categories; that is, the Indians constituted a different category of biological classification—one that was essentially non-human. Therefore, instead of the Spanish focusing on the legitimacy of their rights in the New World, or considering the possibility that the Indians held rights of *dominium* to their

lands, their philosophical inquiry could instead focus on the "nature" of the Indians. If the Indians were not human beings then issues of whether they held political rights of sovereignty became unnecessary.

In 1513, Palacios Rubios, building on Mair's ideas, wrote *Libellus de Insularis Oceanis* to address the issue of the Indians' *dominium* over their lands before contact with the Spanish.⁴⁷ By 1513, the Spanish had discovered the advanced cultures of the Mexica and Aztec peoples. On one hand the Spanish were amazed and respectful about the ingenuity of the Indians; on the other hand, they maintained that Native American cultures did not measure up to European cultures. It became apparent that the Indians clearly exercised some degree of rationality, but the extent of their reason was questionable; the tension between rational and irrational thinking in the context of the Indians was a difficult philosophical dilemma. Rubios's solution to the distinction is interesting.

Rubios was the creator of the famous (or infamous) "*requirimiento* or requirement," "that curious declaration of the Indians' obligations to submit to Spanish rule and be converted to the Christian faith, which all the conquistadors carried with them and were required to read out loud to the Indians before attacking them."⁴⁸ Rubios claimed that the Indians appeared to live in types of societies, and, at least before the arrival of the Spanish, they were "somewhat" free. Yet, they manifested certain uncivilized behaviours. For example, their sexual practices were considered to be, by Spanish standards, "promiscuous."⁴⁹ More importantly, the Indians did not maintain

proper family relationships, and they obviously had no religion. For these reasons, the Indian cultures must be considered to be barbaric. Rubios concluded, however, that the Indians were not quite slaves by nature in Aristotle's sense. One reason that the Indians were not full blown slaves by nature was that they lived in complex technological cities, and demonstrated a freedom to rationalize in ways similar to the Spanish.

But the freedom of the Indians could not be considered to be freedom in its most qualitative form. It was accepted by all the Spanish that the papal bulls of donation legitimated the Spanish presence in the New World and more importantly bound the Indians to accept the authority of the Church. In addition, the requirement was taken seriously by the Spanish Crown as a document that legitimated the sovereignty of the Spanish in the New World. The "requirement," by its very meaning, also declared the unilateral imperative that although the Indians might demonstrate some degree of rationality, their cultures remained forever inferior because they simply were not Christian cultures. The Indian was becoming a philosophical paradox: in one sense they appeared to be rational, therefore perhaps human, yet they clearly displayed to European eyes repugnant qualities that allocated them into the realm of the barbaric and inhuman.

Franciso de Vitoria attempted to resolve this paradox in his famous lecture *Des Indis*,⁵⁰ written and presented in 1539 (however not published until 1557). Vitoria claimed that the Indians clearly appeared to be rational because of their elaborate cities, but that their cultural practices of cannibalism

and human sacrifice were clear signs that they had "barbarian" tendencies. Vitoria then laid down what he understood to be the definitive cultural criteria for membership in a civilized society. The Indians could be shown empirically to constitute civilizations to the point that they lived in cities, were governed by some forms of laws, and organized themselves religiously to a certain degree. However, the Indians were guilty of a fundamental violation of the law of nature: they did not have *adequate* laws or Magistrates and, more importantly, they did not base their societies on the Christian notion of the family.

Therefore, Vitoria developed the idea, borrowed from Aristotle, that the rationality of the Indians was only "*in potentia*." For the Indians to possess rationality "*in potentia* " meant that Indian rationality had the possibility, with the right kind of habituation and moral education, to become actual. Thus, the categorical nature of the Indians was brought back into the moral realm of human beings. For Vitoria, the Indians could be considered to be barbarians in the sense that they were similar to the uneducated peasants of Europe. The Indians, stated Vitoria, are "so little removed from the foolish that they are not able to constitute nor administer a legitimate republic in civil or human terms."⁵¹

So, the Indians were rational to the extent that within their own "Spanishless" environment they adhered to the laws of nature. In addition, Indian laws and customs were generated by deduction from the first principles of the laws of nature. However, argued Vitoria, these customs had

to be "promulgated" by the right person, or persons. Vitoria claimed that the Indians could never fully promulgate their cultures because they did not have access to Christian revelation. In contrast, European cultures "are guided by revelation[,] rarely go astray except when they allow themselves to be drawn aside into sin by the machinations of Satan."⁵² The Indians' cultures could only advance from the realm of the barbarian into the realm of the civilized by embracing Christianity. "Until that time arrives, however, he must, for his own benefit, remain in just tutelage under the king of Spain, his status now slave-like, but not slavish."⁵³ Vitoria, in the end, is no more generous to Indian identity than Rubios: once again, Indians are indebted to the naturally superior Spanish culture. To complicate his argument further, Vitoria leaves it as an open question whether the Indian cultures are capable in practice of embracing Christian revelation and subsequently assimilating themselves into Spanish culture.

Las Casas, who had spent much more time in the New World than Vitoria, or any other European thinkers for that matter, had a higher opinion of the Indians than Vitoria. Nonetheless, he was to use many of Vitoria's arguments in the Valladolid debate to provide his own analysis of the concept of "barbarian." In his *Defense of the Indians*, Las Casas argues that there are four senses in which the word "barbarian" can be understood. First, there are barbarians who are "cruel, inhuman, wild, and merciless [men] acting against human reason."⁵⁴ These are men who are normally guided by reason, but choose to act otherwise. For Las Casas, these are the most despicable kind of

men since they choose to disregard reason and virtue. Las Casas described the Spanish conquistadors in the New World as barbarians in this sense. When he refers to the savage and inhumane practices of some barbaric peoples he states, "Indeed, our Spaniards are not unacquainted with a number of these practices. On the contrary, in the absolutely inhuman things they have done to those nations they have surpassed all other barbarians."⁵⁵

The second kind of barbarians are those who do not have a written language. Las Casas states that these men are not considered to be barbaric in the sense of the first meaning, that is, they are not evil and savage. Las Casas is assuming the superiority of Latin over other written languages; put simply, this kind of barbarian is someone who speaks another language. "They are not barbarians literally...it is obvious that a people can be wise, courageous, prudent, and lead a settled life."⁵⁶ An important point to remember about this category of barbarian is that they can still be self-governing societies. The Indians could not be denied recognition of their political sovereignty simply because they spoke another language. However, as we shall see shortly, the main reason for thinking of the Indians as barbarians is because they are non-Christians.

The third kind of barbarian is the barbarian in the strictest sense of the meaning. This is how Sepulveda characterized the nature of the Indians, and therefore it is worth quoting Las Casas in full:

...[barbarians] are those who, either because of their evil and wicked character or the barrenness of the region in which they live, are cruel, savage, sottish, stupid, and strangers to reason. They are not governed by law or right, do not cultivate

friendships, and have no state or politically organised community. Rather, they are without ruler, laws, and institutions. They do not contract marriage according to any set forms and, finally, they do not engage in civilized commerce. They do not buy, they do not sell, they do not hire, they do not lease, they do not make contracts, they do not deposit, they do not borrow, they do not lend. Finally, they enter into none of the contracts regulated by the law of nations.⁵⁷

Men of this character are rare occurrences in nature and are viewed as imperfections or "freaks in a rational nature."⁵⁸ Since these men are incomplete without the ability to actualize a potential rationality Aristotle considered them to be "slaves by nature."

The Indians of the New World, argued Sepulveda, fell clearly into this category of barbarian. This description of a barbarian is telling not so much for its criteria of membership into the class of barbarians, but rather as a list of what barbarian cultures clearly *do not* have. The criteria of a civilized culture consists of a list of European cultural practices. Sepulveda, who had never been to the New World, relied on Oviedo's *La Historia General de las Indias* to substantiate many of his claims about Indian cultures. It is worth mentioning that Oviedo's *Historia*, brutally condemned by Las Casas as simply false, articulated three fundamental propositions about the nature of the Indians. First, Oviedo made the strange claim that the Indians were under the Visigothic monarchy in Spain, therefore Spain was merely "recovering" her own lands. Second, Oviedo made the even stranger claim that the Indians had already been preached the Christian faith centuries before, therefore the Spanish Inquisition applied to Indians. Third, if these

reasons were not good enough, Oviedo claimed that the Indians were incapable of becoming Christians.⁵⁹

Las Casas's last definition of barbarian is men who are not Christians. For Las Casas, "no matter how well governed a people may be or how philosophical a man, they are subject to complete barbarism, specifically, the barbarism of vice, if they are not imbued with the mysteries of Christian philosophy."⁶⁰ Las Casas claims that the Indians are barbarians in this sense. However, because the Indians had not been exposed to Christianity they can be excused for their ignorance, but they must be educated in the right way in order to be converted. The Indians are not like the Turks, or Muslims, who have been exposed to, and rejected, the revealed truth of Christianity. The Indians possess a unique innocence that Las Casas argued necessitated their peaceful conversion, rather than one predicated by violence. Because the Indians are ignorant of Christianity, through no fault of their own, it is the responsibility of missionaries to convert the Indians. The Papal Bulls of Donation in 1493 gave the Spanish Crown this spiritual authority, not the authority to tyrannize and destroy the Indians.

It is not difficult to see why there would have been an interest in maintaining the characterization of the Indians as barbarians as argued by Sepulveda: it legitimated and encouraged the actions of the continuing conquest of the New World briefly alluded to in the first section of this chapter. The Spanish landowners in the New World harshly exploited the

Indians for their cheap source of labour to the point that Indian populations dwindled close to extinction in some areas, while being completely wiped out in other areas. Las Casas, on the other hand, argued incessantly to the Spanish Crown that the Spanish were obliged, first and foremost, to save the Indians' souls. As I have mentioned several times now, he argued for better, more humane treatment, of the Indians.

Sepulveda's line of argument about Indian identity is explicitly anti-Indian. Similar characterizations of the Indians of the New World as somehow "naturally" inferior have been argued in many forms since the time of Sepulveda. However it must be remembered that Las Casas's views about the Indians also legitimated the Spanish presence in the New World and that his view has also lingered in different forms down to the present day. Las Casas was called "The Defender of the Indians" and he is generally viewed by scholars as a staunch advocate of Indian rights in the New World. I would like to examine Las Casas's views of the Indians more closely in order to show that, from an indigenous perspective, Las Casas failed to recognize fully the legitimacy of Indian cultures.

There can be no doubt that Las Casas had a deep appreciation for the diversity of Indian cultures in the New World. Virtually all of his comments about the Indians are favourable as to their intellectual and cultural abilities. But, Las Casas still categorizes the Indians into the class of "barbarians"--if only in respect to the fact they are non-Christians. Even though Las Casas can be thought of as the "Defender of the Indians," he remained committed to

the view that Christianity was the "true" religion. Therefore no matter how developed the Indian cultures were, or became, the fact that they were non-Christians made them inferior.

Las Casas delineates the different senses of barbarian for two reasons. First, he wants to distinguish between the senses of barbarian that are purely accidental and those that fall into natural categories. Second, Las Casas does not want to place the ultimate authority for his argument in the writings of the pagan Greek philosopher Aristotle. Las Casas, it must be remembered, was deeply religious and thoroughly versed and trained in Thomistic philosophy. In fact, he complained about the over-dependence on Aristotle's thought when he stated that Aristotle was "a pagan burning in hell whose principles should only be accepted in so far as they conform to our Christian religion."⁶¹

These two reasons guide Las Casas's strategy regarding his characterization of the Indians. By claiming that the Indians were barbarians in the sense that they were non-Christians, Las Casas brings the discourse about Indian identity back into the language of theology. The Indian condition is the contingent historical result of a non-Christian culture evolving without Christian guidance and not because the Indians themselves are inherently irrational. The Indians can be "excused" for not living as good Christians, because they have not been taught to act otherwise. In other words, for Las Casas, the only relevant essential fact about Indian identity that

sets them apart from Spanish culture is the fact that the Indians are not Christians.

It is not difficult to find passages in Las Casas's writings praising the virtues of Christianity, but none demonstrates his Christian beliefs more clearly than his claim at the beginning of chapter five of his *Defense*.

There is a fourth kind of barbarian, which includes all those who do not acknowledge Christ. For no matter how well governed a people may be or how philosophical a man, they are subject to complete barbarism, specifically, the barbarism of vice, if they are not imbued with the mysteries of Christian philosophy. Now these vices can be cleansed only by the sacraments and the power of the Christian law, which is the only unspotted law that "converts souls" and frees and cleanses the hearts of men from every vice and superstition of idolatry, from which springs the source of all evils that make both private and public life miserable and unhappy.⁶²

Although Las Casas recognizes the distinctiveness of Indian cultures, nonetheless, he is committed to converting, or changing, the identity of the Indians by making them Christians.

Obviously Las Casas's advocacy for Christianizing the Indians has great political importance. Later, in chapter six, Las Casas states that "All government comes from God."⁶³ But, Las Casas claims that the Church's power over non-believers is "habitual," or potential, not actual. Las Casas claims that God, because he is perfect, holds absolute power over all men, Christian and non-Christian. But, there are two types of power relationships. The first is to hold potential power over something, the second is to possess actual power. God has potential power over all men, but He has actual power only over men who have embraced Christianity. God's actual power over

Christians in the world is manifested in the pope, who acts as God's representative on earth. The pope, then, can delegate Kings, or Emperors, to act on his authority within the Christian world. But the pope does not have actual power over non-believers, since God himself only has potential power over them. Unbelievers have to atone for their false beliefs in the afterworld when God has actual power over them, but as far as our world goes, God only has potential power over them. The pope cannot have greater powers than God, so he can, at most, have potential power over unbelievers. Therefore, since unbelievers do not fall under the actual authority of the Church, Christian kings do not have power over unbelievers either. However, if the Indians accepted the Christian Church as the true religion, they would in effect give their consent to the Church's authority.

This was precisely Las Casas's strategy. If he could bring the Indians to embrace Christianity by their own volition--that is, if they would willingly consent to become Christians--they would embrace the authority of the Church. It follows from this line of reasoning that the Indians would become Spanish citizens and fall under the authority of the Spanish Crown, the pope's delegated political authority.

One problem with this approach is that Las Casas's characterization of the Indians does not consider Indian notions of spirituality. Although Las Casas shows an immense amount of respect towards the diversity of Indian languages and cultures, he does not respect the fact that the Indians are non-Christians. In the final analysis, Indian conceptions of spirituality, and their

religious systems of thought are irrelevant to Las Casas, in spite of the fact that they had existed for thousands of years before Christianity's advent. Of course, by his own measure, Las Casas was exactly right: millions of Indians did convert to Christianity in the very context that he advocated. Las Casas can be viewed as a kind of Christianizing messiah for Indian cultures.

This raises many complex problems about the role of Christian conversion in the Americas, especially as to how Indians were converted. I do not pretend to be able to answer them here. I am simply claiming that the debate set down the limits of a dialogue *about* the Indians. The dialogue between Las Casas and Sepulveda, or in a larger context, between the "Defenders of the Indians" and the colonial expansionists, shared two powerful unexamined assumptions. First, there was the assumption that the Spanish had a moral right, even obligation, to be in the New World. Second, both agreed that the Indians must be converted to Christianity though they disagreed about the proper strategies for converting them. These two assumptions served to marginalize Indian philosophical traditions apart from the European traditions from the initial period of first contact.

The Indians of the New World, especially the Indians of the middle and southern parts of the Americas, were defined as inferior to Europeans right from the very beginning of their relationship. Although this has been clearly shown in the historical literature, it is quite significant that the European philosophical discourse about Indian identity and Indian political sovereignty is equally as oppressive. This examination of the Valladolid debate shows

that the Spanish discourse about Indian identity presumed that Indians were barbarians, and merely quibbled over determining in what sense the Indians were barbarians. Las Casas may have tried to protect the Indians against complete physical annihilation, but his philosophical views also served to undermine the legitimacy of Indian sovereignty. Las Casas argued that, despite the fact that the Indians were non-Christians, they nonetheless formed self-governing societies.⁶⁴ However he added an important additional proviso: the Indians themselves could never be fully happy until they embraced Christianity. This, in effect, placed a limitation on Las Casas's ability to recognize the legitimacy of Indian sovereignty.

Nowhere in this chapter have I mentioned Aztec, or Incan, philosophical understandings of their identity. The Valladolid debate shows quite clearly that these voices were not required to understand Indian identity. There is no need for a dialogue between the Spanish and the Indians over Indian identity because the Spanish imposed their understandings within the oppressive political relationship almost from the point of first contact.

The ability to impose one's will over another is central to the relationship between the Indians of the New World and the European newcomers. One very powerful fact about the behaviour of the Spanish during this early period was that they behaved as they did without repercussions, or in the very least, without serious repercussions. No one

expressed this frustrating reality better than Las Casas. It is within this context that Las Casas's writings are valuable and important.

But Las Casas's arguments about the Indians constitute a different kind of oppression, and his logic has been abused by Europeans throughout the history of the relationship. Las Casas does not include any Indian voices. Because the discourse of political sovereignty requires Indian participation, the Valladolid debate occurs within a philosophical context that does not fully consider the legitimacy of Indian sovereignty in the New World. A complete discussion of Indian sovereignty would not only have recognized the legitimacy of Indian forms of government (as Las Casas did) but also recognized the Indians' own philosophical and religious justifications for their political legitimacy (which Las Casas ignored). Sepulveda embraced neither aspect. Las Casas recognized that the Indians constituted legitimate political entities, but failed to embrace their philosophical and religious systems of thought. If Las Casas had advocated this richer view of Indian sovereignty, he would have argued for the Spanish, including the missionaries, to leave the New World.

The Indians of the New World did not have the military power, or initially even the desire, to force the Spanish to leave their homelands. This indigenous attitude of welcoming the Europeans into their homelands has had devastating effects across all of Indian Country. In the next chapter I will turn to a society that held enormous political power in the early colonial

period, but whose political significance gradually dissipated once the power dynamic shifted in favour of the European newcomers.

Endnotes

¹ It ought to be a well known fact by now that Columbus was simply wrong in labeling the indigenous peoples of the New World as "Indians." I shall use the term "Indian" in this chapter in order to facilitate criticism. However, many indigenous peoples of the Americas refer to themselves as Indians without controversy, which only serves to complicate the practical problem of finding a collective noun that captures the diversity of indigenous peoples of the New World. As I mentioned in the first chapter, "Aboriginal peoples" is used in legal and political discourse, but not without its vocal opponents in Canada. The term "Native American" is more commonly used in the American context. In this thesis I shall use the terms "Aboriginal," "indigenous peoples," and "Native American" interchangeably.

² See Robert Allen Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis: University of Minnesota Press, 1995).

³ "Hidalgo" is a Spanish term meaning "landed gentry" and it was offered to Spanish citizens as an incentive to attract them to the New World. See Robert Williams Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press, 1990), p.81.

⁴ Michel-Rolph Trouillot, *Silencing the Past : Power and the Production of History* (Boston, Mass. : Beacon Press, 1995), p.114.

⁵ See David Stannard, *American Holocaust: Columbus and the Conquest of the New World* (Oxford: Oxford University Press, 1992), Eric Wolf, *Europe and the People Without History* (Berkeley: University of California Press, 1982); Tzvetan Todorov, *The Conquest of America: The Question of the Other*, Trans. Richard Howard (New York: Harper and Row, 1982); Bartolomé de Las Casas, *History of the Indies*, Trans. Andree Collard (New York: Harper and Row, 1971); Bartolomé de Las Casas, *The Devastation of the Indies - A Brief Account*, Trans. Herma Briffault (New York: Seabury Press, 1974); Lewis Hanke, *The First Social Experiments in America* (Harvard: Harvard University Press, 1935); Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949); Lyle N. McAlister, *Spain and Portugal in the New World: 1492-1700* (Minneapolis: University of Minnesota Press, 1984); Stephen Greenblatt, *Marvelous Possessions: The Wonder of the New World* (Chicago: University of Chicago Press, 1991); Juan Friede and Benjamin Keen Eds., *Bartolome de Las Casas in History: Towards and Understanding of the Man and his Work* (De Kalb: Northern Illinois University Press, 1971); Serge Gruzinski, *The Conquest of Mexico: The Incorporation of Indian Societies into the Western World*, Trans. Eileen Corrigan (USA: Blackwell Publishers, 1993); Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (New York: W.W. Norton and Company, 1975).

⁶ See Francisco Guerra, "The Earliest American Epidemic: The Influenza of 1493," *Social Science History*, 12 (1988), p.305-25. For a discussion of this debate see RE Hope-Simpson and DB Golubev, "A New Concept of the Epidemic

Process of Influenza A Virus," in *Epidemiology and Infection*, 99 (1987), 5-54.

⁷ For an interesting discussion of the role that biology has played in the success of European imperialism see Alfred W. Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900-1900* (Cambridge: Cambridge University Press, 1986).

⁸ Stannard, p.69.

⁹ Crosby, p.48.

¹⁰ Carl Ortwin Sauer, *The Early Spanish Main* (Berkeley: University of California Press, 1966), pp.86-87.

¹¹ Bartolome de Las Casas, *History of the Indies*, p.94.

¹² Cf. fn. 5. See also Russell Thornton, *American Indian Holocaust and Survival: A Population History since 1492* (Norman: University of Oklahoma Press, 1987).

¹³ Las Casas quoted in Todorov, p.139.

¹⁴ Vasco Nunez de Balboa in *Ibid.*, p.141.

¹⁵ Jeronimo de San Miguel in *Ibid.*, p.141.

¹⁶ Bishop of Yucatan in *Ibid.*, p.141-142.

¹⁷ See Sherburne F. Cook and Woodrow Borah, "The Aboriginal Population of Hispaniola," in Cook and Borah, *Essays in Population History: Mexico and the Caribbean* (Berkeley: University of California Press, 1971), Volume One.

¹⁸ See Williams Jr., pp.83-6.

¹⁹ The papal bulls of donation had a long history dating back to Innocent IV in the thirteenth-century. Papal bulls unilaterally asserted the authority of the Church over undiscovered heathen lands and placed its inhabitants under the tutelage of the discovering nation's monarch. In the case of Spain, the first bull, *inter caetera divinai*, was issued in May of 1493 and granted to Ferdinand and Isabella the lands of the New World and the authority to Christianize the indigenous peoples. The issue of whether the Spanish Crown was authorized to use force in order to convert the Indians was a contentious issue in early 16th century Spanish politics, one which played a role in initiating the Valladolid debate. See Williams Jr., especially Chapter 2.

²⁰ Williams Jr., pp.83-4.

²¹ Hanke, *The Spanish Struggle for Justice*, p.34.

²² For an account of Cortés's conquest of Mexico see Hernan Cortés, *Letters From Mexico*, Translated and edited by A.R. Pagden (New York: Grossman Publishers, 1971). See also Gruzinski, *The Conquest of Mexico*.

²³ For example, the *Times Literary Supplement's* advertisement on the back of the 5 *Letters of Cortés to the Emperor*, Trans. J. Bayard Morris (New York: W.W. Norton, 1928) reads: These letter, well edited and attractively published, tell of a great conqueror, fearless and courageous, fighting for God and his king, and reveal in great detail the mighty proportions of the truly Elizabethan character that was Hernando Cortés.

²⁴ Gruzinski, p.22.

²⁵ Stannard, p.4.

²⁶ Stannard, pp.75-81.

²⁷ Las Casas, *Brief Account*, p.50-51.

²⁸ Francisco Lopez de Gomara, *Cortes: The Life of the Conqueror by His Secretary*, Translated and edited by Lesley Byrd Simpson (Berkeley: University of California Press, 1965), pp.204-205.

²⁹ See John Hemming, *The Conquest of the Incas* (New York: Harcourt Brace Johanovich, 1970), p.351.

³⁰ Pedro de Cieza de Leon, *The Incas*, translated by Harriet de Onis (Norman: University of Oklahoma Press, 1959), pp.lviii-lix.

³¹ Noble David Cook, *Demographic Collapse: Indian Peru, 1520-1620* (Cambridge: Cambridge University Press, 1981), p.114.

³² Stannard, p.95.

³³ The junta consisted of four famous Spanish theologians: Cano, Soto, Miranda, and Arevalo. For a summary of the debate see Angel Losada, "The Controversy between Sepulveda and Las Casas in the Junta of Valladolid" in Friede and Keen, *Bartolome de Las Casas in History*.

³⁴ Juan Gines Sepulveda, *Democrates II*, Translated into Spanish from Latin by Angel Losada (Madrid, 1951). *Democrates II* was not permitted to be published in Spain until 1892. This is a telling comment about the general reactions to Sepulveda's argument as Bernice Hamilton notes that 16th century Spain did not have the strict censorship practices found elsewhere in Europe. See Bernice Hamilton, *Political Thought in Sixteenth-Century Spain* (Oxford: Clarendon Press, 1963), pp.8-10.

³⁵ For an excellent summary of Aristotle's theory of natural slavery in the context of sixteenth-century Spain see Anthony Pagden *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge: Cambridge University Press, 1982). especially chapter 3 "The Theory of Natural Slavery."

³⁶ For example see Romans 15 [1-2,7]; Romans 1 [14-15]; Matthew 22 [40]; 1 Corinthians 13 [5].

³⁷ Sepulveda and Las Casas did not debate directly against each other. Sepulveda presented his arguments first, over a three hour period of time. Las Casas responded to Sepulveda for five days.

³⁸ Las Casas summarizes Sepulveda's arguments within his own arguments in *In Defense of the Indians*, Translated by Stafford Poole (De Kalb: Northern Illinois University Press, 1992)

³⁹ Las Casas wrote *History of the Indies* and *In Defense of the Indians* as two consecutive volumes that were meant to complement each other. Volume one was the historical background, volume two the philosophical discussion of the rights of the Indians.

⁴⁰ (*Politics* 1252 I 2)

⁴¹ (*Politics* 1252 I 20)

⁴² (*Physics* 258b 10-259 a20)

⁴³ (*Politics* I 1254 7-10)

⁴⁴ (*Politics* I 1255 5)

⁴⁵ (*Politics* 1255b I 10-15)

⁴⁶ Pagden, *The Fall of Natural Man*, pp.38-39.

⁴⁷ *Ibid*, pp.50-56.

⁴⁸ *Ibid*, p.51.

⁴⁹ *Ibid*, p.53. Pagden notes "As a consequence [of the women being promiscuous] descent in Indian society was through the female line, because, he [Rubios] thought, only women were in a position to identify the offspring. I will come back and say more about the Christian notion of the family in Chapter four.

⁵⁰ In Francisco de Vitoria, *Political Writings*, Ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991).

⁵¹ In Pagden, *The Fall Of Natural Man*, p.79-80.

⁵² *Ibid*, p.99.

⁵³ *Ibid*, p.104.

⁵⁴ Las Casas, *In Defense*, p.28.

⁵⁵ *Ibid*, p.29.

⁵⁶ *Ibid*, p.31.

⁵⁷ *Ibid*, p.32.

⁵⁸ *Ibid*, p.34.

⁵⁹ See Lewis Hanke, *All Mankind is One* (DeKalb: Northern Illinois University Press, 1974) p.40-41.

⁶⁰ Las Casas, *In Defense*, p.49.

⁶¹ Pagden, *Fall Of Natural Man*, p.40.

⁶² Las Casas, *In Defense*, p.50.

⁶³ *Ibid*, p.61.

⁶⁴ For example, Las Casas states "Rather, long before they had heard the word Spaniard they had properly organized states, wisely ordered by excellent laws, religion, and custom. They cultivated friendship and, bound together in common fellowship, lived in populous cities in which they were wisely administered the affairs of both peace and war justly and equitably, truly governed by laws that at many points surpass ours, and would have won the admiration of the sages of Athens..." *In Defense*, pp.42-3.

Chapter Three:

The Great Law of Peace and the Iroquois Confederacy

They seem always to have lookd upon themselves as far Superiour to the Rest of Mankind and accordingly Call themselves *Ongwehoenwe* i.e. Men Surpassing all other men.

Henry Barclay to Cadwallader Colden (1741)

Introduction to Chapters Three and Four

While the famous debate in Spain was engaging some of the most brilliant European minds, a very different political frontier was being negotiated in the northeastern part of the Americas. The Haudenosaunee, or "People of the Longhouse," were a substantial political power in sixteenth-, seventeenth-, and eighteenth-century northeast America. The legitimacy of the Iroquois spiritual, social, and political reality was, and still is, guided by what is called "The Great Law of Peace," more commonly referred to as "The Great Law" or "The Great Peace." The Great Peace was revealed to the Iroquois by the prophet Deganawidah and its message has been preserved in the narrative of his life. In this chapter I shall examine "The Great Law" in some detail in order to explain its conception of political sovereignty. The view of political sovereignty in the "Two-Row Wampum", or "Guswentha" (a specific treaty made between the Iroquois and Dutch traders), is an example of an "Aboriginal" view of political sovereignty; further, it was one that functioned quite successfully in early colonial North America.

The Deganawidah narrative functions as an Iroquois political vision. Deganawidah's message serves as a practical guide that empowers the Iroquois to move out of an era of social and political disorder into an era of peace. This transition--from an era of disorder to an era of peace--parallels an important distinction we find in the political philosophy of Thomas Hobbes.

Hobbes's ideas of political sovereignty also depends on individuals moving out of a "state of nature" in order to form a "civil society." However, Hobbes has quite a different understanding of this transition than we see in Iroquois political thought. Interestingly, though, The Great Law of Peace and Hobbes's political philosophy originate from similar political contexts: the Iroquois at the time of Deganawidah, and the English at the time of Hobbes, lived in societies on the brink of total chaos.

In the next chapter I shall explore a few of the main differences between the Iroquoian and Hobbesian views of political sovereignty. It is clear from examining Hobbes's comments on the Indians of the New World that he did not have a high opinion of their cultures and knew virtually nothing about their political thought. Since Native Americans exist in the state of nature, it follows, according to Hobbes, that the Iroquois have not implemented a sovereign. Therefore the Iroquois Confederacy does not count as a legitimate civil society. Further, since philosophy can only arise from within a civil society, it follows that Indians do not "do" philosophy at all. This is a fruitful investigation because it demonstrates that Hobbes advocates a political vision that does not require Native participation.

The actual political relationship between the Iroquois and their Native and non-Native neighbours, however, tells quite a different story. I suggest that this asymmetry between theory and practice is because, quite simply, the Iroquois had the military power to enforce the Great Peace in early colonial America. In other words, the European newcomers, as a practical constraint,

were forced to recognize and respect Iroquois political diplomacy. To say that the Europeans fully recognized the philosophical legitimacy of Iroquois sovereignty in the early part of the relationship ignores a powerful developing philosophical discourse that is *about* Native Americans. Like Las Casas and Sepulveda before him, Hobbes writes *about* Native Americans. He makes normative judgments about Native Americans, uses these judgments to help create a normative theory of sovereignty, all without engaging Native American philosophical traditions.

I begin this chapter with a brief examination of the narrative of Deganawidah and highlight two important aspects of its message. The first is Deganawidah's censure of two destructive social practices: cannibalism and witchcraft. The peace he sought depended on the Iroquois recognizing that these practices were irrational and dangerous, and thus that they perpetuated a social and political climate of disorder and war. The second aspect of Deganawidah's message I shall examine has to do with the importance of political organization and diplomacy, or what I shall term, to borrow a term from William Fenton, "forest diplomacy."¹ In the next chapter I will turn to the political thought of Thomas Hobbes. Hobbes's view of sovereignty depends on individuals forming a covenant, thereby moving out of a state of war to establish a civil society. Hobbes does not state specifically whether Indians can form his kind of covenant. For him, Indian cultures simply *are* in the state of nature. A consequence of Hobbes's view is that since Native American views of sovereignty do not count as legitimate, there is no

philosophical sanction against Europeans taking Native American lands, therefore exerting the superiority of European sovereignty in America.

The Narrative of Deganawidah

The narrative of Deganawidah, also referred to as the Peacemaker, provides a normative justification for the Iroquois Confederacy.² Historians and anthropologists, mostly non-Iroquois, have generated immense amounts of scholarship arguing over the facts surrounding the existence of Deganawidah and his role in the formation of the Confederacy.³ In this chapter I shall not focus so much on the ethnohistorical discourse as I will attempt to understand better the role the narrative plays in justifying the political structure of the early Iroquois Confederacy. Whether Deganawidah existed or not, or whether the narrative is “true,” the Iroquois use the narrative to guide their spiritual, social, and political reality. More importantly, the formation of the confederacy itself, during the sixteenth and seventeenth centuries, and later “The Covenant Chain” of the eighteenth century, was a powerful political force in early colonial America.⁴

As with many narratives, the narrative of Deganawidah gives the illusion of simplicity. Upon further examination, the narrative proves to contain the fundamental tenets of the Iroquois political system, which guide Iroquois political diplomacy. The parallels to the structure of Christian narratives are quite striking in some places. This may be due to the fact that

we do not have written accounts of the Great Law from the sixteenth or seventeenth centuries. Rather, we have accounts transcribed by nineteenth-century Europeans.⁵ However, there are several generally accepted authoritative written sources of the Great Law of Peace.⁶ The versions I have used are all quite similar in content, especially with respect to their main philosophical points, but I shall mainly use the John Gibson version as it is has recently been translated by Hanni Woodbury in her impressive transcription of A.A. Goldenweiser's manuscript.⁷

The narrative begins by describing the times (most likely early to mid-sixteenth century) as violent and without political or social order. Mohawk country, located roughly around the shores of Lake Ontario, is immersed in unbridled warfare.⁸ A Huron mother takes her daughter away from the violence to live in a remote part of Huron territory where she will be safe. Shortly thereafter the mother discovers that her daughter is pregnant. She confronts her daughter who, distraught, claims that she does not know who is the father of her child. The question is answered when the mother has a dream where she is visited by a messenger from the spirit world who informs her that the child will be called Deganawidah and will grow up to be a great man who will bring the Great Law of Peace to mankind. This revelation comforts the woman and from that day forth she supports her daughter and helps raise Deganawidah. When Deganawidah grows up to be a man they return to their village "so that he can announce to their people the Good Message, the Power, and the Peace, three concepts that, together, spell out the

call to unify the separate nations of the Iroquois.”⁹ Deganawidah’s people listen to his message. Curiously, they do not accept it, but they wish him luck as he sets out to the east in a stone canoe to bring his message to the People of the Flint, or Mohawk Nation.¹⁰

It does not take long for Deganawidah to be confronted once he lands in Mohawk territory. When a man approaches Deganawidah and asks who he is Deganawidah replies,

The Great Creator from whom we all are descended sent me to establish the Great Peace among you. No longer shall you kill one another and nations shall cease warring upon each other. Such things are entirely evil and he, your Maker, forbids it. Peace and comfort are better than war and misery for a nation’s welfare.¹¹

Deganawidah tells the man to go to his village and inform his people that he will arrive shortly with his message of peace. However, Deganawidah encounters two important people before he reaches the village.

First, Deganawidah meets the great female chief, Jingosahseh, who is known to feed and clothe warriors who have set out on the warpath. Deganawidah tells her that her actions perpetuate violence and unrest in their nation and informs her of his message. His “Good News of Peace and Power” contains three parts: Righteousness (Gaiwoh), Health (Skenon), and Power (Gashasdenshaa). Each part consists of two branches:

Righteousness means justice practiced between men and between nations; it means also a desire to see justice prevail.

Health means soundness of mind and body; it also means peace, for that is what comes when minds are sane and bodies cared for.

Power means authority, the authority of law and custom, backed by such force as is necessary to make justice prevail; it means also religion, for justice enforced is the will of the Holder of the Heavens and has his sanction.¹²

Jingosahseh is sceptical and retorts that his nice sounding words mean nothing if they cannot be implemented into the daily lives of the people. Deganawidah responds by saying that he will show the people of the Five Nations how to organize themselves into a confederacy in the form of the longhouse. Political unity begins with families living around their individual longhouse hearths. The next level of organization are the clans within a single longhouse. The neighbouring longhouses form a nation, each with its own council fire. However, at the highest level of abstraction, the Five Nations will form a larger longhouse spreading across Iroquoia. The Confederacy will consist of—from west to east—the Seneca, Cayuga, Onondaga, Oneida, and Mohawk nations. The Mohawk will be designated as the “Keepers of the Eastern Door” and the Seneca “The Keepers of the Western Door.” It is under this structure that the Iroquois can live together in peace. Jingosahseh is convinced and is the first to accept the Great Law.¹³

Deganawidah invites her to go east to advance this message and to meet him in three years time in Onondaga country. She accepts and heads out east.

Deganawidah then encounters a second person, a cannibal, named Hiawatha,¹⁴ who lives by himself in a remote part of Onondaga territory. Deganawidah climbs up on Hiawatha’s roof and peers down into the smoke hole. Hiawatha arrives and pours water into a pot, and proceeds to cook the

body parts of a human being. Suddenly he sees the reflection of Deganawidah in the water. He thinks it is his own image and is astounded that he should be so beautiful. The encounter with the image causes Hiawatha to reflect on his behaviour and he concludes that eating human flesh must be wrong. He leaves his house in distress, overcome by guilt, and meets Deganawidah and relates to him his epiphany. Deganawidah consoles him and together they uproot a tree exposing a black hole. Deganawidah throws the cooking pot containing the human remains into the dark chasm and covers it with the uprooted tree. Deganawidah then shows Hiawatha how to hunt and prepare venison and teaches him that proper food for humans is caught in the forest and prepared and cooked appropriately. Then, Deganawidah tells Hiawatha that he will be an example to others and that he must return to his community and warn them that they will shortly receive his message of peace.

Deganawidah sets off to a local village. The community, having been forewarned of his arrival, is ready to listen to his message. The chief of the village accepts Deganawidah's message of peace and his idea of confederation; however the village's war chief is skeptical. He demands proof that Deganawidah is, in fact, a messenger from the Creator. Deganawidah offers to climb the highest tree so that they can cut it down in order that they may witness him fall to his death. They agree, so he climbs the tree, they cut it down, and Deganawidah appears to fall to his death. The next day Deganawidah is found inside a cabin peacefully smoking his pipe. The people

are convinced that he is the chosen one and that he will show them how to bring peace to their community.

Deganawidah subsequently brings his message to the surrounding nations: the Oneida, Cayuga, and Seneca nations. Hiawatha, meanwhile, returns to his village and loses his three daughters to the bad magic of an evil sorcerer. Hiawatha, deep in anguish, his grief unable to be consoled by his own people, leaves his community to wander as an outcast from village to village. An important event occurs before he enters an Oneida village. He bores a number of sumac twigs, binds them together, then suspends them from a horizontal rod. This act initiated an important ritual that was to become known as the "Condolence Ceremony" and it is the fundamental ceremony that shapes all levels of Iroquois spiritual, social, and political life. In another version, this event had Hiawatha stringing up seashells rather than twigs, but his message is the same as he states:

Men boast what they would do in extremity but they do not do what they say. If I should see anyone in deep grief I would remove these shell strings from the pole and console them. The strings would become words and lift away the darkness with which they are covered. Moreover what I say I would surely do. This he repeated.¹⁵

However, since the ceremony requires another participant, it remained uninitiated, and therefore Hiawatha's grief remained unconsoled.

Upon Hiawatha's arrival in an Oneida village he was welcomed and lived among them until the arrival of Deganawidah. When Deganawidah arrived, approximately three years later, he met with Hiawatha and performed the Condolence Ceremony with him. Essentially the purpose of

the ceremony is to remove Hiawatha's grief and return him to a state of clarity; in Iroquois terms, Deganawidah returned him to a "clear mind." It is worth making a closer examination of this central ceremony and the notion of the "clear mind."

The Condolence Ceremony, or Council, is based on a reciprocal relationship between one "moiety" of the community, called the "clearminded", who are people unaffected by the event (usually a death), and the other moiety consisting of the mourners. The purpose of the ceremony is for the clearminded to "lift up the minds" of the mourners in order to restore them to a clearminded state. For the Iroquois, a person who is able to perform his or her function in society, and whose disposition is not affected by emotions such as grief, anger, and sorrow is thought to be clearminded. The ceremony has different forms, but it follows a basic pattern that consists today of sixteen parts.

The Condolence Ceremony lies at the heart of all political negotiations and Europeans quickly became familiar with its significance in securing political alliances. Fenton argues that the ceremony was *the* central institution that guided all facets of Iroquois relationships, whether internal or international, as its incorporation of the principle of reciprocity was fundamental to the Iroquois notion of political sovereignty. I will return to this notion of reciprocity in the next section.

After Hiawatha regains a clear mind, Deganawidah reports his successes at bringing together the Chiefs of the surrounding nations (Mohawk, Oneida,

Seneca, and Cayuga). The evil sorcerer of the Onondaga Nation, Adodarho, remains as the last person to embrace the Great Peace. Adodarho, which means "entangled" in Onondaga, is a misshapen hideous looking creature who had snakes in place of his hair. Deganawidah tells the chiefs that they must act as one mind in order to be able to convert the sorcerer. They then approach Adodarhoh several times without success. They are only able to convert Adodarhoh when Jingosahseh returns and joins them, thereby completing their circle of membership, and when they sing the right songs in the proper manner. Only when they act with one voice, with a show of unity, and perform the necessary ceremonies, are they able to convert the sorcerer.

Deganawidah says to the sorcerer:

This will now function, the Great Law, and they place before you the proposition that it is you who shall be the title bearer, and it is you who shall be a Great Chief, and it is you, also, who shall be firekeeper at the place where we shall kindle the fire whose smoke will rise, piercing the sky, so that it can be seen in every settlement on earth.¹⁶

The sorcerer is converted to the Great Law and is given the title of Confederacy Chief; further, he is made the Confederacy's firekeeper and wampum keeper.¹⁷ The conversion of the chiefs of the Five Nations is now complete and the first meeting is convened to establish the structure and organization of the Confederacy. Deganawidah teaches the Iroquois the practical organizational skills, and rituals, that are required to implement the Great Law of Peace in practice. I shall explain the basic structure of the Confederacy over the course of the next two chapters. After Deganawidah

teaches these skills and rituals to the Chiefs he announces that his task is now complete and leaves with the following words:

Now my work is finished. I shall cover my body with bark and bury myself in the ground. There I shall hear how men tend the Longhouse I constructed for them here on the earth.¹⁸

From a state of disorder to an era of peace

Although there is an enormous amount of scholarship on the Iroquois, the Iroquois Confederacy, and the narrative itself, I shall focus on the significance of the narrative as a political vision.¹⁹ Deganawidah arrives at a time of great social and political upheaval in Iroquoia, and his message provides the impetus for the Iroquois to initiate social and political changes. Part of his message focuses on changing two aspects of Iroquois political reality. The first aspect is the censure of two destructive practices that have become prevalent in Iroquoia: cannibalism and witchcraft. These practices create mistrust and unrest and must be eliminated in order to create a peaceful, healthy environment within Iroquoia. The second aspect of political reality is the imperative that the Iroquois must develop the necessary practical skills that will enable them to, first, lift themselves out of this state of turmoil so they can co-exist in a peaceful society and, second, co-exist with other nations on an international level. I shall consider briefly each of these aspects.

Deganawidah's public censure of cannibalism and witchcraft is represented in the narrative by the conversions of Hiawatha, the chiefs of the

Five Nations, and Adodarho. These events in the narrative are important because they show that certain behaviours are unacceptable if peace is to be secured in Iroquoia. When they learn that these practices are unacceptable, the Iroquois take an important step towards securing a healthier environment. Abolishing these irrational, unhealthy practices will put the Confederacy in a more stable position to assert and protect its political sovereignty. Specifically, Deganawidah's views on political organization, and forest diplomacy, can secure a viable peaceful political structure not only within the Confederacy, but internationally.

The practice of cannibalism has long fascinated Europeans. The fearful "Caribs," supposedly encountered by Columbus's men, generated accounts in Europe that the New World was inhabited by beastly man-eating human beings.²⁰ The reputation of the Caribs is undeserved. The Iroquois, however, are a different story. Dean R. Snow quotes:

Iroquois warfare throughout the seventeenth century was fueled by desires for revenge and for captives to replace lost relatives. Many captives were adopted and became full members of their adoptive nations. Others were allowed to live, but only as slaves. Those that were not incorporated in these ways were often subjected to protracted torture and painful death. In these cases cannibalism was sometimes practiced, at least in ritual form, as the torturers attempted to invest themselves with the bravery and prestige of their victims.²¹

Cannibalism created a general feeling of fear among the Iroquois which in turn isolated communities from each other. Matthew Dennis, in his discussion of the early Iroquois, distinguishes two types of cannibalism: endo-cannibalism and exo-cannibalism. Endo-cannibalism means to eat the flesh

of one's own people. This is the kind of cannibalism that Deganawidah immediately sought to eliminate. However, Deganawidah also worked to expand the definition of "one's own people" to include many communities and nations. A large part of the social and political unity of the Iroquois Confederacy was generated by Deganawidah's message of peace. Although there were kinship relations tying many Iroquois communities together, Deganawidah bound them together into an artificial political entity. This Confederacy, was (and is), a man-made political union amongst a diversity of nations.²²

On an individual level, Deganawidah's message of Health teaches that cannibalism does not create a sound mind or body. The message, though, contains two parts: Health means soundness of mind and body; it also means peace, for that is what comes when minds are sane and bodies cared for. When individuals have sound minds and bodies, it follows that the community will be healthy. On a community level then, Health means living in peace. Once he had shown that it was wrong to eat one's own kin Deganawidah could extend his sanctions against anthropophagy to include future kin--that is, people who would come to embrace the Great Law of Peace. Deganawidah's message of health begins at the level of individuals, and extends outward to the Five Nations, the Confederacy, and the international arena. International peace, then, ultimately depends on the soundness of the minds and bodies of individuals.

Deganawidah shows Hiawatha how to hunt, prepare, and cook venison in the proper way. Deganawidah's point is that we look to nature for our needs, yet we must do so in a "proper" way. Basically, cannibalism goes against the Creator's design. It is natural for man to hunt for food and in doing so he engages in the way the Creator has made the world.

Deganawidah reminds the Iroquois that they must return to these natural ways. "Natural," for the Iroquois, means, quite simply, in accordance with what the Creator has placed before us in nature. The Iroquois believe quite strongly that the universe is ordered in a certain way, and that there are natural relationships that govern the universe. A Native American view of knowledge arises out of thousands of years of observing the many complex relationships found in nature. Because Native Americans believe that the Creator is responsible for all that is found in nature, to understand something about nature is to understand the Creator's work. This kind of knowledge is considered to be sacred. These "natural ways" of thinking become a little clearer when we examine witchcraft.

Witchcraft is another impediment to social and political stability. The main problem with witchcraft is that it creates suspicion and uncertainty among people. The practice and belief in witchcraft, as seen similarly in its early American context in Salem, renders communities unstable, irrational, and violent. A categorical distinction within Iroquoian cosmology is the inherent dualism between good and evil. There are other inherent dualisms in the Iroquois belief system such as the relationships between male and

female, clarity and obscurity, and peace and war.²³ Deganawidah's message does not offer a philosophical justification for these beliefs; rather it subsumes these beliefs into practices that already guide the day-to-day behaviour of individuals in Iroquoia.²⁴

Basically, witchcraft lies outside the boundaries of what are considered to be natural, or rational, ways of behaving. Because Deganawidah teaches that peace is a natural goal of all people, people who willingly advocate evil are thought to be acting irrationally, and engaging in witchcraft. L.H. Morgan wrote:

...a belief in witches is to this day [1845], and always has been, one of the most deeply-seated notions in the minds of the Iroquois....Any person, whether old or young, male or female, might become possessed of an evil spirit, and be transformed into a witch....they were endued with the power of doing evil, and were wholly bent upon deeds of wickedness....According to the current belief, he [a witch] was not only willing to take the life of his nearest friend, but such an one was the preferred object of his vengeance....Such was the universal terror of witches, that their lives were forfeited by the laws of the Iroquois.²⁵

Deganawidah's message does not condemn the belief in witchcraft as superstitious. Instead, he points out that sound minds and bodies do not have to worry about witchcraft because they are able to see clearly. The importance of ceremony and proper political diplomacy are ways to insure, and maintain, a healthy environment of peace.

Adodarho was a powerful sorcerer. Deganawidah was finally able to convert him to accept the message of peace, but Adodarho's conversion came about only when the chiefs, Jingosahsah, and Deganawidah acted and spoke

with "one mind." Only when their circle was complete, and they followed the right procedures, did they have the power to clear Adodarho's mind.

Deganawidah speaks:

...we will begin now to use a single mind. And this we will do by being like a single person, working together to change the habits of the man who lives nearby. This is how we will all cooperate in our work: We will unite, creating a single family to carry on into the future, and all will become related so that there will be respect among the various nations. So now, you chiefs, we will unite, we will use a single way of thinking, and we will depart, going to the place where he abides, the Great Witch.²⁶

Once the conversion process was complete--including bestowing upon Adodarho the most prestigious title as the league's firekeeper and wampum keeper--Deganawidah could show the Chiefs how to organize themselves so that they could maintain the power of the Great Law of Peace in practice.

The organization and diplomatic protocol of the Grand Council was of utmost importance for establishing and maintaining peace within the Confederacy. The Mohawk, Seneca, and Onondaga were considered to be "the older brothers," while the Cayuga and Oneida, and later the Tuscarora, were considered the "the younger brothers."

The Confederacy was the most abstract construction within the various levels of the Confederacy's political organization. This means that the individual longhouse was the place where most Iroquois people lived their lives--it was the living space that mattered most. Beyond the longhouse, their social and political structure manifested itself as a nation. Finally, the Five Nations made up the Iroquois Confederacy. However, even at this broadest level of abstraction, Iroquois society was held together by the

intimate relationships characterized by the clan system. Iroquois society was maternal in organization--the basic unit of organization, the "clan," consisted of a complex set of kinship relationships. Dean Snow says:

Clans were grouped into moieties so that for any function there was a natural division of people into two sides. These engaged in friendly competition and provided services for each other. The most important of those services was occasioned by death. Upon the death of any individual, that person's moiety immediately assumed the role of condolence while attending to the practical matter of burying the deceased. The elaborate funeral rite ensured that everyone was either grieving or condoling, and that no one could be blamed for causing the death.²⁷

As can be seen from this quote, the notion of reciprocity is central to the clan system.

The clan system was already in place at the time of Deganawidah, but, the kinship ties between clans had broken down, due to the unstable and violent environment. Deganawidah showed the people how to renew these kinship ties and create a peaceful environment of co-existence. After peace had been re-established in Iroquoia clan members could once again be welcomed by their clans in other nations; a relationship that facilitated trade and inter-marriage between nations (as it is the custom to marry outside of one's clan).

The Five Nations consisted of at least three clans--Turtle, Bear, and Wolf--who each had a chief represent them on the Grand Council.²⁸ These chiefs were chosen by the elder clan mothers who had the power to oust a chief if he did not perform up to their expectations. The Grand Council met a few times a year, or whenever necessary, to deal with the problems of

securing peace and order within the Confederacy. As I mentioned above, the Confederacy's political structure constituted a metaphorical longhouse. The Confederacy's central fire was in Onondaga country, which lies in the centre of Iroquoia. The eastern and western doors were protected by the Mohawk and Seneca respectively. It is for this reason that these three Nations were considered to be the "older brothers."

The relationship between younger and older brothers was one based on equality, but the older brothers held the right to speak first at Council meetings. Decisions in meetings required consensus, which meant that everyone had to agree or the matter was dropped or reconvened at a later date. By the time an issue was discussed in the Grand Council it had already passed through the individual longhouses and nations. Consensus was first reached within the individual longhouses, since this was where people's lives were affected most. Individual longhouses governed themselves independently of each other, provided their actions did not harm other members of the Confederacy.²⁹ As the Confederacy grew, and the European presence began to dominate the political landscape, this autonomy became more and more difficult to sustain until gradually the Confederacy fell apart.³⁰ However, in the Confederacy's nascent form, individual longhouses and nations exercised a great deal of autonomy and the organization of the Grand Council functioned as a means to maintain and protect this autonomy.

The organization of the Confederacy into the Grand Council is not similar to a European type of centralized government. Representation within

the Grand Council consisted of fifty chiefs, or sachems, who functioned as the voices of their communities. The Chiefs did not make decisions in consultation with other chiefs about the welfare of the community as a whole without *first* gaining the approval of their respective communities. This process was respected for every issue that affected the welfare of the Confederacy. This kind of democratic representation was grounded on the principles of reciprocity and renewal. These two fundamental principles are deeply embedded in Iroquois culture and they generate attitudes that guide their social and political relationships at all levels of interaction. These principles are pivotal to understanding the Iroquois notion of political sovereignty and are worth a closer examination. I shall come back to them again when I discuss Hobbes in the next chapter.

According to Deganawidah's precepts, individuals are accorded a fundamental respect, due to their intrinsic worth. Because of their self worth, individuals ought to determine what course of action is best for themselves. At the same time, reciprocity entails that individuals recognize others as autonomous moral agents and that they must also be accorded the ability to decide for themselves their own course of action. It follows that, in principle, one cannot tell another what to do, or how to behave. Europeans often commented about the individualistic nature of Native Americans and the fundamental respect and freedom they accorded each other in their day-to-day lives.

This attitude of reciprocity, or mutual respect, manifests itself in two kinds of individual freedoms: the freedom of speech and the freedom of religion. It was viewed as disrespectful to speak for another person, and it was certainly forbidden to choose how to act for another. The freedom of speech gave everyone the right to speak his or her mind in the context that everyone else held the same right.

It is also important to note that reciprocity applies to groups as well as individuals. Longhouses and nations are recognized to be autonomous entities, and therefore they are accorded rights to govern themselves as they see fit. This recognition, however, had its limits, for reciprocity and self-government were only recognized *after* one embraced the Great Peace. I will come back to this limitation shortly, when I discuss the notion of power.

Religious diversity was a fact duly recognized by virtually every Iroquoian, and the Confederacy accommodated this diversity within its political structure. However, Iroquoians shared an implicit assumption that all peoples believe that there is a supreme Creator. Cosmologically, this Creator is responsible for creating and sustaining the natural order of the universe. Ceremonies are a natural part of a religion as they are ways to give thanks to the Creator, and to confirm one's place within the universe. Given the attitude of reciprocity, it follows that people will give thanks in different ways, and therefore embrace different ceremonies and religions. Upon the first arrival of the Europeans, their religious beliefs were no less respected than other existing Native American religions. However, as is well

documented, the European missionaries did not hold the same view of reciprocity. The recognition of the diversity of religious beliefs within a political community was a fundamental difference between European and Native American political thinking.³¹ The Iroquoian attitude of reciprocity, however, is inextricably woven together with yet another culturally embedded principle, that of renewal.

The concept of renewal is complex and it goes to the core of the philosophical legitimacy of the Great Law of Peace. As I mentioned above, pre-Deganawidah Iroquoia did not exist in a cultural vacuum; rather, there were embedded ways of thinking that guided Iroquoian behaviour. The main idea behind the principle of renewal is that continual change is a natural part of any relationship--whether the relationship be spiritual, physical, or political. This is because nature itself moves in cycles of renewal: life and death; the four seasons; planting cycles; migration patterns etc.³²

Relationships between people go through natural changes as well. For the Iroquois it is important to recognize, affirm, and renew these relationships periodically in order to give thanks to the Creator and revitalize the relationship so that peace may be retained in the Confederacy. Public manifestation of the principles of reciprocity and renewal are found in the various forms of the Condolence Ceremony.

Renewal in political relationships, though, depends upon an important proviso of the Condolence Ceremony--that keeping one's word within the public sphere is recognized by everyone to be of utmost importance in

securing peace. Promises made in the public domain are elevated to the highest standards of diplomatic protocol. Of course, there are no guarantees that everyone will tell the truth, so even in diplomatic situations one is never "sure" that the truth is being told. The Iroquois solution to this unavoidable problem was to sanctify certain practices. This is why Deganawidah taught Hiawatha the Condolence Ceremony. Words were to be used in responsible ways, and in certain situations, they bound a person to keep a promise, especially if there was an exchange of wampum. But the place of oral agreements must be understood within a culture that is based on an oral tradition.

One of the fundamental differences between European and Native American cultures is that Native Americans have a highly developed oral tradition. The tradition remains in place today in most Native communities as it is only recently that most Native Americans have engaged the written word as a means of communication. N. Scott Momaday, a Kiowa writer, captures the importance of words, and promises, for indigenous cultures in his *The Way to Rainy Mountain*:

A word has power in and of itself. It comes from nothing into sound and meaning; it gives origin to all things. By means of words can a man deal with the world on equal terms. And the word is sacred. A man's name is his own; he can keep it or give it away as he likes.

Later he speaks the following:

If an arrow is well made, it will have tooth marks upon it. That is how you know. The Kiowas made fine arrows and straightened them in their teeth. Then they drew them to the bow to see if they were straight. Once there was a man and his wife. They were alone at night in their tipi. By the light of the fire the man was making arrows. After

a while he caught sight of something. There was a small opening in the tipi where the two hides were sewn together. Someone was there on the outside, looking in. The man went on with his work, but he said to his wife: "Someone is standing outside. Do not be afraid. Let us talk easily, as of ordinary things." He took up the arrow and straightened it in his teeth; then as it was right for him to do, he drew it to the bow and took aim, first in this direction and that. And all the while he was talking, as if to his wife. But this is how he spoke: "I know that you are there on the outside, for I can feel your eyes upon me. If you are a Kiowa, you will understand what I am saying, and you will speak your name." But there was no answer, and the man went on in the same way, pointing the arrow all around. At last his aim fell upon the place where his enemy stood, and he let go of the string. The arrow went straight to the enemy's heart.³³

As this story illustrates, possessing power over one's language is sacred for Native Americans. Although the social and political reality may have changed drastically since the early days of contact, Native American strategies for engaging in philosophical problems through the oral tradition remains an essential part of Native American identity. Remember my earlier words from Chief Dan George:

We have discarded our broken arrows and our empty quivers, for we know what served us in the past can never serve us again...It is only with tongue and speech that I can fight my people's war.

Philosophical discourse in the Western European tradition, on the other hand, has evolved around the legitimacy of the "text." Philosophy is written, published, and consumed within a literate, mostly university educated community of practitioners. The written text plays a central role in determining what counts as legitimate content of philosophical discourse. An important defining characteristic of the text in Western philosophy is that it focuses on presenting coherent and developed arguments. Philosophers defend arguments, consisting of premises and conclusions, that are then

evaluated by a set of standards that have evolved over the history of the Western philosophical tradition. This is a very brief gloss of the Western philosophical tradition, but my basic point is that Western philosophy has evolved into a community that uses the written text as its main form of public discourse.

Native Americans in early colonial America, on the other hand, focused on a different way of presenting arguments, especially in a public forum. This is because the oral tradition did not rely on a written text that could be referred to at a later date. An oral account, either in the form of a speech or a narrative, was given in a particular context, for example, a treaty negotiation. Once agreement was reached between the participating parties, there would be an exchange of wampum belts. These belts served as the "text" as they materialized the agreement itself. What made the wampum belts valuable was that each one had a story attached to it that certain people, called wampum keepers, were responsible for remembering and reciting at various times of the year. There is no higher level of intellectual specialization, or training, than having to remember the stories attached to the wampum belts. The physical act of giving or receiving the wampum belt established the significance of an agreement.³⁴

Since wampum belts were exchanged in the context of reciprocity and renewal, issues of interpretation and determining the meaning of the treaties was not so much a philosophical problem as a practical problem. Treaties required constant renewal, and agreements could only be made with the

consent of both sides. If one side did not agree there would not be an exchange of wampum belts. If the two sides could not reach an agreement, often the result would be that they would go to war. However, although determining the meaning of the wampum belts is not a philosophical priority, this does not mean that they are not open to philosophical interpretation.³⁵

For example, the "Two-Row Wampum," or "Gus-Wen-Teh," is an example of a treaty that embraces a profound political vision. The treaty was said to have originated around 1664 and was first signed with the Dutch. Grand Chief Michael Mitchell of Akwesasne states, and it is worth quoting in full:

When the Haudenosaunee first came into contact with the European nations, treaties of peace and friendship were made. Each was symbolized by the Gus-Wen-Teh or Two Row Wampum. There is a bed of white wampum which symbolizes the purity of the agreement. There are two rows of purple, and those rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows symbolize two paths or vessels, traveling down the same rivers together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel.

The principles of the Two Row Wampum became the basis for all treaties and agreements that were made with the Europeans and later the Americans.³⁶

I will say more about the significance of the Two Row Wampum in the next chapter when I discuss the Iroquois notion of political sovereignty. For now I

want to highlight the fact that these treaties were understood by the Iroquois in the context of the principles of reciprocity and renewal.

Another example of a "text" in Native American oral traditions is the narrative. One example is the narrative of the life of Deganawidah. The narrative was originally meant to be spoken, not read. But the role of the narrative functions, once again, within the context of reciprocity. A story is recited but there is no explicit imperative attached. For example, a story would be recited to children and it would be up to the children themselves to think about the message of the story. They could confer with other people, especially elders, about its meaning and significance, but each child had to reach an understanding on his or her own. Children who grow up in such an environment learn to think for themselves, which was a necessary skill required for the survival of the community.

Since the latter half of the nineteenth century, however, Native American narratives have been transcribed into a written text, mostly by non-Native anthropologists and missionaries. This means that there are now written sources of the narratives that are available to academic scrutiny.³⁷ Once the European newcomers gained a political advantage over the Iroquois the oral context "textualized" in the wampum belts ceased to be recognized as the legitimate source for understanding the meaning of treaties. Yet, an important fact that is often ignored is that the oral tradition remains alive in many Native communities, and has evolved to embrace the written text.³⁸ There can be no doubt that the written text has taken primacy over the oral

account in many contemporary contexts, especially legal and political contexts. However, for the early period with which I am concerned in this chapter, the oral tradition was considered by the Iroquois *and* the Europeans to be the source of Iroquois knowledge and wisdom.³⁹

One important consequence of the primacy of an oral tradition is that words, metaphor, and symbols play a major role in determining social and political meanings, especially in the context of forest diplomacy. "The basic principle of Iroquois metaphor is the projection of words about familiar objects and relations into the fields of politics and diplomacy."⁴⁰ Of course the use of metaphor in guiding political relationships occurs in many cultures, but one has to be especially careful about the use of metaphors with respect to the Iroquois. This is because there are certain Iroquoian metaphors, of which I shall discuss two, that do not easily "translate" into European equivalents.

First, as I have discussed briefly above, there is the importance of kinship metaphors. The use of familial terms in Iroquoian diplomacy was important because it established the relationship of power between the participating parties. The relationship between father and children is not the same in Iroquoian culture as in Christian families: in Iroquoian culture the father does not carry significant paternal authority over his children.⁴¹ Iroquoian cultures are organized matrilineally which means that the eldest matriarch is respected as the highest authority within each clan. The uncles on the mother's side were viewed to have authority over the children. Grandfathers were accorded respect but they did not command obedience. The title of

“brother,” or “brethren,” demanded a relationship of equality; although there was a distinction made between elder and younger brother that dictated a protocol of deference in speaking, as was found in the protocol of Grand Council meetings. The Iroquois always entered into international political relationships with the Europeans as their “brethren.” When the Europeans insisted on being addressed as “father” Iroquoians did so to allow for further negotiations, and not because they viewed themselves as children to the king of France in a European sense.⁴²

The second metaphor involves the sanctity of words. I have already discussed the importance of words in the context of treaties, but it is important to reiterate the point. Words, as expressed in promises or political agreements, become morally binding when they are spoken along with the exchange of wampum or the smoking of the pipe. Remember that wampum are small shells that are bored through the middle and strung into belts or strings. The use of wampum had many meanings and each depended on the context. But the main political significance of wampum was to represent - materially--the morally binding nature of an agreement or promise. It was a way of sanctifying one’s words in practice. The wampum belts played a very serious role in forest diplomacy. A wampum belt was offered with each request, and in turn, a wampum belt was offered in response. The refusal to accept a wampum belt was an explicit sign of rejection. Sometimes a wampum belt was given as a gift to confirm one’s position in a particular relationship.⁴³

Tobacco is a sacred plant for virtually all Native Americans. Its use in smoking the pipe, in a political context, represents the solemnity of taking responsibility for one's words. The act of smoking the pipe, in diplomatic relationships, represents carrying one's words with the smoke into the spirit world. In many Native American cosmologies, the spirit world is the highest form of existence and it is the place where ancestors go upon their death. To breach the sanctity of the act of smoking is a fundamental act of disrespect which upsets the balance of peace in the political relationship. Father Marquette says in the *Jesuit Relations*:

[The Sacred Pipe] is the most mysterious thing in the World. The Scepters of our Kings are not as much respected; for the Savages have such a Deference for this Pipe, that one may call it the God of Peace and War, and the Arbiter of Life and Death.⁴⁴

Smoking the pipe, then, morally binds the participants in a solemn manner--in a way that requires them to take responsibility for themselves. Political agreements were publicly recognized as legitimate *because* they were consecrated in the pipe ceremony. This Native American practice is opposed to the European practice where "signed and sealed articles of agreement...were most often considered by Euroamericans to be the primary concrete symbols of agreement, [although they] were not commonly valued as such by Iroquois people."⁴⁵

Of course nothing guarantees that one is telling the truth. Further, there is never a guarantee that both sides understood what these agreements meant. This is why the notion of power is central to understanding the

political structure of the Iroquois Confederacy. Remember Deganawidah's message of Righteousness and Power:

Righteousness means justice practiced between men and between nations; it means also a desire to see justice prevail.

Power means authority, the authority of law and custom, backed by such force as is necessary to make justice prevail; it means also religion, for justice enforced is the will of the Holder of the Heavens and has his sanction.

An Iroquois conception of justice means for all people to live in peaceful co-existence. There are several assumptions at work in this view of justice. I've already discussed the principles of reciprocity and renewal. Another assumption about human nature is that human beings desire peace rather than disorder and war.⁴⁶

But, for the Iroquois, justice has to be exercised in the everyday world; that is, a just society is not something that happens on its own. This is where the principle of renewal is important. Political relationships require renewing; if they are left alone they die. This introduces the notion of power in political relationships. The Great Law of Peace, through the words of Deganawidah, has been divinely revealed to the Iroquois. The Iroquois, then, perceive themselves as privileged human beings who hold the truth about how human beings can organize themselves into the most efficient way. The best way that justice can be insured is if one follows the rules laid down by the Great Law of Peace. If people or nations do not accept the Great Peace, then they are considered to be the enemy of the Confederacy and must either be eliminated or forced to accept it. In this respect, the Iroquois can be said to be

the first colonizers of the Americas. Here is an example of how the Iroquois presented the Great Law of Peace to a neighbouring village:

When the proposition to establish the Great Peace is made to a foreign nation it shall be done in mutual council. The nation is to be persuaded by reason and urged to come into the Great Peace. If the Five Nations fail...after a third council...the war captain of the Five Nations shall address the head chief of the rebellious nation and request him three times to accept the Great Peace. If refusal steadfastly follows the war captain shall let a bunch of white lake shells fall from his outstretched hand and shall bound quickly forward and club the offending chief to death. War shall thereby be declared and the war captain shall have his men at his back to support him in any emergency. War shall continue until won by the Five Nations...Then shall the Five Nations seek to establish the Great Peace by a conquest of the rebellious nation.⁴⁷

The Five Nations, throughout the sixteenth and seventeenth centuries, had the physical power to enforce their will in and around Iroquoia. However, the military power exercised by the Confederacy was used only to bring a community into the Confederacy. Once a community embraced the Great Peace, they could govern themselves as they saw fit, as long as they did not infringe upon the other nations within the Confederacy. Parker says:

Whenever a foreign nation is conquered or has by its own free will accepted the Great Peace, their own system of internal government may continue so far as is consistent but they shall cease all strife with other nations.⁴⁸

Another characterization of the Great Peace is the image of a great tree:

Deganawidah's tree had four white roots that stretched to the four directions of the earth. A snow white carpet of thistledown spread out from the base of the tree, covering the surrounding countryside and protecting the peoples who embraced the three life affirming principles. Deganawidah explained that this tree was humanity, living within the principles governing relations among human beings, and the eagle perched on top of the giant pine was humanity's

lookout against enemies who would disturb the peace. He postulated that the white carpet could cover the entire earth and provide a shelter of peace and brotherhood for all mankind. His vision was a message from the Creator, bringing harmony to human existence and uniting all peoples into a single family.⁴⁹

So one had to become a member of the community, by force if necessary, in order to exercise its privileges. Democracy had its price in the Confederacy; one had to accept the Great Peace before one could be recognized as autonomous within it. This imperative of membership is also embedded within the understanding of the Two Row Wampum, but in a much more tenuous form. International relationships did not require the same kind of consent and I will examine these differences in the next chapter.

We can gain a better understanding of how the sovereignty of the Iroquois Confederacy functioned when we examine it alongside the political thought of Thomas Hobbes. At first glance, the Confederacy appears to be a kind of Leviathan. However, upon closer examination we will see that it functions quite differently. I have discussed the important principles of reciprocity and renewal in the context of political relationships and I will come back to them in the next chapter. Now that we have a good idea of how the Confederacy was organized, I will turn to the political thought of Hobbes in hope of explaining the Confederacy's view of political sovereignty more fully.

Endnotes

¹ From William N. Fenton, "Structure, Continuity, and Change in the Process of Iroquois Treaty Making" in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and Their League* ed. Francis Jennings, (Syracuse, N.Y.: Syracuse University Press, 1985), p.5.

² Daniel Richter argues to separate the Iroquois Great League of Peace and the Iroquois Confederacy into cultural and political constructs respectively. He writes "The first - the League - is undeniably old, relatively unchanging, and very much alive to the present day. The second - the Confederacy - developed gradually in the years following European contact. It was in constant flux, and during the American War for Independence it virtually ceased to exist." in "Ordeals of the Longhouse," in *Beyond the Covenant Chain: The Iroquois and Their Neighbors in Indian North America, 1600-1800* (Syracuse, N.Y.: Syracuse University press, 1987), p.11-12.

³ The scholarship on the Iroquois Confederacy is enormous. However, virtually all of the important academic work has been the work of anthropologists, historians, and legal scholars. The main sources I have used are Lewis Henry Morgan, *League of the Iroquois* (USA: Carol Publishing Group Edition, 1993); Cadwallader Colden, *The History of the Five Indian Nations: Depending on the Province of New-York in America* (Ithaca, N.Y.: Cornell University Press, 1988); Dean R. Snow, *The Iroquois* (USA: Blackwell Publishers Ltd., 1996); Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lake Region, 1650-1815* (Cambridge: Cambridge University Press, 1991); Francis Jennings, *The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with English Colonies from Its Beginnings to the Lancaster Treaty of 1744* (New York, N.Y.: W.W. Norton & Company, 1984); Daniel Richter, *The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization* (Chapel Hill: University of North Carolina Press, 1992); Matthew Dennis, *Cultivating a Landscape of Peace: European-European Encounters in Seventeenth-Century America* (Ithaca, N.Y.: Cornell University Press, 1993); Brenda Katlatont Gabriel-Doxtator and Arlette Kawanatatie, *At the Woods' Edge: An Anthology of the History of the People of Kanesata:ke* (Kanesata:ke, P.Q.: The Kanesatake Education Center, 1995); J.D. Hurley, *Children or Brethren: Aboriginal Rights in Colonial Iroquoia* (Ph.D Dissertation, Cambridge University, 1985); Gerald Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism in Canada* (Oxford: Oxford University Press, 1995); Bruce Trigger, *The Children of Aantaentsic: A History of the Huron People to 1660* (Montreal: McGill-Queens University Press, 1976); Bruce Trigger, *Natives and Newcomers: Canada's "Heroic Age" Reconsidered* (Montreal: McGill-Queen's University Press, 1985); Francis Jennings et al, *The History and Culture of Iroquois Diplomacy:*

An Interdisciplinary Guide to the Treaties of the Six Nations and Their League (Syracuse, NY.: Syracuse University Press, 1985); Daniel K. Richter and James H. Merrell Eds., *Beyond the Covenant Chain: The Iroquois and Their Neighbors in Indian North America, 1600-1800* (Syracuse, N.Y.: Syracuse University Press, 1987)

⁴ See especially Jennings, *The Ambiguous Iroquois Empire*.

⁵ Another reason for the Christian overtones found in the narrative is the Code of Handsome Lake that was articulated by Handsome Lake in the nineteenth century. His writings are loosely defined as an amalgamation of traditional longhouse views and American Quakerism. See A.C. Parker, *The Code of Handsome Lake, The Seneca Prophet* (Ohsweken, Ont.: Irocrafts Ltd, 1990) and Chief Jake Thomas and Terry Boyle, *Teachings from the Longhouse* (Toronto, Ont.: Stoddart Publishing Co. Ltd, 1994).

⁶ This is not to say that the legitimacy of sources for the Great Law is without controversy. I am approaching the narrative similar to Christopher Vecsey's approach in "The Story and Structure of the Iroquois Confederacy" in his *Imagine Ourselves Richly: Mythic Narratives of Native American Indians* (New York: Crossroad, 1988). With respect to the narrative itself I have relied on the following: Hanni Woodbury, *Concerning the League: The Iroquois Tradition as Dictated in Onondaga by John Arthur Gibson* (Winnipeg, Man.: Algonquian and Iroquoian Linguistics, 1992); Matthew Dennis, *Cultivating a Landscape of Peace: Iroquois-European Encounters in Seventeenth-Century America* (Cornell, NY: Cornell University Press, 1993); A.C. Parker, *The Constitution of the Five Nations or The Iroquois Book of the Great Law* (Ohsweken, Ont.: Irocrafts Ltd., 1991); Duncan Campbell Scott, *Traditional History of the Confederacy of the Six Nations Prepared by a Committee of the Chiefs, Royal Society of Canada Transactions*, 3 d ser., 5, no. 2 (Ottawa, 1912), 195-246; J.N.B. Hewitt, "A Constitutional League of Peace in the Stone Age of America: The League of the Iroquois and its Constitution," in *Annual Report of the Smithsonian Institution for 1918* (Washington, DC, 1920); Paul A. Wallace, *The White Roots of Peace* (Santa Fe: Clearlight Publishing, 1997) At the time of writing this chapter I have not had the opportunity to listen to an oral rendition of the Great Law, and this is indeed a shortcoming of my chapter; however, at this point in my investigation of Iroquois sovereignty I am focusing on several of the more salient points of the narrative that are amenable to Western philosophical inquiry. A detailed examination the Great Law of Peace is a project well beyond the scope of a thesis chapter and involves years of listening to the teachings of Iroquois elders and wisdomkeepers. The purpose of including the Iroquois Confederacy in this thesis is to cite it as an example of an Aboriginal view of sovereignty within the context of Hobbes's characterization of Native Americans--not as an extensive philosophical analysis of the Great Law of Peace itself. I am not qualified to offer such an analysis and I make no pretensions to be able to do so. For a detailed understanding of the Great Law of Peace I suggest contacting

the following people: Oren Lyons, Department of American Studies, State University of New York at Buffalo; Charlie Patton, Kahnawake, Mohawk Territory, Quebec; and Jake Thomas, Six Nations Reserve, Brantford, Ontario. I am grateful, however, to the following Iroquois people who have helped me, whether in mutual conversation or as an active listener, understand better the philosophical significance of the Great Law of Peace: Patricia Montour-Angus; Gerald Alfred; Paul Williams; Christopher Jocks; Audra Simpson; Marlene Brant Castellano; Charlie Patton; Alex McComber; Chief Mike Mitchell; and, Ellen Gabriel.

⁷ For an executive summary of the narrative see pps. xix - xxxiii of Woodbury, *Concerning the League*.

⁸ Dating the origins of the Confederacy is itself a hotly debated issue in the academic literature. For example see Barbara Mann and Jerry Fields, "A Sign in the Sky: Dating the League of the Haudenosaunee" in *American Indian Culture and Research Journal*, Vol 21, no. 2, 1997.

⁹ Woodbury, *Concerning the League*, p. xx.

¹⁰ In another version, Deganawidah is ridiculed and rejected by his own people, therefore he sets out without belonging to a community. In many Native American cultures this amounts to a death sentence. Also, because his message was not understood, nor accepted by the Huron, they would not fall under the Great Law of Peace, and subsequently they would become enemies of the Confederacy. See White, *Middle Ground*.

¹¹ Woodbury, p. 15.

¹² Wallace, *White Roots*, p. 40.

¹³ It is generally accepted that because Jingosahseh was the first person to accept the Great Peace, Deganawidah put women in charge of selecting the Chiefs, or sachems, who made up the council of the confederacy. See Barbara Mann, "A Sign in the Sky," pp. 132-4.

¹⁴ In Goldenweiser's manuscript it is not clear whether this person is supposed to be Hiawatha, or the sorcerer Adodarho as is stated in other versions, but scholars agree that it most likely is Hiawatha. Matthew Dennis has an interesting remark about the abuse of Hiawatha's identity in Longfellow's poem *Song of Hiawatha* (1855): "If a Chinese traveler, during the middle ages, inquiring into the history and religion of the western nations, had confounded King Alfred with King Arthur, and both with Odin, he would not have made a more preposterous confusion of names and characters than that which has hitherto disguised the genuine personality of the great Onondaga reformer." *Landscape*, Quoting Horatio Hale, p.83.

¹⁵ Wallace, *White Roots*, p.55; Woodbury, *Concerning the League*, p.138-40.

¹⁶ Woodbury, p.232.

¹⁷ I will say more about the use and meaning of wampum shortly.

¹⁸ The Council that followed the conversion process sat and established 117 rules that were codified into the Constitution. The laws entrenched in the Constitution ranged over issues from the rights and duties of chiefs to the

laws of adoption. See A.C. Parker, *The Constitution of the Five Nations*, pp. 30-60.

¹⁹ See sources in fn. 3. See also Oren Lyons et al, *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light Publishers, 1992; *Indian Roots of American Democracy* ed. Jose Barreiro *Northeast Indian Quarterly*, Special two volume edition, Vol. IV, no. 4 (Winter 1987) and Vol. V, no. 1 (Spring 1988).; Donald Grinde and Bruce Johanssen, *Exemplar of Liberty: Native America and the Evolution of Democracy* (Los Angeles, Calif.: American Indian Studies Center, University of California, Los Angeles, 1991).

²⁰ See Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge: Cambridge University Press, 1982), especially chapter two.

²¹ Snow, *The Iroquois*, p.127.

²² There are two major linguistic groupings in Northeastern North America: Algonkian and Iroquoian—although their political organizations were not necessarily derived from their linguistic similarities. A case in point is the Huron. The Huron and Iroquois are from the same linguistic group, yet they were enemies, at least during the early period of the Iroquois Confederacy (mid to late sixteenth century).

²³ Dennis, *Cultivating a Landscape*, p.91.

²⁴ In the introduction to *White Roots of Peace* Wallace characterizes the Iroquois as "an active and emotional people; for symbols are a means by which practical persons, shy of metaphysics and impatient of theory, are enabled to apprehend great ideas, take them to heart, and put them to work." I think Wallace overstates his point here, the Iroquois are neither "shy of metaphysics" nor "impatient of theory." Rather they engage metaphysical and theoretical issues in different ways. For example, the Seneca term *orenda* is "a benevolent and protecting power," and is opposed to *utgon*, which is the essence of evil. The difficult path for the Iroquois is to maintain a balance between good and evil in their social and political lives. Death upsets this precarious balance as a person's mind becomes blackened, or irrational, and often they become violent and seek vengeance. Deganawidah's "Good News of Peace and Power" offers a way of subduing evil, so that a person could live in a "clearheaded," or rational, state of mind.

²⁵ Dennis, *Cultivating a Landscape*, p.93.

²⁶ Woodbury, *Concerning the League*, pp. 221-2.

²⁷ Snow, *The Iroquois*, p.56.

²⁸ *Ibid*, p.62-3.

²⁹ Reverend Asher Wright quotes "If any individual desired to bring any proposition before the general council, he must first gain the assent of his family, then his clan, next of the four related clans in his end of the council house, then of his nation, and thus in due course...the business would be brought up before the representatives of the confederacy. In the reverse order,

the measures of the general council were sent down to the people for their approval. It was a standing rule that all action should be unanimous. Hence, the discussions were continued until all opposition was reasoned down, or the proposed measure abandoned." from Fenton, "Structure, Continuity and Change," p. 13.

³⁰ Fenton says in "Structure, Continuity, and Change": When in 1777 the Five Nations could not agree on participation in the American Revolution, the League covered its fire, which had burned since the founding in Onondaga: for all viable historical purposes, it suspended functioning as a general government for the six nations. p.31.

³¹ This raises a host of difficult epistemological issues. For example, the notion of scepticism in traditional Native thought functions in a different way than it is understood within the European philosophical tradition, at least since the time of Montaigne. To the extent of my limited knowledge of Native American religions, Native thinkers did not question the existence of the Creator so much as question man's understandings of how to behave appropriately in the world. The principle of reciprocity functions in a way that imperatives are discovered and recognized by individual listeners. One can be offered an imperative, and even accept it to be true, but it does not follow that it is a universal claim. The notion of epistemological certainty will become clearer when we examine the oral tradition shortly.

³² See Snow, whose chapters in *The Iroquois* are outlined according to the various yearly ceremonies.

³³ N. Scott Momaday, *The Way to Rainy Mountain* (Albuquerque: University of New Mexico Press, 1969) p. 33 and p.46.

³⁴ See Tehanetorens, *Wampum Belts* (Ohsweken, Ont.: Irocrafts Ltd., 1993).

³⁵ For example, see James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), p. 127-8.

³⁶ Chief Michael Mitchell, "AN Unbroken Assertion of Sovereignty" in *Drumbeat: Anger and Renewal in Indian Country*, Ed. Boyce Richardson (Toronto: Summerhill Press, 1989) pp.109-110.

³⁷ This has led to the field of Native American literary criticism. See Arnold Krupat, *For Those Who Come After: A Study in Native American Autobiography* (Los Angeles: University of California Press, 1985); Robert Allen Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis : University of Minnesota Press, 1995); Gerald Vizenor, *Manifest Manners: Postindian Warriors of Survivance* (Hanover: University Press of New England, 1994; Elizabeth Cook-Lynn, *Why I Can't Read Wallace Stegner and Other Essays: A Tribal Voice* (Madison, Wisc.: The University of Wisconsin Press, 1996); N. Scott Momaday, *The Man Made of Words* (New York: St. Martins Press, 1997).

³⁸ For example, Jake Thomas still recites the Great Law at least once a year while publishing his ideas in *Teachings From the Longhouse*.

³⁹ For example, the oral traditions of Native Americans have not fared well in American and Canadian courts, although there is some progress being made. See Mary Ellen Turpel-Lafond, *First Nations' Resistance: Post-Colonial Law* (Toronto: University of Toronto Press, forthcoming). See also Gisday Wa and Delgam Uukw, *The Spirit in the Land* (Gabriola, B.C.: Reflections Press, 1989).

⁴⁰ See "Glossary of Figures of Speech in Iroquois Political Rhetoric," in *Iroquois Diplomacy*, p.115.

⁴¹ This has been a common complaint from Europeans about Native American families as was shown in chapter two. As we shall see in chapter four, Hobbes also assumes the natural superiority of the Christian notion of the family.

⁴² If anything, referring to the Europeans as "fathers" lessened the purported power relationship in the favour of the Iroquois. See Francis Paul Prucha, *Great Father: The United States Government and the American Indians, Volumes I and II*, Lincoln: University of Nebraska Press, 1984. Especially pps 5-29.

⁴³ Tehanetorens writes "Wampum strings served as credentials or as a certificate of authority. No Iroquois chief would listen to a messenger or pay attention to a report until he received official information through a runner who carried the proper wampum string or belt. Wampum guaranteed a message or a promise. Treaties meant nothing unless they were accompanied by wampum. Belts were given and received at treaties as seals of friendship." *Wampum Belts*, p.3.

⁴⁴ From Jordan Paper, *Offering Smoke: The Sacred Pipe and the Native American Religion* (Idaho: The University of Idaho Press, 1988). Frontispiece, Ch.1.

⁴⁵ Mary A. Druke, "Iroquois Treaties: Common Forms, Varying Interpretations in Iroquois Diplomacy," in *Iroquois Diplomacy*, p.85.

⁴⁶ My intention here is to compare this with Hobbes's fundamental law of nature which I shall discuss in the next chapter.

⁴⁷ A.C. Parker, *The Constitution of the Five Nations*, p. 10.

⁴⁸ *Ibid*, p.10.

⁴⁹ From Donald Grinde and Bruce Johanssen, *Exemplar of Liberty: Native America and the Evolution of Democracy* (Los Angeles, Calif.: American Indian Studies Center, University of California, Los Angeles, 1991), p.29.

Chapter Four:

Hobbes's "State of Nature" and the Iroquois Confederacy

...And the life of man, solitary, poore, nasty, brutish, and short.

Thomas Hobbes

Introduction

In this chapter I shall examine Hobbes's allocation of Native Americans to the "state of nature." By locating Native Americans to the state of nature, Hobbes denies the legitimacy of Iroquois political thought and consequently develops a discourse on sovereignty that excludes Native American voices. In Hobbes's *Leviathan*, an Iroquois view of political sovereignty would not count as a legitimate form of Commonwealth for two reasons. First, Hobbes claims that Native Americans live in the state of nature. Therefore, it follows that they do not live in civil societies and have not established a legitimate Commonwealth. The second reason is specific to the internal workings of Hobbes's political system. In Hobbes's view, *any* political structure--Aboriginal or non-Aboriginal--organized in a form resembling the Iroquois Confederacy would not count as a legitimate Commonwealth.

In response to the first reason, I will argue that Hobbes is simply wrong to place Native Americans in a state of nature, as the legitimacy of the Confederacy's political organization is based on a kind of covenant, just not the kind of covenant espoused by Hobbes. With regard to the second reason, I shall argue that in his discussion of the Commonwealth Hobbes fails to give good reasons for why a political society, such as the Iroquois Confederacy, is an unacceptable form of sovereignty. Further, I will argue that Hobbes's interpretation of the "state of nature," further developed by Pufendorf, Locke, and Rousseau, is flawed because it is a discourse *about* Aboriginal peoples that does not recognize Aboriginal ways of thinking.

My discussion is broken up into two parts. In the first part I will briefly explain Hobbes's state of nature, or "natural condition of man," and show

how Native Americans fit into his political system. Hobbes's ideas about natural law and the natural state of man are found primarily in chapters 13-15 of *Leviathan* and chapters 1-4 of *De Cive*.¹ In the second part of the chapter, I shall argue that the covenant manifested in the Iroquois Confederacy is a form of political sovereignty--when examined within a richer understanding of Iroquois political thinking--that Hobbes's system fails to recognize as legitimate. Hobbes's view of political sovereignty established a discourse that had no need for Native American participation, and therefore discussions about the legitimacy of Native American sovereignty were, for Hobbes, not a philosophical issue. Quite simply, Hobbes was not interested in Native Americans, or their political thought, except to cite them as pre-political "savages" who serve as counterexamples to European civil societies.

The Natural Condition of Man

In Chapter 13 of *Leviathan* - "Of the Naturall Condition of Mankind," Hobbes claims that the natural condition of man is "every man against every man." This amounts to the fact that natural man, that is, man as he is found in pre-civil society, is virtually immersed in a state of perpetual war. Hobbes's view basically is that, left alone in nature, man will inevitably end up in conflict. However, some textual explanation of how Hobbes arrives at this conclusion is in order.

To begin, it is important to mention that Hobbes's methodology is primarily scientific. For Hobbes, this means that his examination of civil society had to proceed from fundamental claims about the nature of man and society. He states in his early work *Philosophical Rudiments*:

For as in a watch, or some such small engine, the matter, figure, and motion of the wheels cannot well be known, except it be taken insunder and viewed in parts; so to make a more curious search into the rights of states and duties of subjects, it is necessary, I say, not to take them insunder, but that yet they be so considered as if they were dissolved, that is, that we rightly understand what the quality of human nature is,...and how men must be agreed among themselves that intend to grow up into a well-rounded state.²

These fundamental parts observed in dissolution consisted of two related inquiries: facts about man's essential nature and the objective conditions of man's existence. By means of philosophical ratiocination, Hobbes could construct a scientific political system from these facts. It must be remembered that the scientific methods of Harvey and Bacon were considered to be authoritative in seventeenth-century Europe. Hobbes argued that political thinking could be as systematic as geometry, but to do so it had to follow a similar methodology. Like geometry, Hobbes's philosophical system is built up from facts and definitions.³

Hobbes begins from the uncontroversial claim that man is born with the capacity for reason and the drive to satisfy certain desires.⁴ But desires function within a particular view of power. Hobbes contends that individuals have an insatiable need to pursue power--power meaning the "present means to obtain some future apparent Good"⁵:

I put for a generall inclination of all mankind, a perpetuall and restlesse desire for Power after power, that ceaseth onley in Death. And the cause of this, is not always that a man hopes for an intensive delight, than he has already attained to; or that he cannot be content with a moderate power; but because he cannot assure the power and means to live well, which he hath present, without the acquisition of more.⁶

Reason, for Hobbes, is understood as mathematical reasoning: "When a man Reasoneth, hee does nothing else but conceive a summe totall."⁷ He

understands reason to be no more than to exercise mathematical additions and subtractions. However, an individual is born with certain “vital” kinds of motions, or desires—breathing, pulse, blood flow—that continue throughout his or her entire life. Other desires require the imagination to cause them to become motions. These kinds of desires are called “voluntary motions,” such as “to go, to speak, to move any of our limbs.”⁸ More importantly, though, Hobbes claims that an individual’s overriding desire is the desire to preserve his or her own life. Complementary to the precedence of the desire for self-preservation is the claim that our greatest fear is of a violent and painful death. These fundamental psychological claims about man’s nature enable Hobbes to generate his view of rights, laws, and sovereignty. In addition to the psychological characteristics of man, however, Hobbes requires the set of objective conditions of man’s natural environment.

First, it is reasonable to claim that any man, in general, has the capacity to kill another man; that is, no man is completely secure in the state of nature. Hobbes concludes from this condition that nature has made every man equal. Differences may exist between men, such as intellectual ability and physical strength, but these differences are contingent; they are certainly not significant enough to make one person able to dominate over everyone else. The fundamental *right of nature* for all individuals is the right of self-preservation: “The right of nature, which writers commonly call *Jus Naturale*, is the liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own nature.”⁹ The meaning of “right” and “law” are important concepts in Hobbes’s political thought and are clarified at the beginning of Chapter 14:

*"Jus, and Lex, Right and Law, yet they ought to be distinguished; because Right, consisteth in liberty to do so, or to forebeare; Whereas Law, determineth, and bindeth to one of them."*¹⁰

A right, then, is a freedom to do something. The fundamental right of nature is the freedom to act as an individual sees fit in order to preserve his or her life. An important proviso of this right is that individuals must act in the world in order to preserve themselves. This raises the second natural condition of man in nature: there are only limited resources in nature, or, as it is more commonly stated, there is a "scarcity of goods." Because man, as a self-interested individual, has an inherent drive to attain more power in his life *and* there is a scarcity of goods, Hobbes concludes that conflict is inevitable between individuals. In other words, the relationship between individuals in the state of nature is characterized by mistrust. "If any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies."¹¹ Since there is no assurance that one man's interests will prevail, Hobbes claims that man is inevitably led into a state of war. Unless there is a "common power to keep them all in awe, they are in that condition which is called Warre; and such is of every man, against every man."¹² Hobbes defines "warre" as a condition that occurs over time "wherein the Will to contend by battle is sufficiently known," even if there are not actual battles.¹³ This condition of war is better understood when we examine Hobbes's "laws of nature."

A Law of Nature, or *lex naturalis*,

is a precept, or general rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that which he thinketh it may be best preserved.¹⁴

The fundamental law of nature is:

That every man, ought to endeavour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre. The first branch of which Rule, containeth the first, and Fundamentall Law of Nature; which is, to seek Peace, and follow it. The second, the summe of the Right of Nature; which is, By all means we can, to defend our selves.¹⁵

As I mentioned previously, rights are concerned with man's liberty, whereas laws act as rules, or precepts, which set up an obligation. The laws of nature are not laws in the same sense as the laws of motion, or the law of non-contradiction, but they are nonetheless dictates of right reason.¹⁶ The fundamental right of nature functions concomitantly with the fundamental law of nature. This relationship deserves closer examination.

Man in a state of nature has the freedom to act to preserve his life and to act according to how he sees fit. Since there is no obligation to recognize another's right of self-preservation, or to recognize their reasons for acting, the result is that individuals will end up in a state of conflict. Conflict arises in three ways: competition, diffidence (mistrust), and glory:

The first, maketh men invade for Gain; the second, for Safety; and the third, for Reputation. The first use Violence, to make themselves Masters of other mens persons, wives, children, and cattell: the second, to defend them; the third, for trifles..¹⁷

Although the fundamental law of nature is obligatory by the dictates of right reason, in a state of nature there is nothing powerful enough to enforce it. Therefore, although man is obliged by reason to seek peace, he is bound by the practical constraint of doing so "as farre as he has hope of obtaining it." Once man is immersed in a state of war, it follows that "every man has a right to everything; even to one another's body."¹⁸ Man does not begin with a right to everything as a natural condition. It is only in a full-blown state of war,

characterized by competition and mistrust, does one attain the right to everything.¹⁹ There is another consequence in a state of war: "To this Warre of every man against every man, this also is consequent: that nothing can be unjust."²⁰ Further, where there is no common power to keep man in awe there are no recognizable civil laws, or form of government.

Although a lack of government is an important characteristic of a state of nature, there are other defining characteristics of the state of nature. This is demonstrated in Hobbes's well known remark, which is worth quoting in full:

Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withall. In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by the Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.²¹

The state of nature, then, is not a pleasant place. It is a pre-political condition where self-interested individuals live in constant conflict with each other and there appears to be no hope of attaining peaceful co-existence. The solution, for Hobbes, is to show how "we" can move from this unacceptable state of disorder to a state of peace or civil society.

If the natural state of man consists of individuals seeking their own self-interests, what mechanism, if any, can lift them out of this miserable condition into a state of peace? Hobbes attempts to answer this problem by saying that it is partly through the passions, and partly through reason. The

“passions that encline men to peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a hope by their Industry to obtain them.”²² The use of reason manifests itself in the Laws of Nature. It is reasonable, as is shown in the second law of nature, for men to transfer their rights to a sovereign who will in turn secure the safety of all.²³ Individuals in a state of nature consent amongst each other to implement a sovereign authority by transferring all rights except the fundamental right of self-preservation to a sovereign. The sovereign implements and, more importantly, enforces civil laws that will guarantee peace and security within society. The dictates of the sovereign, properly called “civil laws,” introduce morality and justice into society. Indeed, there is no society, or sovereignty, until individuals implement a sovereign.

The important question about consent is: Why would a person consent to establish a sovereign if it were not in her best interest; or if at some time in the future, she would break the contract because it was not in her best interest?²⁴ Promises do not have much worth in the state of nature “because the bonds of words are too weak to bridle men’s ambition, avarice, anger, and other Passions, without the feare of some coercive Power.”²⁵ In other words, if one person were to keep his word, there is no guarantee that others would follow, too. “They have no good reason, because the only good reasons are those of self-preservation; and someone who has done what he has said he would do is not a danger to the people.”²⁶

Hobbes’s answer to the problem of consent is to argue that it is the rational thing to do; the covenant created by consent is enforced by the sovereign who ensures that others keep their promises. There is no good reason to keep one’s promises in the state of nature, but once everyone consents to establish a sovereign, enforceable rules can be established to

maintain peace. Justice, for Hobbes, consists of people keeping their promises, though promises can only be kept once a civil society is established. Thus, for Hobbes, morality does not become part of the society until it can be enforced by the sovereign.

It is worth taking a closer look at the four ways in which a civil government may arise in Hobbes's seventeenth-century Europe: Divine right, force or conquest, patriarchal authority, or consent.²⁷ Hobbes clearly wants to defend the last alternative but Ashcraft claims that "he does not want to set aside the alternative explanations [except for the divine right model which he rejects]; he merely redefines them in terms of consent, leaving intact the assumptions and framework of the theories themselves."²⁸ Ashcraft argues that Hobbes subsumes the generally accepted views of patriarchy into his account of consent. This is due to two factors: first, the role that consent plays in generating a legitimate body politic, and second, the role of the family in Hobbes's political thinking. I shall consider the notion of consent first, and examine Hobbes's notion of the family in the next section when I compare it to Iroquois notions of kinship relations.

Consent is the most important action that individuals perform to establish a civil society. This is because civil society, for Hobbes, is not a natural kind of entity; rather it is artificial. Animals in nature can "agree" as to how to co-exist because they live permanently in the state of nature; man, on the other hand, if left alone in the state of nature would inevitably resort to war of all against all. In other words, the natural inclinations of animals are to co-exist in peace, whereas man's are towards inexorable conflict.

Hobbes claims:

...the agreement of these creatures is Naturall; that of men, is by Covenant only, which is Artificiall: and therefore it is no wonder if

there be somewhat else required (besides Covenant) to make their Agreement constant and lasting; which is a Common Power, to keep them in awe, and to direct their actions to the Common benefit.

The most significant difference, then, between man and animals is that man can *choose* to form a political society. But the covenant established by the consent of individuals must arise in a certain fashion. Man is able to make rules that can guide his actions. These rules, formed in accordance with the laws of nature, can lead men to form a civil society. A legitimate civil society is only formed when all individuals consent to transfer their rights to a sovereign.

Hobbes argues that the *only* way to establish a Commonwealth is for individuals "to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will."²⁹ He adds that this is not merely consent but "a real Unitie of them all, in one and the same Person, made by Covenant of every man with every man."³⁰ The Commonwealth is formed by individuals forming a Covenant, or promise, to transfer all their rights, except the right to self-preservation, to one person. This person is said to be the sovereign power and the multitude, taken together, consist of his subjects.

The powers of the sovereign are extensive.³¹ First, his power is irrevocable. This is because once individuals form a covenant, and transfer their rights to the sovereign, they have no recourse. The covenant is formed between individuals, not between individuals and the sovereign. This means that there is no contract set up between a sovereign and his subjects. Once the covenant is formed, the sovereign takes over and acts for individuals. Second, the sovereign's power is absolute because when individuals in the state of nature agree to transfer their rights to a third party,

they relinquish all of their rights, except the fundamental right of self-preservation. Third, the sovereign's power is indivisible. This means that the power accorded to the sovereign is not divided up, or shared, with any other entity. The covenant creates an artificial third "person" who rules and acts with one mind.

Hobbes endows the sovereign with enormous powers because the central problem with the state of nature is its lack of security. By making the power of the sovereign absolute, Hobbes does away with the possibility of questioning political authority. The Iroquois Confederacy also advocates a kind of sovereign authority, but does so in a different way. I shall examine the differences between their understandings of sovereignty in the last section of this chapter. In the next section, I shall examine Hobbes's choice to locate Native Americans in the state of nature.

Native Americans in the State of Nature

In several places scattered throughout his writings Hobbes makes unequivocal references to his views of Native American peoples. For example, in Chapter 13 of *Leviathan*, directly after describing the short, nasty life of man in the state of nature, he states:

It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now. For the savage people in many places of America, except the government of small families, the concord whereof dependeth on naturall lust, have no government at all; and live at this day in that brutish manner, as I said before.³²

This characterization of Native Americans is not much different than the reference in the earlier *De Cive* :

They of America are examples hereof, even in this present age: other nations have been in former ages; which now indeed are become civil and flourishing, but were then few, fierce, short-lived, poor, nasty, and deprived of all that pleasure and beauty of life, which peace and society are wont to bring with them.³³

These statements are quite clear as to where Native Americans fit in Hobbes's political system. In fact, it could be argued that Hobbes's well-known "nasty brutish and short" description was framed with reference to his conception of Native American life. However, Hobbes does not assert that *all* Native American *individuals* fit into the state of nature. The Iroquois Confederacy could, for example, possibly count as one of the patriarchal, or familial, governments that Hobbes describes in *De Cive*. But, for Hobbes, families outside of a civil society also exist in a state of nature. No form of patriarchal government is a legitimate form of Commonwealth. For Hobbes, all Native Americans must live in a state of nature simply because they have not implemented sovereigns in the Hobbesian way. Further, because Native Americans do not live in civil societies, they do not embrace the most esteemed practices of European culture: science, the arts, philosophy, law, and theology.

It is accepted by most Hobbesian scholars that Hobbes invokes the state of nature not as an empirical claim, but a logical construct. This makes his references to the "savages" all the more interesting since Native Americans are, in many ways, an abstraction for European thinkers. Much of what Hobbes and his contemporaries understood about Native Americans came from the vast amount of travel literature written by missionaries, explorers,

and military men. Surprisingly, very little has been written about the role that Indians play in Hobbes's political thought. A notable exception is Richard Ashcraft's article, "Leviathan Triumphant: Thomas Hobbes and the Politics of Wild Men," to which I am indebted.³⁴ Ashcraft argues that Hobbes embraces uncritically the seventeenth-century European popular view of Native Americans. The accepted views of Native Americans in Hobbes's day were either that they were brutal barbaric savages capable of great violence or that they were pristine pre-lapsarian examples of pre-civil society man. This harkens back to the diametrically opposed European understandings of Indians in the Las Casas-Sepulveda debate. However, Hobbes's seventeenth-century understanding of Native Americans is put to a different use than it was in the Valladolid debate and it is worth a closer examination.

In Hobbes's view, Native Americans were no different in physical make-up than Europeans. This meant that the Native Americans' bodies were of the same genetic class as Europeans. More importantly, their capacity for rationality was, in principle, equal to the Europeans. Of course, the fact remained that the Indians were non-Christians and there was plenty of literature available in seventeenth-century England that argued that *because* the Indians were non-Christians, it followed that they were uncivilized.³⁵ But Hobbes advocated a more scientific approach to political thinking that did not require a divine teleology. So the inferiority of the Indians had to be grounded on something other than the mere fact that they were non-Christians. At the same time, Hobbes argued against the Aristotelians who believed that human beings were in some sense naturally sociable beings, and therefore civil societies were a natural extension of that sociableness.³⁶ This kind of naturalism grates against the more scientific methodology espoused by Hobbes because it begins from the questionable intuitive assumption of

man's natural sociableness, an assumption that is unverifiable in the practical world.

Speech and reason are not understood by Hobbes to be "natural properties" of man. Rather he thinks of them as "self-willing" kinds of actions:

There is no other act of man's mind that I can remember, naturally planted in him, so, as to need no other thing, to the exercise of it, but to be born a man, and live with the use of his five Senses. Those other Faculties, of which I shall speak by and by, and which seem proper to man onely, *are acquired, and encreased by study and industry; and of most learned by instruction, and discipline;* and proceed all from the invention of Words, and Speech. For besides Sense, and Thoughts, and the Trayne of thoughts, the mind of man has no other motion; though by the help of Speech, and Method, the same Facultyes may be improved to such a height, as to distinguish men from all other living creatures.³⁷(emphasis added)

This is an important claim for Hobbes because he has found a way to distinguish Europeans from Indians. Since Europeans and Indians have the same abilities to use their five senses, and have the same relative capacities to reason, the manner in which they put capacities to work in practice becomes much more important in distinguishing differences. One has to keep in mind that Hobbes is generating a systematic justification for the formation of a civil society, so any differences between Europeans and Native Americans will have to be spelled out, and scrutinized, by his own philosophical standards. For Hobbes, Native Americans are non-philosophical beings so their own ways of thinking do not pose a philosophical problem *within* his normative political system.

In chapter five Hobbes states:

Reason is not as Sense, and Memory, borne with us; not gotten by Experience onely, as Prudence is; but attained by Industry; first in apt

imposing of Names; and secondly by getting a good and orderly Method in proceeding from the Elements, which are Names, to Assertions made by Connexion of one of them to another; and so to Syllogismes, which are the Connexions to one Assertion to another, till we come to a knowledge of all the Consequences of names appertaining to the subject at hand; and that is it, man call SCIENCE.

Europeans have developed their scientific reasoning "by Industry" while the "savages" of the New World have not:

...for, those men who have taken in hand to consider nothing else but the comparison of *magnitudes, numbers, times, and motions*, and how their proportions are to one another, have thereby been the authors of all those excellencies by which we differ from such savage people as now inhabit divers places in America; and as have been the inhabitants heretofore of those countries where at this day arts and sciences do most flourish.³⁸

In *De Corpore* he states:

But so far forth as the fancy of man has traced the ways of true philosophy, so far it hath produced very marvellous effects to the benefit of mankind. All that is beautiful or defensible in building; or marvellous in engines and instruments of motion; whatsoever commodity men receive from the observations of the heavens, from the description of the earth, from the account of time, from walking on the seas; and whatsoever distinguisheth the civility of Europe, from the barbarity of the American savages; is the workmanship of fancy, but guided by the precepts of true philosophy.³⁹

Indians simply have not developed their scientific thinking, and therefore they have not attained the higher forms of scientific and political thinking, and its practical consequences, as European societies have.

In a discussion about philosophy in chapter 46, "Of Darknesse from Vain Philosophy, and Fabulous Traditions," Hobbes states:

By Philosophy, is understood the Knowledge acquired by Reasoning, from the Manner of generation of any thing, to the Properties; or

from the Properties, to some possible Way of Generation of the same; to the end to bee able to produce, as far as matter, and humane force permit, such Effects, as humane life requireth.⁴⁰

He then goes on to cite geometry and astronomy as examples of philosophical inquiry; in other words, the sciences are able to generate a type of knowledge that is "generall, eternall, and immutable Truth." This way of generating knowledge is contrasted against gaining knowledge from experience. In chapter five, Hobbes distinguishes between experience and science:

As, much Experience, is *Prudence*; so, is much Science, *Sapience*. For though wee usually have one name of Wisedome for them both; yet the Latines did always distinguish between *Prudentia* and *Sapientia*; ascribing the former to Experience, the later to Science.⁴¹

Hobbes then compares a man who has a natural ability to handle weapons with a man who trains according to a more "scientific" method. The first man, while a competent fighter to some degree, does not have the developed ability of the trained soldier. So, experience is valuable, in the sense that it does help to some degree, but not when it is compared to the rigorous methods demonstrated by the sciences.

With respect to Native Americans Hobbes states:

The Savages of America, are not without some good Morall Sentences; also they have little Arithmetick, to add, and divide in Numbers not too great: but they are not therefore Philosophers.⁴²

Philosophy, meaning scientific thinking, is achieved by the proper use of reason. As for Hobbes, proper use--whatever it means--can only occur within a community that has leisure time: "Leasure is the mother of Philosophy; and Common-wealth the mother of Peace, and leasure." The argument is quite simple. Native Americans live in a state of nature. It follows that they do

not live in a civil society, nor have they implemented a sovereign. This means that regardless of the complexity of their social and political organization, it is not a Commonwealth. Since a Commonwealth is required to have leisure time, and it is clear that Indians do not have leisure time, they cannot practice philosophy or scientific thought.

It is true that Native Americans, at the time of Hobbes, did not reason in ways that produced the mathematical and technological marvels of European cultures. Remember the kinds of practices that are lacking in a state of nature:

In such condition, there is no place for Industry; because the fruit thereof is uncertain; and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society...⁴³

Of course, there is nothing, in principle, to prevent Native Americans from becoming scientific thinkers, but at the very least, they must embrace European industriousness and philosophy to do so. More importantly, they must first form a civil society.⁴⁴

I have tried to show, so far in this chapter, that Hobbes clearly locates Native Americans in the state of nature, although he does not explicitly give reasons for doing so. As I mentioned earlier, a reason for Hobbes's lack of concern for Native Americans is that he was more concerned with the possible dissolution of his own society into complete anarchy than he was with understanding the political philosophy of Native Americans. By using the Native Americans as examples of what could happen to themselves without a stable government, he rhetorically cites them as savage counterexamples to his more immediate concerns of presenting a

philosophical argument for a civil society based on absolute sovereignty. As Roy Harvey Pearce says:

In America, [an Englishman] might see clearly what he himself would become did he not live according to his highest nature. The Indian became important for the English mind, not for what he was in and of himself, but rather for what he showed civilized men they were not and must not be.⁴⁵

In laying out what does not exist in the state of nature--science, philosophy, civil laws--Hobbes has in effect listed the cultural criteria for civil society. As I have tried to demonstrate, these criteria clearly consist of European cultural practices, such as agriculture, machine-based industry, science, and European-style government. These practices are central to any civil society, but their existence depends on the implementation of an absolute sovereign. Native American cultures have not instituted Hobbesian sovereigns; therefore, they do not engage in any of the activities of a civil society.

In chapter three, I argued that the Iroquois were deeply concerned with establishing peace in and around Iroquoia. The Great Council consisted of representatives who followed diplomatic protocol that rivaled any European political organization during Hobbes's time. But not only did Hobbes not recognize the Iroquoian civil government, he also denied the possibility of such a government. The standards with which Hobbes judges Native American cultures are Eurocentric. Throughout history, Europeans have used such Eurocentric judgments as a license to destroy and conquer the New World.

The Iroquois believe that they have lifted themselves out of a state of political disorder (not necessarily the state of nature in Hobbes's sense) into a

coherent political organization that guarantees the safety of everyone. On this comparative note, the Great Law and Hobbes's covenant between individuals in the state of nature are thought to be similar in structure. The main difference, as I will show in the next section, is that the sovereignty of the Confederacy functions best in an international context. Therefore, the Confederacy can be described as being accepting of a diversity of cultures. Hobbes's view of sovereignty, on the other hand, is applicable only to a homogenous European culture, and in particular, Hobbes's England. Both Hobbes's political system and the Great Law depend heavily on brute power as its ultimate source of legitimacy, but do so in different ways.

The Iroquois Confederacy and Hobbes's Absolute Sovereign

In this section I will address the question of why a political organization like the Iroquois Confederacy does not count as a legitimate form of sovereignty in Hobbes's political system. In particular, I will examine Ashcraft's claim that Hobbes assumes a view of patriarchy that shapes his ideas of consent. I think that this is a fruitful way of highlighting the differences between Hobbes's view of absolute sovereignty and the sovereignty of the Iroquois Confederacy. However, despite the value of raising such differences, the fact remains that Hobbes was not interested in accommodating Native American views of political sovereignty, or recognizing their sovereignty as legitimate. This is important because it shows that Native American philosophies, such as the Iroquois Great Law of Peace, were not acknowledged by a formidable philosopher like Thomas Hobbes. I interpret this lack of Native inclusion to mean that elite philosophers, such as Hobbes, did not recognize the significance of Native

American ways of thinking and were primarily concerned with advocating the superiority of their own cultures in the nascent political landscape of the New World.

Hobbes argues that civil societies are formed by the consent of individuals in the state of nature. It has been argued that Hobbes focuses too much on the role that individuals play in establishing a civil society. In other words, an objection could be made that families ought to play a normative role in the formation of a civil society—that is, families ought to count as legitimate political units. This is because families consist of inherent paternal relationships between rulers and followers; therefore, since families already exist as legitimate forms of government the consent of individuals is not necessary to generate a Commonwealth.

In Chapter 22 of *Leviathan* Hobbes states:

And whereas in Nations not thoroughly civilized, severall numerous Families have lived in continuous hostility, and invaded one another with private force; yet it is evident enough, that they have done unjustly; or else that they had no Common-wealth.⁴⁶

Hobbes argues that families cannot form Commonwealths because families consist of relationships based on consent; families are not natural relationships of power, but artificial ones. Moreover, Hobbes claims that families do not live in secure conditions, that is they exist in the state of nature. More importantly for Hobbes's theory is the fact that families in the state of nature consist of individuals who do not have obligations to obey their parents. There is no such thing as a "natural" paternal relationship between parents and their children, nor between a husband and wife.

In explaining how paternal dominion arises in a family Hobbes states: "And is not so derived from the Generation, as if therefore the parent had

Dominion over his child because he begat him; but from the Child's Consent, either expresse, or by other sufficient arguments declared."⁴⁷ Later in the same paragraph he states what a typical family looks like:

For as to the Generation, God hath ordained to man a helper; and there be alwayes two that are equally Parents: the Dominion therefore over the child, should belong equally to both; and he be equally subject to both, which Is impossible; for no man can obey two Masters.

Hobbes claims that since all men in the state of nature are equal there is nothing in nature to distinguish a definitive authority within a family.

However, once a civil society is formed the civil laws decide who the authority is supposed to be: because, Hobbes claims, Commonwealths are usually formed by men, the father is deemed by the authority of civil law, to be the authority figure in families.⁴⁸

Ashcraft concludes that Hobbes does not disagree with the claim that the family is the fundamental, or most important, unit to a civil society. Hobbes, rather, states that it is the consent of individuals that generates a civil society, and consent arises from individuals who find themselves in the state of nature. But the type of family Hobbes considers to be the norm is the European Christian family. God has dictated into the natural order of the universe a familial structure that consists of two parents in a relationship to their children. Also, Hobbes makes it clear that there is only room, logically, for one authority figure in the family, as is demonstrated in the phrase "for no man can obey two Masters." Hobbes may filter out the "natural" bonds

that exist between family members, and turn them into brute power relationships, but he does so within a Christian understanding of the family.

This means that Iroquois families, who organize themselves along different kinship relationships, would not be considered as legitimate forms of families. But, as I have already shown in chapter three, the notion of the family, or at least the notion of kinship relationships, plays an important role in shaping the political sovereignty of the Iroquois Confederacy.

The Iroquois formed the Confederacy around the principles of reciprocity and renewal. These principles manifest themselves in social practices that were foreign to European cultures. For example, the Confederacy's fundamental political unit of existence is the longhouse. The longhouse, though, does not simply consist of a multitude of individuals. Rather, it consists of individuals who live in a complex set of kinship relationships. In the Iroquois clan system an individual was not only born into a family that consisted of a father and a mother; more importantly, the child was born into a clan. The child belonged to the mother's clan, whose authority figure was the eldest woman of the clan. The child's male influence came not from the father, but from the mother's eldest brother. There are three clans endemic to all five nations--Wolf, Bear, and Turtle--that establishes kinship ties outside of one's own longhouse. These kinship ties were useful in promoting movement between nations, which encouraged and solidified trade relationships. Also, the chiefs of the Grand Council were chosen by the clan mothers and could be removed from office by the clan mothers.

The kinship ties, then, functioned in a way that connected the five nations both physically, economically, and politically. The organization of the Confederacy itself is a reflection of these kinship ties. The clans were, and are, the fundamental familial unit in Iroquois political society. Hobbes would not recognize that this type of kinship would lead to a Commonwealth because an absolute sovereign has not been established among consenting individuals--there simply is no covenant. This may be true when examined within Hobbes's system, but it does not mean that the Confederacy was generated without consent. I will take a closer look at the role consent plays in the Confederation.

The conditions in Iroquoia at the time of Deganawidah's arrival are important to an understanding of how consent was generated by the Iroquois to form the confederacy. First, the existing kinship ties between many of the communities within Iroquoia had broken down. The uncertainty and fear that had been perpetuated during this time was largely because of "the mourning wars."⁴⁹ These were not so much wars as violent raids that were inflicted upon villages. These raids were usually acts of revenge and the result was that large numbers of people were kidnapped, many of whom subsequently were adopted by the raiding village. These adoptees became replacements for lost community members who had died from disease or violence. The adoptees, chosen by the clan mothers, would be given the deceased person's name and, more importantly, their social status in the community. This type of adoption is not practiced in European cultures as

prisoners of war are thought to be outsiders, and therefore not eligible for community membership. The mourning wars had a deleterious effect on the political relationships between the communities in and around Iroquoia. This does not mean that kinship relationships ceased to be central to Iroquois identity, but it does mean that the social and political environment did not allow for the clan system to transcend barriers between communities.

A second important aspect of Iroquoian reality that was prevalent during this period of disorder was that it was assumed that all Iroquois wanted to live together in peace. Hobbes makes a similar point in his second law of nature. As in Hobbes, the Iroquois assumed that it is rational to prefer peace over conflict. Finally, the people of Iroquoia, as part of the principle of renewal, believed that their social and political environment would change for the better. Therefore the arrival of Deganawidah was not seen as anomalous. Rather, his message was accepted as an inevitable part of the order of the cosmos. At the time of Deganawidah, kinship ties were still part of the social fabric, but the mourning wars created an environment characterized by fear and mistrust, while individuals held a universal desire to live in peace, rather than conflict, and the principle of renewal dictated that their political and social situation would change for the better. This state of affairs comes close to resembling what Hobbes may have meant by the state of nature. Both Hobbes's state of nature and pre-Deganawidah Iroquoia can be understood to be pre-civil societies; that is, social and political life consisted of individuals, or groups, who were not held together by any recognized form of

government. From this sorry state of affairs Hobbes generates his account of absolute sovereignty, while the Iroquois move in a different direction to form the Iroquois Confederacy.

Deganawidah's message of Health, Righteousness, and Power makes more sense when it is evaluated within the context of reciprocity and renewal. Consent plays a central role in Iroquoian political thought, but not in the same way as it does in Hobbes. In Hobbes's system, consent is generated by individuals who make a *self-interested* rational choice in isolation from the rest of the community. Even the fundamental unit of political life, the family, is recast into a state of nature type of power relationship. The consent of other political entities, such as families or provinces is not necessary for Hobbes after the initial consent of individuals. In addition, all of an individual's rights, except the right to self-preservation, are transferred to the sovereign. The covenant is held between the individuals. The sovereign becomes the third person in the relationship, but he is not part of the covenant. Hobbes views this as a virtue, since this makes the sovereign's power over his subjects absolute, irrevocable, and indivisible. The sovereignty of the community is protected by force, at the will of the sovereign, who, by creating civil laws, establishes peace in the community.

Consent in the Iroquois Confederacy is generated in a much different way. For the Iroquois, individuals are not thought to be the only entities involved in reaching consensus. Deganawidah reaffirmed the kinship system by instituting the Condolence Ceremony as the central practice within

forest diplomacy. Reciprocity functioned at different levels within the Confederacy's political organization. The union of the Five Nations was not simply a non-aggression pact between individual nations since the nations were already tied together by kinship relationships on a more social and economic level. Yet, the institution of the Confederacy was a distinctly political creation. It created a kind of authority that could legislate, and guarantee, peace. It accomplished this by creating the intricate set of rules attached to forest diplomacy and backing them up with physical force. By engaging in diplomatic relationships, individuals, clans, and nations could renew their commitments to maintaining peace within Iroquoia.

This kind of social and political relationship functioned well in the early period of contact between the Confederacy and the European newcomers. The Two Row Wampum is an excellent example of how the Iroquois view political sovereignty in what is now clearly labeled as an "international" context. Remember that the two vessels--one an indigenous canoe the other a European ship--traveled alongside each other in the same river. Each was to respect the traditions of the other and the bonds that held them together were the bonds of peace, friendship, and respect. But these bonds had to be renewed if the relationship was to remain peaceful. The principle of renewal, however, began to take on a different meaning for the newcomers once the power dynamic shifted between the Europeans and the Iroquois.

The notion of power is central to understanding Hobbes's political thinking and to understanding the Great Law of Peace. The Great Law was

the dominant political ideology of early colonial America because, quite simply, the Iroquois could enforce their will. But, the justification for exercising their political power was not to dominate the social and political landscape, as is the case in Hobbes's system; rather, the goal of the Confederacy was to *maintain* peace in already existing political relationships. The Confederacy functioned within a political and social reality that respected diversity, indeed it flourished on it. The newcomers were another part of the already existing relationships of diversity.

It is beyond the scope of my current discussion to explain what happened during the transition period of American history, but as the Europeans gained more political power in the New World they initiated a schizophrenic type of legal/political relationship. They recognized the legitimacy of Native American sovereignty in the form of treaties while unilaterally asserting the superiority of European sovereignty within their own legislative *practices*. This tension has remained part of the legislative, social, and political landscapes down to the present day.⁵⁰

In this chapter, I have highlighted two aspects of Hobbes's political thinking. First, I have tried to show that Hobbes locates Native American cultures in the state of nature. This is because Native American *individuals* have not formed a covenant in the Hobbesian way, and therefore they have not implemented an absolute sovereign. Second, because Native American cultures exist in the state of nature, their cultures are not characterized as civil societies. The most important consequence of this claim is that Native

Americans do not *do* philosophy. Therefore, Native American ways of thinking are non-philosophical and not recognized as valuable within Hobbes's political thinking.

This is an important investigation to make because it shows that a venerable thinker such as Hobbes fails to recognize Native American ways of thinking as valuable for his own philosophical inquiries. I have sketched a brief view of the Iroquois Great Law of Peace as an Aboriginal example of political philosophy. In the process I hope to have shed some light on the Eurocentric nature of Hobbes's understanding of Native American cultures. In the next chapter I turn to the political thought of Alexis de Tocqueville in order to examine the last phase of the early colonial relationship. We shall once again see how Native American identity, and their ways of thinking, are subsumed within a European philosophical investigation of American democracy.

Endnotes

¹ Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991). All references are made from this text. Thomas Hobbes, *Man and Citizen (De Homine and De Cive)* ed. Bernard Gert (Indianapolis: Hackett Publishing, 1991).

² Quoted from Gregory S. Kavka, *Hobbesian Moral and Political Theory* (Princeton, N.J.: Princeton University Press, 1986), p.83.

³ This is obviously a difficult aspect of Hobbes's work and I have only alluded to it because it serves to show how this approach differs from the "methodology" outlined in the previous chapter. A detailed comparison is in order; however I shall not provide one here.

⁴ I use the term "man" to facilitate criticism. It shows that women are also marginalized in Hobbes's political thought.

⁵ *Leviathan*, p.62.

⁶ *Ibid*, p.70.

⁷ *Ibid*, p.31.

⁸ *Ibid*, p.38.

⁹ *Ibid*, p.91.

¹⁰ *Ibid*, p.91.

¹¹ *Ibid*, p.87.

¹² *Ibid*, p.88.

¹³ *Ibid*, p.88.

¹⁴ *Ibid*, p.91.

¹⁵ *Ibid*, p.92.

¹⁶ Reason is "reckoning (that is, adding and Subtracting) of the Consequences of generall names agreed upon." Right reason does not guarantee truth, but it requires a recognized third party to act as an authority - these authorities have evolved over the intellectual traditions of Europe into established fields of study. For example, astronomy, mathematics, surveying, and navigation. See *Leviathan*, p.32-33.

¹⁷ *Leviathan*, p.88.

¹⁸ *Ibid*, p.91.

¹⁹ See Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), p.61.

²⁰ *Leviathan*, p.90.

²¹ *Ibid*, p.89.

²² *Ibid*, p.90.

²³ The second law of nature states: "That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe." *Leviathan*, p.92.

²⁴ See Richard Tuck, *Hobbes* (Oxford: Oxford University Press, 1989), pp.64-76.

²⁵ *Leviathan*, p.96.

²⁶ Ibid, p.68.

²⁷ Richard Ashcraft, "Leviathan Triumphant: Thomas Hobbes and the Politics of Wild Men," in *The Wild Man Within: An Image in Western Thought from the Renaissance to Romanticism* Ed. Edward Dudley and Maximillian E. Novak (Pittsburgh, Penn.: University of Pittsburgh Press, 1972).

²⁸ Ibid, p.156.

²⁹ Ibid, p.120.

³⁰ Ibid, p.120.

³¹ See *Leviathan*, chapter 18. See also Norberto Bobbio Thomas, *Hobbes and the Natural Law Tradition* tr. Daniela Gobetti (Chicago, Ill.: University of Chicago Press, 1993), pp.46-52.

³² *Leviathan*, p.89.

³³ See also *The English Works of Thomas Hobbes of Malmesbury Collected by Sir William Molesworth* (London: C. Richards Printer, St. Martins Lane, 1930), Book IV p.85. Hereafter cited as EW.

³⁴ Cf. fn.27.

³⁵ See sources in Ashcraft, footnote 43.

³⁶ *Leviathan*, Chapter 17, pps. 119-121.

³⁷ *Leviathan*, p.23.

³⁸ EW, IV, p.72.

³⁹ EW, IV, p.449-450.

⁴⁰ EW, IV, p.458.

⁴¹ *Leviathan*, p.36.

⁴² Ibid, P.459.

⁴³ *Leviathan*, p.89.

⁴⁴ Although Native Americans, according to Hobbes, do not come from the right intellectual tradition. So the question of how one can embrace science from outside its concomitant historical tradition is problematic.

⁴⁵ Roy Harvey Pearce, *Savagism of Civilization: A Study of the Indian and the American Mind* (Baltimore: Johns Hopkins Press, 1957), p.5.

⁴⁶ *Leviathan*, p.164.

⁴⁷ *Leviathan*, p.139.

⁴⁸ *Leviathan*, p.139-40.

⁴⁹ See Daniel Richter, *The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization* (USA: The University of North Carolina Press, 1992), pp. 32-38.

⁵⁰ See Russell Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980); Robert A. Williams Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press, 1990); The Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples, Volume 1: Looking Forward, Looking back and Volume 2: Restructuring the Relationship* (Ottawa: Minister of Supply and Services, 1996).

Chapter Five:

Tocqueville's "Hypocrisy" in America

Thus in the beginning all the world was America.

John Locke

Introduction

Alexis de Tocqueville's *Democracy in America*¹ has had a profound effect on shaping the discourse of contemporary political liberalism, and his prophetic observations about nineteenth-century American and European societies have generated an enormous amount of commentary and scholarship. In this chapter I shall examine a much neglected area of Tocquevillian scholarship--his characterization of Native American cultures. I will show that Tocqueville, while sensitive, even sympathetic, to the oppressive situation of Native American people in early nineteenth-century America, nonetheless regards them as belonging to uncivilized cultures. However, my criticism runs deeper than simply pointing out nineteenth-century Eurocentrism. I will argue that in order for Tocqueville's account of democracy in America to remain coherent, Native Americans must by necessity lie outside the boundaries of American civilization.

My discussion will follow in two parts. In the first part, I shall provide a brief normative account of Tocqueville's political project. Specifically, I will focus on his account of American democracy in volume I of *Democracy in America*. Also, I shall examine how Tocqueville characterizes Native American cultures within his view of American democracy. In the second part of my discussion I will examine Tocqueville's justification for the exclusion of Native American peoples from his theory of democracy and try

to show where his justification for Native American exclusion is problematic. Like most 19th-century Europeans writing about Native Americans, Tocqueville simply assumes the superiority of Christian European cultures over the so-called primitive cultures and religions of the Aboriginal peoples in the New World. Like Las Casas and Hobbes, Tocqueville generates a philosophical discourse about democracy that fails to recognize Native American arguments, yet he makes normative claims about Native American identity that play a role in his account of democracy.

Tocqueville's Political Project

Tocqueville makes his project in *Democracy in America* clear from the first sentence of the introduction:

Among the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general *equality of condition* among the people. (I, p.3) (emphasis added)

Tocqueville will show in *Democracy* how the American experience has given rise to a society whose citizens co-exist in a relationship of "enlightened" equality. It is important to point out that Tocqueville's project in *Democracy* is first, and foremost, meant to be a comparative study. Although he examines democracy in its American context, his purpose is to shed light on some of the serious political problems in his native France. By examining democracy in the American context Tocqueville hopes to say something substantive about democracy itself, which in turn, he hopes may offer

solutions for the political strife in France. But Tocqueville does not simply want to argue that the French must adopt the manners and laws of the Americans in order to resolve their political problems.

The manners and laws of the Americans are not the only ones which may suit a democratic people, but the Americans have shown that it would be wrong to despair of regulating democracy by the aid of customs and laws. (I, p.325)

Democracy is found in America in a particular form which is unique to the European newcomers' own historical and cultural formation and evolution. Tocqueville claims that France has a much longer history than America, yet it has failed to attain as stable a social and political environment as the Americans have secured.

The organization and the establishment of democracy in Christendom is the great political problem of our times. The Americans, unquestionably, have not resolved this problem, but they furnish useful data to those who undertake to resolve it. (I, p.325)

A second important aspect to remember about Tocqueville's project in *Democracy* is the important philosophical distinction he makes between ideas and feelings. This distinction is manifested throughout the text in several different forms. Tocqueville associates ideas with abstract constructions made by philosophers. For example, the concept of democracy can be understood as a rational construction of a number of philosophical abstractions. Ideas, then, because they are rational constructions, are amenable to logical scrutiny. Feelings, on the other hand, are irrational in nature, and therefore they cannot be scrutinized by rational or logical inquiry. Tocqueville argues that

democracy is to be associated with the rational and religion is to be associated with the irrational.

The rational and irrational aspects of a society are reconciled by the fusion between the "spirit of liberty," manifested by a society's laws, and the "spirit of religion," manifested in the mores and habits of its citizens.

I have said enough to put the character of Anglo-American civilization in its true light. It is the result (and this should be constantly kept in mind) of two distinct elements, which in other places have been in frequent disagreement, but with the Americans have succeeded in incorporating to some extent on with the other and combining admirably. I allude to the *spirit of religion* and the *spirit of liberty*. (I, p.43)

Tocqueville claims that the remarkable fact about American society is that the driving force behind equality is equality itself. In other words, the principle of sovereignty of the American people is basically the rule of the majority, where each person is guaranteed the same package of rights. The fusion of the spirit of freedom with the spirit of religion brings about the all important political and social stability between political disorder, or revolution, on one side and despotism on the other. This notion of stability, and its related notion of continuity, is vital to understanding Tocqueville and I will return to say more about these aspects of Tocqueville's view shortly.

The most important way the distinction between ideas and feelings, or the rational and irrational, finds itself manifested in *Democracy* is the distinction Tocqueville makes between civilization and barbarism. There are two important working concepts embedded in this distinction: culture and history. I shall examine these concepts in turn.

First, although Tocqueville does not offer a substantive notion of culture, that is, a "theory" of culture, he is quite clear about which culture he thinks is the more civilized. He states:

Among these widely differing families of men, the first that attracts attention, the superior in intelligence, in power, and in enjoyment, is the white, or European, the man preeminently so called; below him appear the Negro and the Indian. (I, p.332)

However, Tocqueville claims that the existence of a democratic government is only possible within a civilized society:

Democratic government, founded on such a simple and natural idea, nevertheless always assumes the existence of a very civilized and knowledgeable society. At first glance it might be supposed to belong to the earliest ages of the world, but looking closer, one soon discovers that it could only have come last. (I, p.212)

Tocqueville accepts without much reflection that Black and Indian peoples are inferior to the Americans, but it does not follow that Tocqueville views them as non-humans. On the contrary, he is deeply affected by the social and political reality of the Indian people, and is vehemently opposed to slavery, but he views the Indian's cultural demise as an unfortunate, although necessary, fact of historical evolution. He believes that Indian societies, by their very nature, must give way to the superior civilized societies of Europe.

The arrogance of this Eurocentric attitude is clearly articulated in the passage about the little girl being attended to by an Indian and Black woman:

The child displayed in her slightest gestures a consciousness of superiority that formed a strange contrast with her infantine weakness; as if she received the attentions of her companions with a sort of condescension. The Negress was seated on the ground before her mistress, watching her smallest desires and apparently divided between

an almost maternal affection for the child and servile fear: while the savage, in the midst of her tenderness, displayed an air of freedom and pride which was almost ferocious. (I, p.334)

This passage is quite revealing. Consider the little girl's actions. Tocqueville suggests that the child displayed, in her naked innocence, a subtle kind of natural superiority towards the two women. Since she is a child, she does not consciously know how she is behaving, but nonetheless she demonstrates in her behavior that she is superior. Of course, there is nothing *natural* about her illusions of superiority as Tocqueville fails to consider that the girl displays this kind of behavior because she has been taught to do so since she was born.

Tocqueville's attitude towards the Black and Indian women "gestures a consciousness of superiority" by his stereotypical descriptions of them. The Black woman is maternal and servile as she sits below the child. Tocqueville strips the woman of power, but describes the situation as if it were normal. The Indian woman--the savage--displays her femininity by displaying tenderness towards the child, but does so from within the context that she is a wild untamed animal. Indians, like wild animals, represent freedom, but unfettered freedom devoid of Christian morality or civilization.

The Indian, according to Tocqueville, possesses a kind of stubborn pride that prevents him from embracing "civilization":

The Indian...has his imagination inflated with the pretended nobility of his origin, and lives and dies in the midst of these dreams of pride. Far from desiring to conform his habits to ours, he loves his savage life as the distinguishing mark of his race and repels every advance to civilization, less, perhaps, from hatred of it than from a dread of resembling the Europeans. (I, p.334)

Tocqueville claims that "Civilisation is the result of a long social process, which takes place in the same spot and is handed down from one generation to another, each one profiting by the experience of the last." (I, p.342) Later he adds:

Society can exist only when a great number of men consider a great number of things under the same aspect, when they hold the same opinions upon many subjects, and when the same occurrences suggest the same thoughts and impressions to their minds. (I, p.392)

Tocqueville possesses the same attitudes that Locke had introduced almost 150 years earlier:

...in order to succeed in civilizing a people it is first necessary to settle them permanently which cannot be done without inducing them to cultivate the soil; the Indians ought in the first place to have been accustomed to agriculture. (I, p.343)

A few pages later Tocqueville makes the claim that white farmers are superior to Indians, stating that "The white man is skilled in the craft of agriculture; the Indian is a rough beginner in an art with which he is unacquainted." (I, p.348) Once again, the European standards of civil society are measured against the allegedly inferior standards of Native American cultures. Property, as Locke had argued over a century earlier, was only available to those who appropriated the land in the right way. "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the Common."² The Native American forms of agriculture did not enclose and use the land in the same way, therefore the land remained undeveloped and common to all.

Tocqueville assumes that America was formed in a kind of physical and cultural *tabula rasa*. Tocqueville's most telling passage is in chapter one. He states:

Although the vast country that I have been describing was inhabited by many indigenous tribes, it may justly be said, at the time of its discovery by Europeans, to have formed one great desert. The Indians occupied without possessing it. It is by agricultural labor that man appropriates the soil, and the early inhabitants of North America lived by the produce of the chase.... they were there merely to wait till others came. Those coasts, so admirably adapted for commerce and industry; those wide and deep rivers; that inexhaustible valley of the Mississippi; the whole continent, in short, seemed prepared to be the abode of a great nation yet unborn. (I, p.25)

Later he adds:

But North America was inhabited only by wandering tribes, who had no thought of profiting from the natural riches of the soil; that vast country was still, properly speaking, an empty continent, a desert land awaiting its inhabitants...Just then North America was discovered as if it had been kept in reserve by the Deity and had just risen from beneath the waters of the Deluge. (I, p.291)

The idea that the continent was a "*terra nullius*" when the Europeans first arrived was not a concept invented by Tocqueville. Europeans had already been asserting their cultural and philosophical sovereignty for over three hundred years. The concept of *terra nullius* was an application of these Eurocentric attitudes that was used to justify Native American dispossession of their lands.

Tocqueville was well aware of the fact that there were already in existence many thriving cultures at the time of the Puritan immigration. He simply does not recognize Native American cultures as legitimate political entities. The pioneer, who is "unimpressed by the silence of the woods" (I,

p.294), has every right to be in America; in fact, it is his destiny to "make ready the triumphal march of civilization across the desert." (I, p.292)

Tocqueville, however, not only characterizes America as a physical wasteland, he also claims that America had no proper history before the arrival of the Europeans. While he is not a fatalist about history, he is committed to a particular interpretation of historical evolution. He believes that democracy is inevitable for civilized societies. As I already mentioned, one of Tocqueville's main goals of investigating American democracy was to gain insight into how to initiate this inevitable transformation without having a society (in particular France) cycle between the irrational political extremes of revolution and despotism.

This is one reason why Tocqueville is so interested in the American experience. He claims that the Americans, because of their unique historical and political situation, do not have to break out of an aristocratic past as European nations will inevitably have to do. Even the so-called American Revolution was not a real revolution in the European sense as the Americans were really breaking away from a distant relative in order to become autonomous and self-sufficient. Tocqueville claims that America's lack of an aristocratic past has proven to be a distinct advantage for the evolution of American democracy.

However, despite the colonial Americans' lack of an aristocratic past, Tocqueville does not imply that they are not without a distinct advantage over the indigenous inhabitants:

Yet no sort of comparison can be drawn between the pioneer and the dwelling that shelters him. Everything about him is primitive and wild, but he is himself the result of the labor and experience of eighteen centuries...he is, in short, a highly civilized being, who consents for a time to inhabit the backwoods, and who penetrates into the wilds of the New World with the Bible, an axe, and some newspapers. (I, p.317)

This passage, which amounts to a mandate for colonial expansion in the New World, suggests that the Native Americans cannot become citizens simply because they did not evolve beyond their barbaric cultures. This attitude becomes clearer a few sentences later when he states "I am still further from thinking as so many people do think in Europe, that men can be instantaneously made citizens by teaching them to read and write." (I, p.317)

In the penultimate chapter of volume 1, "Principle Causes Which Tend To Maintain the Democratic Republic in the United States," Tocqueville demonstrates the importance of laws, customs, and religious beliefs in maintaining the social and political stability of American institutions. "All the causes which contribute to the maintenance of the democratic republic in the United States are reducible to three heads:

- I. The peculiar and accidental situation in which Providence has placed the Americans.
- II. The laws.
- III. The manners and customs of the people. (I, p.288)

The geographical, or physical, environment of America has to some degree affected the way democracy has evolved. Other additional accidental causes are the fact that the United States does not have any natural enemies that lie close to its boundaries and that they do not have "a great capital city,

whose direct or indirect influence is felt over the whole extent of the country." (I, p.289-90) But the most important accidental cause which contributes to the maintenance of democracy is the fact that the lands of the United States were empty and ready for their possession.

The second cause lies in the power of the laws. Tocqueville's political project of *Democracy* has been to explicate the laws of America: "The principle aim of this book has been to make known the laws of the United States." (I, p.299) He cites three major 'circumstances' which maintain democracy in America:

The first is that the federal form of government which the Americans have adopted, and which enables the Union to combine the power of a great republic with the security of a small one.

The second consists in those township institutions which limit the despotism of the majority and at the same time impart to the people a taste for freedom and the art of being free.

The third is to be found in the constitution of the judicial power. (I, p.299)

Finally, and for Tocqueville by far the most important cause of maintaining democracy in America, are the customs, or mores, of the American people. However the notion of customs, habits, or "mores", has substantial content for Tocqueville:

I here use the word customs with the meaning which the ancients attached to the word mores; for I apply it not only to manners properly so called - that is, to what might be termed the habits of the heart - but to the various notions and opinions current among men and to the mass of those ideas which constitute their character of mind. (I, p.299)

So, customs are what ultimately serve to provide the stability required to maintain the democratic state of America. Although Tocqueville states that

his aim in *Democracy* has been to explicate the laws of the United States, he states:

It may be regarded as a central point in the range of observation, and the common termination of all my inquiries. So seriously do I insist upon this head that, if I have hitherto failed in making the reader feel the important influence of the practical experience, the habits, the opinions, in short, of the customs of the Americans upon the maintenance of their institutions, I have failed in the principle object of my work. (I, p.322)

But the customs, or mores, of the American citizens are deeply embedded within a Christian morality. "All sects of the United States are comprised within the great unity of Christianity, and Christian morality is everywhere the same." (I, p.303)

The influence of the Christian religions on all aspects of American life serves to generate the "fusion" of the spirit of religion with the spirit of liberty. For example, consider the following claims:

In the United States religion exercises but little influence upon the laws and upon the details of public opinion; but it directs the customs of the community, and, by regulating domestic life, it regulates the state. (I, p.304)

But the revolutionists of America are obliged to profess an ostensible respect for Christian morality and equity...(I, p.305)

Thus while the law permits the Americans to do what they please, religion prevents them from conceiving, and forbids them to commit, what is rash and unjust. (I, p.305)

Despotism may govern without faith, but liberty cannot. (I, p.307)

But Tocqueville does not say how this fusion occurs. In other words, Tocqueville admires the influence of religion on the American people's customs and laws, but leaves the normative dimension of this religious

influence unexplained. Since Tocqueville assumes the natural superiority of European cultures over indigenous cultures, it follows that European religions are also naturally superior. This is because Tocqueville thinks of religion and culture as intimately related and inseparable from each other in practice. Customs are what ultimately do the normative work for Tocqueville's understanding of democracy in America. In essence, the American customs, guided by a Christian morality, are what shape the laws and political organizations of American society. Because Americans have been able to pursue their goals within a physical, political, historical, and cultural vacuum, they have evolved in a short period of time to become what Tocqueville esteems as a just democratic state.

Native American sovereignty in Tocqueville's America

In this section I shall focus on one important aspect of Tocqueville's discussion of Native Americans--Native American dispossession of their lands. Tocqueville experienced first hand the atrocities of President Andrew Jackson's Indian Removal policies. In essence these were policies designed to dispossess The Five Civilized Tribes of their lands.³ The legislative consequence of Native American dispossession of their lands raises the philosophical and political issue of Native American, or tribal, sovereignty. Tocqueville mentions that the United States federal government made "deals" with the Cherokees, and other Native American tribes, to the effect

that there was some kind of recognition of their sovereignty: the United States "treat them as independent nations and do not possess themselves of their hunting grounds without treaty of purchase." (I, p.355) In the early relationship treaties were viewed by both parties to be legally binding agreements over land ownership. However, history has shown that this relationship changed drastically once the European Americans began to outnumber the Native Americans. Tocqueville mentions, almost casually, how easy it was for the European Americans to gain legal possession of Indian lands. This was because the Indians did not really "own" the land, in the European sense of ownership. Indians were present on the land in much the same way as the animals roamed about in the woods. They were part of the landscape, but not the true owners of the land--in other words, land for the Indians was not property. Tocqueville explains:

Bold adventurers soon penetrate into the country the Indians have deserted....this is done without difficulty, as the territory of a hunting nation is ill defined: it is common property of the tribe and belongs to no one in particular, so that individual interests are not concerned in protecting any part of it. (I, p.338)

It is no coincidence that Tocqueville believed that United States sovereignty is superior to Indian sovereignty. Justice Marshall's famous decision of *Cherokee Nation v. Georgia* was handed down in 1831, the same year that Tocqueville was in America. Marshall's decisions have been enormously influential in shaping the language of both American and Canadian Indian policy making.⁴ The issue at stake in *Cherokee Nation* was

the legitimacy of the state of Georgia's jurisdiction in Cherokee lands.

Marshall stated in his decision:

Though the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his government.

Marshall goes on to state that one of the powers of Congress is "to regulate commerce with foreign nations, including the Indian tribes, and among their several states." Although Indian nations are not thought to be foreign nations they do hold some kind of quasi-sovereignty apart from the sovereignty held by the states and foreign nations.

Later, in his most influential decision in *Worcester v. Georgia* (1832), Marshall put substantive legal content on the understanding of Indian "quasi-sovereignty." The issue at hand was, once again, whether the state laws of Georgia could be applied in Cherokee territory. Marshall claimed that the relationship between Indians and the federal government "was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master." He goes on to add:

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide

all intercourse with them shall be carried on exclusively by the government of the union.

The Cherokee, then, were considered to be held under the authority of the powers vested by Congress. The states had no jurisdictional authority in Cherokee territory. The Cherokee were in a relationship with the federal government where: "The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial." This meant that the Courts were recognizing that Indian communities held a kind of sovereignty that gave them powers that sealed their territories from state legal incursion. Georgia defied the Supreme Court. They did not send anyone to argue their case and they simply ignored Marshall's ruling. Georgia held firm to their belief that their sovereignty outweighed any authority held by the Cherokee or the United States government. Therefore, although *Cherokee Nation* embedded the concept of tribal sovereignty into law, in practice, it accomplished very little in the way of establishing Indian communities as self-governing political entities. The ambiguity over the legal and political meaning of tribal sovereignty empowered the United States government in two important ways.

First, Marshall's decisions were used to unilaterally establish in American law, once and for all, that American sovereignty was superior to Indian sovereignty. Because of the ambiguous phrase "domestic dependent nations," Indian nations could be viewed as "quasi-sovereign" states within the larger sovereign nation of the United States. This ambiguous definition

the nature of tribal sovereignty brought forth an increasingly complex legal discourse of Native American rights and sovereignty. At the same time, the federal government assumed tribal sovereignty to be without substantive powers and began a process of legislation that devastated many Native American communities.⁵

The second advantage the federal government gained by the *Worcester* decision was that once the fact was established in law that American sovereignty was superior to tribal sovereignty the American government could create legally justified policies without Native American participation. The first federal legislation to go through Congress after the Marshall decision was to initiate the Indian removal policies. This interesting passage by Tocqueville brings out clearly the American perception of this process and it is worth quoting it in full:

The expulsion of the Indians often takes place at the present day in a regular and, as it were, legal manner. When the European population begins to approach the limit of the desert inhabited by a savage tribe, the government of the United States usually sends forward envoys who assemble the Indians in a large plain and, having first eaten and drunk with them, addressing them thus: "What have you to do in the land of your fathers? Before long, you must dig up their bones in order to live. In what respect is the country you inhabit better than another? Are there no woods, marshes, or prairies except where you dwell? And can you live nowhere but under your own sun? Beyond those mountains which you see at the horizon, beyond the lake which bounds your territory on the west, there lie vast countries where beasts of chase are yet found in great abundance; sell us your lands, then, go to live happily in those solitudes." After holding this language, they spread before the eyes of the Indians firearms, woolen garments, kegs of brandy, glass necklaces, bracelets of tinsel, ear-rings, and looking glasses. If, when they beheld all these riches, they still hesitate, it is insinuated that they cannot refuse the required consent and that the government itself will not long have the power of protecting them of their rights.

What are they to do? Half convinced and half compelled, they go to inhabit new deserts, where the importunate whites will not let them remain ten years in peace. In this manner do the Americans obtain, at a very low price, whole provinces, which the richest sovereigns of Europe could not purchase. (I, p.341-2)

It should be mentioned that Marshall's trilogy created opposing interpretations of Native American sovereignty. On one side of the debate were people who were concerned, for various reasons, about protecting the Indian peoples from the greed, arrogance, and racism of the expanding eastern Americans.⁶ On the other side of the debate were the wealthy influential advocates of President Jackson's removal policies. The removal advocates shrouded their attitudes about Native Americans under the guise of humanitarianism, though in reality their attitudes served their own best political and economic interests.⁷ The Jacksonites prevailed in the debate over tribal sovereignty and their policies set down the rules from which all future negotiations with the Native Americans were to be conducted.

The amount of land dispossessed from Indian nations was astronomical.

Tocqueville mentions in a footnote:

On May 19, 1830 Mr. Edward Everett affirmed before the house of Representatives that the Americans had already received by treaty, to have east and west of the Mississippi, 230,000,000 acres. In 1808 the Osages gave up 48,000,000 acres for an annual payment of 1,000 dollars. In 1818 the Quapaws yielded up 20,000,000 acres for 4,000 dollars. They reserved for themselves a territory of 1,000,000 acres for a hunting ground. A solemn oath was taken that it should be respected, but before long it was invaded like the rest. (I, p.348, fn 8)

Tocqueville is astute enough to see that American attempts to justify their humanitarian interests in the Indians' welfare shrouds their desires for increased wealth and economic growth.

Tocqueville sees the condition of the Indians as irremediable:

I believe that the Indian nations of North America are doomed to perish, and that whenever the Europeans shall be established on the shores of the Pacific Ocean, that race of men will have ceased to exist. The Indians had only the alternative of war or civilization; in other words, they must either destroy the Europeans or become their equals. (I, p.342)

Later in the chapter, he adds:

...if they attempt to civilize themselves, the contact of a more civilized community subjects them to oppression and destitution. They perish if they continue to wander from waste to waste, and if they attempt to settle *they still must perish*. (I, p.354, emphasis added)

Tocqueville claims that the only options available for Indian peoples are to perish or become the Americans' equals. Tocqueville implies that for Indian nations equality means to embrace civilization--European civilization--whether Indians like it or not. But to embrace civilization means to "settle," and as Tocqueville states above, Indians who attempt to settle "must perish." So in either situation, the Native Americans are doomed to extinction. No one was aware of these options more than the Cherokee themselves. The Cherokee responded by drafting their own constitution, complete with American styled forms of government. The Cherokee embraced American forms of political organization to demonstrate to the federal government that their governments were legitimate, although parallel, sovereign entities. As

history showed, it did not matter and the Cherokee were removed from their homelands.

I shall briefly recapitulate Tocqueville's characterization of Native Americans. He maintains that political and social stability of the United States is maintained by three principal causes: accidental causes (The claim that America was a physical, historical, political, and cultural *tabula rasa*), the laws, and most importantly, the customs of the American citizens. The American experience has solidified the fusion between the spirit of liberty (embodied in the laws of the American citizens) and the spirit of religion (embodied in the customs of the American citizens). But accidental causes play an important role in determining the quality of this enlightened social state. The main accidental cause, defended by Tocqueville, is that the Puritan immigrants arrived on the shores of the New World to behold a *terra nullius* which was characterized as physically vacant, historically non-existent, politically primitive, and culturally barbaric.

It is this claim that I believe creates problems for Tocqueville's argument for maintaining democratic stability in America. Although Tocqueville claims that the accidental causes, which are neither rational nor irrational, play a minimal role in the maintenance of democracy, they nonetheless cannot be ignored. A citizen, for Tocqueville, is an individual of a township who falls under the authority of the laws of the state, and who is also, more importantly, embedded in the customs and habits of the community. Native Americans were certainly accommodated within the legal and political

system, in the form of policies that dispossessed them of their lands, but they were not citizens in either the legal or cultural sense.⁸ For Tocqueville, democracy was limited by the boundaries of its citizenry—one had to be a member of the community before one possessed the rights and freedoms of a democratic society.

There are two problems with this characterization of American democracy. First, the customs and habits that are so pivotal to Tocqueville's view of political and social stability have evolved within the mistaken assumption that America was a physical and cultural wasteland at the time of the Puritan immigration. This contradicts many of the accounts of the early treaty relationship between the European newcomers and the indigenous peoples of the New World. There can be no doubt that by 1830 Native American cultures, and their political significance in the eyes of the dominant culture, appeared to be on the brink of extinction.⁹ But this has been shown to be a misconception. Native American cultures still exist. Although many are in a state of destitution, they remain an important, complex and significant part of the American political and cultural landscape. Similarly, at the time of the Puritan immigration and of Indian Removal there were a diversity of Native American nations living in complex political relationships in the United States. Indeed, as I have shown in this thesis, some of these Native American political structures were unquestionably democratic in nature.¹⁰

Tocqueville's characterization of Native American cultures is in line with the status quo found in the attitudes embedded within Andrew Jackson's Indian removal policies. But determining the status of the Indians created a controversial public debate, even in Tocqueville's day.¹¹ Tocqueville's account of American democracy does not engage a richer interpretation of tribal sovereignty that can be found in *Worcester*. This is because the language for articulating this other view of sovereignty is not within Tocqueville's political imagination. Tocqueville is wrong to assume that America was a vacant wasteland, because, as I have shown in the Iroquois example, there were sophisticated systems of government in place at the time of contact. In the very least, a close analysis of the idea of tribal sovereignty embedded in Marshall's decisions, especially *Worcester*, shows that the American democracy that Tocqueville so highly esteems rests on highly questionable historical and political foundations.

But even if we accept the *terra nullius* argument, Tocqueville's account of democracy remains problematic. This is because he misrecognizes the significance of the inter-cultural relationship between Native Americans and the European newcomers. Tocqueville admits that over the course of their two-hundred-year history the European immigrants have evolved into a culturally and politically unique social state. But this social state has been shaped by many factors, one of which is the American people's relationships with Native Americans. Tocqueville takes it for granted that the customs of the American people have evolved from within a mono-cultural dialogue.

This is not true. To the contrary, American customs, habits, or mores, have been profoundly shaped by the inter-cultural dialogue between Native Americans and the European newcomers. My point is that the customs and mores that Tocqueville finds as pivotal to the preservation of the American social state are not solely "Christian" in origin. Although the underlying cultural background of the European newcomers is Christian, the customs and mores themselves have been influenced by Native American cultures, even if this influence has been largely misrecognized and distorted by the dominant culture.¹²

This does not mean that the relationship between European Americans and Native Americans has been an equal one, or even that Native Americans were recognized as equal participants in the formation of the American state. Throughout the 175 years of contact before the formation of the American state, the power relationship between Native Americans and the European newcomers had shifted decidedly in favor of the newcomers. Nonetheless, a closer examination of the relationship shows that Native Americans presented a moral dilemma for all European Americans. In Tocqueville's America, as in Las Casas and Sepulveda's context three hundred years earlier, the debate over Native American identity fell into two schools of thought. First there was the anti-Indian position, namely, President Jackson's view that the Indians had to be physically removed from their land in order to make room for the inevitable and just expansion of the American state. On the other side of the debate was the supposedly "pro-Indian" position whose

argument in favor of tribal sovereignty relied on a generous interpretation of the Marshall decisions. Yet, whatever tribal sovereignty meant it was nonetheless clearly subservient to the federal sovereignty of the American state. This fact, entrenched in American law in the 1830's, powerfully silenced Native American voices and kept them from participating in the evolving discourse of tribal sovereignty.

Tocqueville clearly aligned himself with the Jacksonian position of Native American identity for three reasons. First, he believed Native Americans could not become part of American democracy for cultural reasons. Second, he argued that Native American cultures could not survive in the presence of European Americans. Third, he doubted that the European-American style of democracy could flourish so long as Native American ways survived. The attitude embedded within these claims about Native American identity shows that Native American cultures, and their ways of thinking, were irrelevant to Tocqueville's panegyric to American democracy.

Tocqueville's *Democracy* is an important text for defenders of tribal sovereignty because his theoretical account of American democracy sheds light on the prevailing attitudes about the federal Indian removal policies of the 1830's. Once again, we see that the Native voice is not present in the discourse that purports to delineate Native American political sovereignty. Tocqueville's discourse of democracy excludes Native American participation because he has no need to listen to Native American ways of thinking.

Native Americans exist on lands that are vacant, they have no history to speak of, and they are destined to perish in the face of the inevitable onslaught of American culture. Though, like Las Casas he is sympathetic to the situation of Native Americans in this inevitable onslaught of American expansionism, he fails to seriously recognize the significance of their claims to sovereignty.

The suggestion that Tocqueville's account of democracy is a "hypocrisy" is meant to be loosely understood. Tocqueville's account of democracy is remarkably insightful given its prophetic observations. It is his failure to recognize the significance of Native American ways of thinking within an investigation into the meaning of democracy itself that makes his investigation "hypocritical." Tocqueville, one of the fathers of modern political liberalism, deploys a language of individualism and rights that has served to silence Native American voices.

Endnotes

¹ Alexis de Tocqueville, *Democracy in America*, in two volumes, The Henry Reeve Text further edited by Phillips Bradley (Vintage Classics: Random House, 1990). Due to the large number of textual citations, I shall hereafter cite the text by volume and page (Volume, page).

² John Locke, *Two Treatises of Government*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1991) p290-1. For criticism about Locke's theory of property in the context of Native American sovereignty see James Tully, "Rediscovering America: The Two Treatises and Aboriginal Rights," in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993).

³ The "Five Civilized Tribes" were the Cherokees, Choctaw, Chickasaw, Creek, and Seminoles. See *The Cherokee Removal: A Brief History with Documents*, ed. Theda Perdue and Michael D. Green (Boston, Mass.: Bedford Books of St. Martin's Press, 1995); Anthony F.C. Wallace, *The Long and Bitter Trail: Andrew Jackson and the Indians* (New York: Hill and Wang, 1993).

⁴ The three important cases, referred to as "The Marshall Trilogy," consist of *Johnson v. McIntosh* (1823), 21 U.S. (8 Wheat.) 543, 5 L.Ed. 681; *Cherokee Nation v. Georgia* (1831), 30 U.S. (5 Pet.) 1, 8 L.Ed. 25; and *Worcester v. Georgia* (1832), 30 U.S. (5 Pet.) 1, 8 L.Ed. 25. For an excellent discussion of the significance of the Cherokee Cases see Jill Norgren, *The Cherokee Cases: The Confrontation of Law and Politics* (USA: McGraw-Hill, Inc., 1996). For a discussion of the intellectual and political context of Justice Marshall's decisions see G. Edward White, "Natural Law and Racial Minorities: The Court's Response to Slaves and Indians," in his *The Marshall Court and Cultural Change: 1815-1835* (Oxford: Oxford University Press, 1991).

⁵ For example, after the Removal Policies of the 1830's, it was not long before displaced Indians now living out west came in contact with the western bound immigrants who demanded possession of the newly created reservations. By 1871 the federal government initiated a new strategy called "The Allotment System" which was culminated in the General Allotment Act of 1887, or the Dawes Act. The strategy was:

"...designed to serve two goals: to open more land for settlement and to end tribalism. The Allotment policy of the late nineteenth-century Expansion Era was supposed to turn reservations into campuses for training Indians in the "arts of civilization." The Bureau of Indian Affairs took unprecedented control of everyday Indian life, seeking to squeeze out Indian government, religion, and culture. Tribal lands were carved up and parceled out to individual Indians who were to be converted from hunters to farmers. "Surplus" lands were sold for non-Indian settlement; the result was a loss of about two-thirds of all the Indians' lands." From *Federal Indian Law: Cases and Materials on Federal Indian Law* ed. David H. Getches, Charles F. Wilkinson, Robert A. Williams Jr. (St. Paul, Minn.: West Publishing Co., 1993), p.168.

⁶ Jeremiah Evarts is worthy of mention. Evarts was the chief administrative officer for the American Board of Commissioners for Foreign Missions and wrote, under the pseudonym William Penn, a series of 24 articles entitled "Essays on the Present Crisis in the Condition of the American Indians" which were published in the *Washington National Intelligencer* during the latter half of 1829. Evarts, writing in the spirit of Las Casas, vehemently defended the rights of the Cherokee; for example in one article entitled "A Brief View of the Present Relations between the Government and People of the United States and the Indians within our National Limits" he states in point: "These rights of soil and sovereignty are inherent in the Indians, till voluntarily surrendered by them; and cannot be taken away by compacts between communities of whites, to which compacts the Indians were not party." in *Cherokee Removal: The "William Penn" Essays and Other Writings*, ed. Francis Paul Prucha (Knoxville, Tenn.: University of Tennessee Press, 1981), p201. See also Francis Paul Prucha, *The Great Father* (Lincoln, Neb.: University of Nebraska Press, 1984) especially Part Two: Indian Removal pps.179-315; Chapter 3 in Perdue and Green, *The Cherokee Removal*; Wallace, *The Long and Bitter Trail*.

⁷ See Lewis Cass, "Removal of the Indians" in *North American Review*, January 1830. Cass was the governor of the Michigan Territory between 1813 and 1831. He had negotiated several treaties with the Indians and was known as a "hardheaded, tough, but fair negotiator" (although this reputation may not have extended into Indian Country), who supported the view that the Indians had to be civilized into European agricultural and economic practices in order to survive. Cass states: "A barbarous people, depending for subsistence upon the scanty and precarious supplies furnished by the chase, cannot live in contact with a civilized community. As the cultivated border approaches the haunts of the animals, which are valuable for food and furs, they recede and seek shelter in less accessible situations." From "Removal of the Indians." See also Perdue and Green, *The Cherokee Removal*, pp. 105-14.

⁸ Indians were not made full citizens of the United States of America until The Citizen Act of 1924.

⁹ Tocqueville claims "...and I myself met with the last of the Iroquois, who were begging alms." (I, p.336.)

¹⁰ The sources to support this claim are exhaustive. For example see Gerald Alfred, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism in Canada* (Oxford University Press, 1995); Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: M.G. Hurtig, 1969); Mark Dockstator, "Towards an Understanding of Aboriginal Self-government: A Proposed Theoretical Model and Illustrative Factual Analysis" (Doctoral dissertation: York University, 1993); Royal Commission on Aboriginal Peoples, *Partners in Confederation: Aboriginal Peoples, Self-government, and the Constitution* (Ottawa: Minister of Supply and Services, 1993); Six Nations, *The Redman's Appeal for Justice: The Position of the Six Nations that they Constitute an*

Independent State (Brantford: Six Nations, 1924); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995); James Tully, "Diversity's Gambit Declined" in *Constitutional Predicament: Canada after the Referendum of 1992*, Curtis Cook, ed. (Montreal: McGill-Queen's University Press, 1994); Gisday Wa and Delgam Uukw, *The Spirit in the Land: Statements of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia 1987-1990* (Gabriola, B.C.: Reflections, 1992); Russell Lawrence Barsh and James Youngblood Henderson *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980); Oren Lyons et al., *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light Publishing, 1992); Grand Council of the Crees of Quebec, *Sovereign Injustice: Forcible Inclusion of the James Bay Cree and Cree Territory into a Sovereign Quebec* (Nemaska, Eeyou Astchee: Grand Council of the Crees, 1995); Wub-E-Ke-Niew, *We Have The Right to Exist* (New York: Black Thistle Press, 1995).

¹¹ It is interesting to note that Tocqueville, although revered for his acuity about nineteenth-century American political life, fails to mention in any detail the significance of the public debate over the legitimacy of the Indian removal policies. Also, it is interesting to note that he does not mention Justice Marshall in *Democracy*, who was one of the most influential American intellectuals of his day.

¹² There is a fascinating, important debate in contemporary historical literature called "The Influence Thesis." The claim is that early American political thinkers "borrowed" from the Indians, mostly the Iroquois, the concept of democracy that shaped the formation of the Constitution. A consequence of such a claim is that "we," meaning non-Indian people, have to re-shape our understandings of American history to include the voices of its Native Peoples. I am sympathetic to the project's ultimate goal, which is the re-evaluation of the historical relationship to include Native Americans' perspectives, however I am not clear about this use of the word "borrowed." It is undeniable that there was some kind of "influence" between Native and non-Native cultures, but I am sceptical that Native American *philosophies* were understood sufficiently enough by the early Americans that there was a philosophical cross-cultural dialogue. Having said that, the defenders of the influence thesis, in particular Donald A. Grinde and Bruce E. Johansen have opened up a fruitful dialogue worthy of closer examination. See Donald A. Grinde and Bruce Johansen, *Exemplar of Liberty: Native America and the Evolution of Democracy* (Los Angeles, Cal.: The Regents of the University of California, 1991).

Chapter Six:

Vision: Towards an Understanding of Aboriginal Sovereignty

For better or worse, it is predominantly non-Aboriginal judges and politicians who have the ultimate power to protect and enforce aboriginal rights, and so it is important to find a justification of them that such people can recognize and understand.

Will Kymlicka

The geese migrate because they have responsibilities to fulfill at different times and in different places. Before they fly they gather together and store up energy. I believe strongly that our people are gathering now, just like the geese getting ready to fly. I am tremendously optimistic that we will soon take on the responsibility we were meant to carry in the world at large.

Jim Bourque¹

Introduction

In this concluding chapter I will address three issues. First, I shall briefly summarize the first five chapters of this thesis. In the process, I shall raise a few of the salient observations from such an investigation. This is important in order to say something about the nature of the Aboriginal voice in what I label as the dominant "legal-political" discourse of Aboriginal sovereignty in Canada. In the second part of this chapter, I shall outline the "Vision Chapter" of Royal Commission of Aboriginal Peoples' (RCAP) final report. I will argue that the Commission's work, while an extensive exercise in listening to the voices of Aboriginal peoples, failed to accommodate the "wisdom of the Elders" into the legal-political discourse that--whether Aboriginal peoples like it or not--is the language of public policy. In the final section of this chapter, I shall use James Tully's notion of "a mediator"--from his recent book *Strange Multiplicity : Constitutionalism in an Age of Diversity*--and discuss the role of the mediator from an Aboriginal perspective. I conclude this chapter, and this thesis, with a few suggestions about how Aboriginal peoples may set out on a path to recover our "intellectual sovereignty" in the context of the dominant legal-political discourse.

I began chapter one with an examination of Kymlicka's political liberalism. Kymlicka's political liberalism is important because he recognizes

the legitimacy of the Aboriginal right of self-government. He attempts to accommodate this right, which is a collective right, within a philosophical theory that fundamentally privileges the individual over the group. The collective right is recognized in Kymlicka's liberalism because Aboriginal peoples, as one of three "national minorities," were accorded a special status at the time of Confederation. The Canadian state was created by the mutually recognized voices--the English, French, and Aboriginal peoples--at the time of confederation. The "incorporation" of the national minorities into the Canadian nation-state implies that the individually recognized communities gave up, or transferred, certain rights in order to gain the protection of the federal government. History has shown that while the provinces retained powers of self-government, Aboriginal nations were to become governed by the dictates of federal parliament and *The Indian Act*.

Aboriginal peoples have consistently argued that they have retained their sovereignty and that the Crown has unilaterally asserted an unjust doctrine of extinguishment. Aboriginal sovereignty, then, is no longer considered to be part of the legal and political landscape from which the federal government discusses and drafts its Indian policies. Aboriginal peoples argue that they never agreed, in the early treaties, or at any other time in the relationship, to the wholesale extinguishment of their rights and sovereignty. Part of the conflict centres around this concept of Aboriginal incorporation. Kymlicka suggests that the incorporation process may have been unjust; nonetheless, it is a political fact. I claimed that Aboriginal

understandings of incorporation tell a different story. More importantly, Aboriginal interpretations of the rights and powers they retained after the negotiated early treaties with the European newcomers, and later the Canadian governments, are not recognized as relevant within contemporary political liberalism.

The political issue, especially from an Aboriginal perspective, is the problem of voice. Aboriginal peoples do not have an equal voice in the discourse that purports to determine the content of their rights and the meaning of Aboriginal sovereignty. This is nothing new for Aboriginal peoples. European understandings of Aboriginal peoples from the initial period of contact created a powerful discourse *about* Indians. This is largely what I attempted to show in chapters two through five.

In chapter two I examined one of the earliest "Royal Commissions." The Valladolid debate of 1550 showed quite clearly that Indian identity was understood by Europeans from within the boundaries of their philosophical imagination. Sepulveda and Las Casas paid little attention to indigenous ways of thinking and instead argued about how the Indians ought to be treated. Both participants in the debate, however, agreed that the Indians belonged to an inferior culture whose options were to either disappear or assimilate into the enlightened Christian culture. Regardless of which direction Indian cultures took, their communities were to be overpowered by the policies and actions of the Spanish Crown.

In chapter three, I introduced the Iroquois Great Law of Peace as an Aboriginal example of a political system that was the dominant political ideology in early northeast America. The Iroquois, unlike many of the indigenous peoples of Latin America, were able to assert their sovereignty and dictate the terms of the political relationship with the European newcomers. This does not mean that the Europeans respected, or even understood, Iroquois political philosophy. Once the power dynamic shifted in favour of the Europeans, they could ignore their political obligations with the Indians.

The Iroquois Confederacy, and later the Covenant Chain, was a political structure that recognized a diversity of nations. The Great Law, centred around the Condolence Ceremony, was grounded on the principles of reciprocity and renewal. The early treaties created a political relationship based upon the principles of reciprocity and renewal. International political relationships, outlined in the Two-Row Wampum treaty, established in practice a type of political sovereignty that embraced diversity. Further, this political relationship was renewed and encouraged by both the Iroquois and the European settlers.

Hobbes's view of sovereignty does not recognize the diversity embraced by the Two-Row Wampum. He defends a form of absolute sovereignty wherein a single sovereign power rules with complete, undivided authority. The purpose of chapter four, though, was not to give a detailed critique of Hobbes's complex account of political sovereignty, but to show where Native

Americans fit into his philosophical system. Hobbes locates Native Americans in the state of nature because their cultures do not measure up to the cultures of European civil societies. One of the main reasons Native Americans could not have a voice in Hobbes's discourse of sovereignty is because they do not "do" philosophy. Hobbes does not consider Native American ways of thinking, yet he makes judgments about Native American identity that play a role in the pivotal distinction of Hobbes's political system: the distinction between the state of nature and a civil society.

Tocqueville, over two hundred years later, invokes a similar distinction in his examination of democracy in America. Tocqueville characterizes the lands of America before the arrival of the Europeans as a *terra nullius*. This concept does a lot of work in Tocqueville's characterization of Native Americans as it unilaterally strips them of their political sovereignty. This is because they do not "own" the land in the European way. Tocqueville advocates a Lockean theory of property where land is appropriated in a state of nature by the labour of individuals. The concept of labour, for Tocqueville, is understood to be immersed within the European agricultural and economic practices of exploiting the earth's natural resources.

Native Americans, according to Tocqueville, were also without a proper history. This allowed the European newcomers to establish a democracy without having to rid themselves of an aristocratic past. This claim was coupled with the belief that the Americans were destined to expand their culture across the Americas. Once again, Native Americans were left on the

outside of civil society--their lands a *terra nullius*, their histories irrelevant, and, their demise unfortunate although necessary for American democracy to thrive. Tocqueville generated an account of democracy that failed to consider Native American voices in American political life. Tocqueville, like Hobbes, made normative judgments about Native American identity without listening, or considering, their ways of thinking.

By examining the Valladolid debate, Hobbes's view of civil society, and Tocqueville's account of American democracy, I have shown that Native Americans have been excluded from these philosophical dialogues.

Kymlicka's language of minority rights, from an Aboriginal perspective, does not fare much better. But with the concept of incorporation Kymlicka opens the theoretical space for Aboriginal perspectives. The notion of Aboriginal incorporation is a controversial term because it questions the legitimacy of the formation of the Canadian state itself.

The issue of Aboriginal sovereignty is rooted in a legal-political discourse in Canada for two reasons. First, Aboriginal sovereignty is a legal issue because section 35 (1) states:

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

The recent court decisions, especially *Sparrow* (1990)², have attempted to attach more context to the meaning of section 35(1), but the courts have not wholeheartedly embraced the idea that Aboriginal sovereignty remains in force as a normative legal and political concept. This is because the courts are constrained by liberal interpretations of rights. Aboriginal rights are

understood, not in the context of their source in Aboriginal sovereignty, but within the assumption that the federal government's political and legal authority is absolute and unquestionable. Aboriginal peoples need to find creative ways of addressing this assumption. The constitutional protection of the right of self-government is arguably already in the Constitution, so any further clarification of the content of Aboriginal rights is going to involve complex interpretations of section 35.³

Aboriginal sovereignty is a political issue because of what I label Kymlicka's constraint:

For better or worse, it is predominantly non-aboriginal judges and politicians who have the ultimate power to protect and enforce aboriginal rights, and so it is important to find a justification of them that such people can recognize and understand.

The Royal Commission on Aboriginal Peoples, an instrument of the government's creation, was implemented to seriously consider the issue of Aboriginal incorporation and the assumption that federal sovereignty is absolute and unquestionable. The main point of disagreement between the Aboriginal views expressed over and over in the Commission's public hearings and the position taken by the government is over the issue of Aboriginal incorporation. The Canadian government has traditionally ignored arguments grounded in Aboriginal sovereignty and asserted a policy of extinguishment of Aboriginal rights and sovereignty. Aboriginal incorporation, from an Aboriginal perspective, has traditionally meant that there was, and is, a trust-like fiduciary relationship between sovereign

governments. Taken together, the legal and political discourses have obfuscated the content and meaning of Aboriginal sovereignty in Canada.⁴

I believe the issue of Aboriginal incorporation was the central legal and political dilemma the Commission had to consider, and it was one of the main reasons the Commission delayed its final report for over a year. The life of the Commission went through two phases. The first was the massive listening and gathering exercise that included four rounds of public hearings in addition to a comprehensive research plan. The second phase of the Commission's life was devoted to consolidating the material from the hearings and research into a final report that was to be tabled in parliament.

There can be no doubt that the public hearings resulted in an overwhelming amount of information. In this sense the Commission can be said to have listened to Aboriginal peoples. The Commissioners, especially the non-Aboriginal Commissioners, were deeply affected by the testimony heard in the public hearings. The research program was also ambitious and extensive. In other words, the Commissioners certainly had enough information from which to produce a final report. The problems for the Commissioners began when they attempted to consolidate the material from the hearings and research within the legal-political discourse of public policy in order to produce the final report.

The Aboriginal Commissioners knew too well what life was like in Aboriginal communities, but they were not by any stretch of the imagination legal and political experts on the same level as the non-Aboriginal

Commissioners.⁵ The Commission's focus shifted from listening and engaging Aboriginal voices to the language of public policy. As the Commission's mandate unfolded, the Aboriginal voice seemed, at least from the perspective of the Aboriginal Commissioners and employees of the Commission, to disappear.

The non-Aboriginal Commissioners could not be blamed for the change in focus. The problem was in the very language of public policy itself. All the Commissioners wrestled with the fundamental problem of bringing the voices of Aboriginal peoples into the legal-political discourse of contemporary Aboriginal policy in Canada. This legal-political context established normative boundaries set by parliament, the Supreme Court, and the Department of Indian Affairs and Northern Development (DIAND). This legal-political context consistently acts as a reality check for Aboriginal leaders who negotiate on behalf of their communities with the various governments of Canada.⁶ In this context, the Commission's work was much less successful than the public hearings. Aboriginal voices were listened to in the extensive public hearings, but when it came time to embed the wisdom found in the hearings--what Robert Allen Warrior calls our "tribal secrets"--into public policy the legal-political discourse proved to be resistant to change.⁷

It came as no surprise to many that the Commission's final report was almost immediately shelved by the Liberal government.⁸ The problem for Aboriginal leaders is, and has always been, to find ways to convince the various levels of Canadian governments that Aboriginal peoples have

retained their sovereignty throughout the history of the relationship. In the context of the Commission's final report, the problem for the Commissioners was to find ways of weaving the wisdom articulated in the hearings into the Aboriginal hostile legal-political discourse of public policy. The truth of the matter is that there are very few people, both Aboriginal and non-Aboriginal people, who are able to engage in such a rich dialogue.

The last chapter of volume one of the final report, entitled "The Principles of a Renewed Relationship," follows on the heels of the historical re-evaluation of the relationship. This is because the new relationship cannot be negotiated without re-newing our understanding of the historical relationship. This chapter, originally called "The Vision Chapter," sets out four principles that ought to guide the renewed relationship: mutual recognition, mutual respect, sharing, and mutual responsibility.

Mutual recognition "calls on non-Aboriginal Canadians to recognize that Aboriginal people are the original inhabitants and caretakers of this land and have distinctive rights and responsibilities that flow from that status."⁹ The Commission goes on to add: "Mutual recognition, thus, has three major facets: equality, co-existence and self-government."¹⁰ The principle of mutual respect focuses on one aspect of the concept of respect: "the quality of courtesy, consideration and esteem extended to people whose languages, cultures, and ways differ from our own but who are valued fellow-members of the larger communities to which we all belong."¹¹ The third principle is sharing. Sharing amounts to "the giving and receiving of benefits."¹² This is similar

to what I have referred to, from an Aboriginal perspective, as reciprocity. The fourth principle is mutual responsibility which "involves the transformation of the colonial relationship of guardian and ward into one of true partnership."¹³

The justification for these principles is articulated in both Aboriginal and non-Aboriginal ways of thinking. The Vision Chapter expresses the Commission's desire to change the deeply embedded attitudes of the dominant culture. The legal-political relationship is currently guided by attitudes that do not allow for Aboriginal voices to be recognized as equal, valuable, and coherent. Part of the dominant culture's resistance to embracing these more egalitarian principles in practice is that there is a lot at stake. The Canadian public, especially in a post-Charlottetown Accord political climate, was resistant to being told what to do by any authority, never mind a Royal Commission that demanded drastic changes in existing public attitudes and, more importantly, existing Aboriginal policies.

For example, the Commission lists five general guidelines attached to the understanding of the principle of sharing:

First, as in any modern co-operative relationship, the partners must recognize each other's basic rights, including, in this instance, rights of self-government and rights of equality as peoples. They must also display respect for their respective cultures and institutions.

Second, our histories, public institutions and popular cultures must give greater recognition to what is often unacknowledged: the relation of sharing that is at the foundation of the Canadian federation and its economy.

Third, as a long overdue act of justice, Aboriginal people should regain access to a fair proportion of the ancestral lands that were taken from them.

Fourth, if sharing is to be a valued part of the renewed relationship, both parties need to be in a position to engage in exchanges on an equal basis. Meaningful sharing is not possible under conditions of poverty and dependence, so strong and effective measures need to be taken to address the often appalling inequalities that separate Aboriginal and non-Aboriginal Canadians in such sectors as health, housing, income and overall living conditions.

Finally, sharing must take a form that enhances, rather than diminishes, people's capacity to contribute to the whole. Transfers that perpetuate relations of dependency, such as welfare payments, are not the long-term solution. Rather just as they helped newcomers in the past, Aboriginal peoples should be assisted to develop economic self-reliance through new relations of economic co-operation in resource development and other fields.

Changing one's deeply ingrained habits and attitudes involves more than simply presenting philosophically consistent arguments, especially in the context of Aboriginal issues. Guidelines three and four above are examples that involve enormous changes in the current economic landscape in Canada, not to mention the effect they would have on defining Canadian sovereignty.

Aboriginal peoples assert their sovereignty. This is a fact of Canadian political life. The Commission states that "the partnership between Aboriginal peoples and Canada is political and constitutional rather than commercial. Nevertheless, the analogy is useful as long as we don't carry it too far."¹⁴ Of course, the reality of the relationship, as the Commissioners point out, is far from being an equal partnership. Many Canadians would agree that there are a number of good reasons for renewing the relationship on more just foundations, but there are limits as to what can be negotiated.

Even the Commissioners set limits. In volume two they make a revealing comment about the practical limits of a political dialogue on sovereignty.

In extensive presentations to the Commission, treaty nation leaders said their nations were sovereign at the time of contact and continue to be so. Such positions are often perceived as a threat to Canada as *we know it*. The Commission has considered the various views of sovereignty expressed to us and has found *no rational way* to bridge the gap between those who assert and those who deny the continuing sovereignty of Aboriginal nations...The Commission concludes that any detailed examination of sovereignty is ultimately a distraction from the issues our mandate requires us to address. Differences in deep political beliefs are best dealt with by fashioning a mutually satisfactory and peaceful co-existence rather than attempting to persuade the adherents of opposing positions that their beliefs are misguided.¹⁵(emphasis added)

This is a subtle passage because the Commission is alluding to its responsibilities as a Royal Commission: they must act as an impartial arbiter between conflicting, seemingly incommensurable viewpoints on sovereignty. The Commission claims that a discussion of sovereignty is not necessary as long as the dialogical relationship itself moves towards a relationship of peaceful coexistence. Deeply philosophical differences between the parties, then, become secondary to establishing a peaceful relationship.

This is a remarkable statement, especially given what is stated in the very next sentence: "Treaty making does not require the parties to surrender their deepest beliefs and rights as a precondition for practical arrangements for coexistence." This statement is unproblematic as long as the issue of sovereignty is understood in context of the federal government's perspective. If we examine this statement from an Aboriginal perspective, it brings back

into the dialogical relationship the language of sovereignty *because it is a concept up for negotiation*. If the relationship between Aboriginal peoples is political and constitutional, and political sovereignty flows out of understandings established within the legal-political discourse, then it makes sense to say that discussions of sovereignty are part of the political relationship. The only time discussions of sovereignty are not in the forefront of the dialogical relationship is when sovereignty is not contested. But Aboriginal leaders *do* assert that their sovereignty still exists, so it ought to be part of what is to be negotiated in the political and constitutional relationship itself.

The Commission argues that adopting the principles of the Vision Chapter is a necessary step in the process of understanding their recommendations on governance. In other words, the Vision Chapter functions as a guiding narrative. The attitudes generated by adopting the four principles need to become part of the policies that can renew the relationship in a more just form. How to bring this imperative into the public space is both a philosophical and practical problem. James Tully provides an encouraging solution to this dilemma, not just in the sense that he shows us how to go about this transformation, but he suggests *who* is the best type of person to guide others through the legal-political discourse of Aboriginal sovereignty.

Tully examines the “politics of cultural recognition” in the context of the evolution of constitutionalism in Western political thought. He embraces, in

his philosophical investigation, a political metaphor in the form of the Haida artist Bill Reid's sculpture "The Spirit of Haida Gwaii." The sculpture represents, like the wampum belt in Iroquois culture, a profound political vision. Tully writes:

The sculpture is a black bronze canoe, over nineteen feet in length, eleven feet wide, and twelve feet high, containing thirteen passengers, *sghaana* (spirits or myth creatures) from Haida mythology. *Xuuwaji*, the bear mother, who is part human, and bear father sit facing each other at the bow with their two cubs between them. *Ttsaang*, the beaver, is paddling menacingly amidships, *qqaaxhadajaat*, the mysterious, intercultural dogfish woman, paddles just behind him and *Qaganjaat*, the shy but beautiful mouse woman is tucked in the stern. *Ghuuts*, the ferociously playful wolf, sinks his fangs in the eagle's wing and *ghuut*, the eagle seems to be attacking the bear's paw in retaliation. *Hlkkyaan qqusttaan*, the frog, who symbolizes the ability to cross boundaries (*xhaaidla*) between worlds is, appropriately enough, partially in and out of the boat. Further down in the canoe, the ancient reluctant conscript, brought on board from Carl Sandburg's poem, "Old Timers," paddles stoically (up to a point). *Xuuya*, the legendary raven--the master of tricks, transformations and multiple identities--steers the canoe as her or his whim dictates. Finally in the centre of this motley crew, holding the speaker's staff in his right hand, stands the *Kitslaani*, the chief or exemplar, whose identity, due to his kinship to the raven (often called *Nangkilstlas*, the One who gives orders), is uncertain. *Bill Reid asks the chief, "Who is he? That's the big question." So the chief has come to be called "Who is he?" or "Who is he going to be?"*(emphasis added)

Tully lays out in the course of his book the complex intellectual landscape from which contemporary debates in constitutional theory have evolved. He cites three conventions found in common constitutionalism: mutual recognition, continuity and consent.¹⁶ Mutual recognition means to recognize and accommodate the fact that Aboriginal peoples are equal self-governing nations. This relationship was first manifested in the early

treaties. The second convention, continuity, means that Aboriginal nations did not relinquish their sovereignty when they entered into treaty relationships with the Crown. The convention of continuity has been superseded by the unilaterally imposed practice of discontinuity or extinguishment. The third convention, consent, is related to the other two conventions. Any changes in the political relationship that affected the nature of the relationship required the consent of the concerned parties. This is embedded in the oldest fundamental convention--*quod omnes tangit ab omnibus comprobetur*--"what touches all should be agreed to by all."¹⁷

Tully argues, as the Commission did in the Vision Chapter, that these fundamental conventions, already embedded in constitutional practice, must be renewed in contemporary constitutional practices if we are to embrace diversity in its richest form. Peaceful co-existence among conflicting voices is possible, but only from within a dialogical relationship. He states:

a mediated peace is a just peace: just because it is a constitutional settlement in accord with the three conventions of justice and peaceful because the constitution is accommodated to the diverse needs of those who agree to it. If this view of constitutionalism came to be accepted, the allegedly irreconcilable conflicts of the present would not have to be the tragic history of our future.¹⁸

A just constitutional relationship is a negotiated one, but it is negotiated from within the attitudes generated by the three conventions.

Political relationships, like the one characterized in the "Spirit of Haida Gwaii," are negotiated where "the passengers vie and negotiate for recognition and power." The leader, the chief, has a specific role within this

kind of political relationship. Tully's last two sentences of *Strange*

Multiplicity are prophetic:

Of equal importance to their pacific way of life, they also never fail to heed what is said by the chief whose identity has remained a mystery until this moment. She or he is the mediator.¹⁹

The mediator, for Tully, is able to embrace the three conventions of constitutionalism--the four principles defended in the Vision Chapter--and accommodate them to practice. Another important quality of the mediator is that she or he is able to guide others about how to act appropriately within this complex politics of cultural diversity.

Tully's book is primarily offered as a way for non-Aboriginal people to view a constitutional relationship amongst a diversity of politically recognized voices. A non-Aboriginal mediator must embrace Aboriginal ways of thinking, and living, and weave them into her or his own philosophical attitudes. Unfortunately, as I mentioned earlier, there are very few non-Aboriginal people who have such broad intellectual and cultural sensitivities. However, there is now an evolving intellectual community that embodies the spirit of Tully's dialogical methodology.²⁰

The question I would like to ask is, given Kymlicka's constraint and the reality of the legal-political discourse of Aboriginal public policy in Canada, who is an Aboriginal mediator? While I cannot give a developed answer to this question here, I will suggest a way that Aboriginal philosophical attitudes can find their way into the legal-political discourse of Aboriginal sovereignty. This would represent a step forward in a direction for Aboriginal peoples to

recover, and renew, their "intellectual sovereignty" within Western legal and political thought. The phrase "intellectual sovereignty" comes from Robert Allen Warrior, an Osage English professor, from his innovative book *Tribal Secrets: Recovering American Indian Intellectual Traditions*. In his discussion about bringing the Native American voice into what is normally considered to be mainstream academia he states:

I contend that it is now critical for American Indian intellectuals committed to sovereignty to realize that we too must struggle for sovereignty, *intellectual sovereignty*, and allow the definition and articulation of what that means to emerge as we critically reflect on that struggle.²¹

To be an Aboriginal intellectual, while elusive to define, is nonetheless a politically rooted activity.

Vision

When an Anishnabai boy becomes a man he must have a vision. In other words, he must know what his purpose is in life. It involves a long process of learning the physical and spiritual landscape that he inherits from his ancestors. The survival of the community depends on him accepting his responsibilities, but he cannot do so unless he has learned the necessary skills. Hunting, trapping, and living in the vast sometimes hostile world requires finely developed skills and knowledge. This knowledge was passed on by Elders, along with the stories that told them who they were and where they

were going. This was the Anishnabai way and it worked well for countless generations.

What kind of vision does an Anishnabai require as he heads into the next millennium?²² A vision seeks understanding of the landscape from which one is inextricably immersed. The brutal reality is that this landscape has changed drastically since the initial contact with Europeans. What has not changed for the Anishnabai is the need to survive in a sometimes hostile world. The landscape is still shared with Anishnabai ancestors, but the tools of survival have changed. The responsibilities that one must learn for the community to survive still requires special skills and knowledge. Much of the knowledge and skills required for survival are traditionally passed on to the youth by wisdomkeepers and other "educators" in the community.

Unfortunately, there are parts of the Aboriginal landscape that have been forced upon them. These are the intellectual discourses that have evolved to subjugate, distort, and marginalize Aboriginal ways of thinking. The knowledge and skills required to participate in the legal-political discourse of Aboriginal sovereignty, for better or worse, have become a significant part of the Aboriginal intellectual landscape. This discourse has evolved without the significant contribution of Aboriginal voices, yet its effects on Aboriginal communities have been devastating. Consequently, Aboriginal peoples have viewed the Eurocentric legal-political discourse with scepticism and embracing it is seen in the communities as a sign of assimilation. There is an element of truth to this prevailing attitude. But I shall explain why I think

Aboriginal intellectuals must turn their intellectual energies to the legal-political discourse of sovereignty.

Robert Allen Warrior writes:

If our struggle is anything, it is a way of life. That way of life is not a matter of defining a political ideology or having a detached discussion about the unifying structures and essences of American Indian traditions. It is a decision—a decision we make in our minds, in our hearts, and in our bodies—to be sovereign and to find out what that means in the process.²³

The point Warrior is trying to make here is that we can assert our intellectual sovereignty in imaginative ways without becoming white intellectuals.

Warrior argues that Native American intellectuals have

by and large [been] caught in a death dance of dependence between, on the one hand, abandoning ourselves to the intellectual strategies and categories of white, European thought and, on the other hand, declaring that we need nothing outside ourselves and our cultures in order to understand the world and our place in it.²⁴

He optimistically adds:

When we remove ourselves from this dichotomy, much becomes possible. We see first that the struggle for sovereignty is not a struggle to be free from the influence of anything outside ourselves, but a process of asserting the power we possess as communities and individuals to make decisions that affect our lives.²⁵

This last comment is worthy of a closer examination in the context of the legal-political discourse I am urging Aboriginal intellectuals to embrace.

Warrior seems to be suggesting that our struggle to exercise our intellectual sovereignty simply requires us to assert a power we already possess. In one sense he is right; that is, in the end it is up to us to assert our

philosophies, and we have to decide as a community to do so. But there is another aspect to this unilateral assertion of intellectual sovereignty, especially when it is viewed from within the context of the legal-political discourse of Aboriginal sovereignty. This is the fact that our intellectual traditions are *not* recognized as valuable sources of knowledge, or wisdom, by the legal and political intellectual community. Our tribal secrets are of anthropological or historical interest only--white academics are still most interested in generating a discourse *about* Aboriginal people. Aboriginal views of political sovereignty occupy little space, if any at all, in the contemporary academic theoretical discourse of sovereignty.

Of course, this does not lower the standards of our own philosophical traditions. I am suggesting that it is not enough simply to assert our intellectual sovereignty within an already vigorous white intellectual community. *As a matter of survival*, Aboriginal peoples must engage the non-Aboriginal intellectual landscape from which their rights and sovereignty are articulated. Unlike Aboriginal intellectuals carving out their own communities and asserting their intellectual sovereignty within them, I am suggesting that Aboriginal intellectuals must carve out a community of practitioners within the existing dominant legal and political communities.

For example, Aboriginal legal theory has moved in new directions over the past ten years. Douglas Sanders, Brian Slattery, Bruce Clark, Patrick Macklem, and Kent McNeil--all non-Aboriginal legal scholars--have, over the past twenty years, established Native Law as a subject worthy of specialization

within the larger field of law.²⁶ It is Aboriginal scholars, though, like Mary Ellen Turpel, Sakej Henderson, Russel Barsh, Patricia Montour, Mark Dockstator, and John Borrows who have engaged the discourse in ways that have empowered the Aboriginal presence within the field of legal theory: Aboriginal legal scholars are becoming recognized as the authorities within the field of Aboriginal law in Canada.²⁷ They in turn can assert their authority within the legal community that has increasing influence at all levels of the Canadian legal culture.²⁸

Bruce Trigger makes a similar plea in the context of professional historians and anthropologists:

While Native people have played the major political role in challenging the image that other Native Americans have of them, non-aboriginal historians and anthropologists have been working to dispel myths that their predecessors helped to create....It is essential that more Native people who are interested in studying their past should become professional historians and anthropologists, so that their special insights and perspectives can contribute to the study of Native history...so the distinction between professional anthropologists and historians on the one hand and Native people on the other should give way to disciplines in which Native people play an increasingly important role. Such collegiality will mark the beginning of a new phase in the study of Native history.²⁹

A problem with bringing the Aboriginal voice into this academic community is that the university remains an unfriendly environment for most Aboriginal students. Most of the course content that is taught to Aboriginal students in universities is focused on Aboriginal peoples as objects of study. Many Aboriginal students experience the residential school attitudes in universities, and therefore most do not finish their degrees. Trigger is talking

about generating a community of Ph.D's, when the truth of the matter is that most Aboriginal students do not graduate from high school. Nonetheless, Trigger's point is well taken. The problem, then, is *how* to establish a community of Aboriginal historians and anthropologists in the first place. This is even more difficult in fields such as philosophy and political science.

This is where Tully's notion of the mediator is helpful. He has offered a way for philosophers, especially political philosophers, to see their own field of study in a way that could include, indeed even demands Aboriginal participation. But Tully's mediator requires an Aboriginal mediator. I suggest that an Aboriginal mediator is someone who can embrace legal-political discourse from the position that the knowledge and skills developed from engaging such a discourse are necessary for the survival of Aboriginal peoples. It is a strange choice to make, but we are a strange multiplicity.

Remember the Elder's words at the beginning of this thesis:

We have discarded our broken arrows and our empty quivers, for we know what served us in the past can never serve us again...It is only with tongue and speech that I can fight my people's war.

Aboriginal peoples can listen to reason, but we will always tell our own stories.

Endnotes

¹ This remark begins the Royal Commission on Aboriginal Peoples' final report. Jim Bourque was an important Metis leader whose influence at the Commission was profound, even if it was for a brief period. Sadly, Jim passed away before the final report was released, which makes the spirit of his words all the more important for those he left behind to gather strength.

² *R v. Sparrow*, S.C.C. (1990). For an insightful compendium of the influential court cases in Aboriginal law see *Unjust Relations: Aboriginal Rights in Canadian Courts* ed. Peter Kulchyski, (Toronto: Oxford University Press, 1994).

³ The Royal Commission argues in *Partners in Confederation* that the inherent right of self-government is already embedded in the Constitution, and therefore there is no need to initiate constitutional change in Canada.

⁴ For example, in *Sparrow*, the Court's ruling was decided on a technical matter. The Court ruled that it could not decide the case because they required a fiat from the lieutenant-governor of British Columbia. The Courts and various levels of government pass the issue of deciding on the content of Aboriginal sovereignty back and forth. Meanwhile Aboriginal communities have to continue to fight against the onslaught of non-Aboriginal intrusions onto their lands.

⁵ Of the four Aboriginal Commissioners--George Erasmus, Paul Chartrand, Viola Robinson, and Mary Sillett-- only Paul Chartrand had a legal background as a practicing lawyer. Of the three non-Aboriginal Commissioners, Bertha Wilson was a Supreme Court Judge, Peter Meekison was a law professor, and Rene Dussault was a Quebec Superior Court Judge.

⁶ I cannot overemphasize the importance of this claim. It is a well known problem in Indian Country that elected leaders who are sent to negotiate on behalf of their communities find that they run up against a Leviathan. Negotiators are often not negotiators at all, but *Indian Act* messengers of federal policy.

⁷ Robert Allen Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis, Minn.: University of Minnesota Press, 1995).

⁸ The final report was released in early January 1996. To this date the Liberal government has not responded to the report.

⁹ RCAP, *Final Report*, Volume One, p.678.

¹⁰ *Ibid*, p. 678.

¹¹ *Ibid*, p. 682.

¹² *Ibid*, p. 685.

¹³ *Ibid*, p. 689.

¹⁴ *Ibid*, p.689

¹⁵ RCAP, *Final Report*, Volume Two, p. 20.

¹⁶ Tully, *Strange Multiplicity*, p.116.

¹⁷ *Ibid*, p.122.

¹⁸ Ibid, p.211.

¹⁹ Ibid, p. 212.

²⁰ For example, see Michael Carrithers, *Why Humans Have Cultures: Explaining Anthropology and Social History* (Oxford: Oxford University Press, 1992); Colin Calloway, *The American Revolution in Indian Country* (Cambridge: Cambridge University Press, 1995); Ronald Takaki, *A Different Mirror: A History of Multicultural America* (Boston: Little Brown, 1993); Mark Kingwell, *A Civil Tongue: Justice, Dialogue, and the Politics of Pluralism* (USA: The Pennsylvania State University, 1995).

²¹ Warrior, *Tribal Secrets*, p.97-98.

²² Traditionally, women do not set out on vision quests. Since they can bring new life into the world they already know their place in the world as the caretakers of the community. This is meant to be understood in the context that to be a "caretaker" of the community is to hold significant political power in the community. Indeed, in a contemporary context I claim that Anishnabai men must begin a vision quest by listening to the women of their community.

²³ Warrior, *Tribal Secrets*, p.123.

²⁴ Ibid, p.123.

²⁵ Ibid, p.124.

²⁶ See Brian Slattery, "First Nations and the Constitution: A Matter of Trust," *Canadian Bar Review* 71 (1992) 261-93; Brian Slattery, *Ancestral Lands, Alien Laws: Judicial Perspectives on Aboriginal Title* (Saskatoon: Native Law Centre, University of Saskatchewan, 1983); Bruce Clark, *Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada* (Montreal: McGill-Queen's University Press, 1990); Patrick Macklem, "Distributing Sovereignty: Indian Nations and the Equality of Peoples," *Stanford Law Review*, 45, 5 (1993) 1312-67; Kent McNeil, "The Constitutional Rights of Aboriginal Peoples in Canada," *Supreme Court Law Review*, 255 (1982).

²⁷ See John Borrows: "With or Without You: First Nations Law in Canada," *McGill Law Journal* 41 (1996) 629; "Constitutional Law From a First Nation Perspective: Self-Government and the Royal Proclamation," *UBC L Rev.* 28 (1994) 1; "Contemporary Traditional Equality: The Effect of the Charter on First Nation Politics," *UNBLJ.* 43 (1994) 19; "Negotiating Treaties and Land Claims: The Impact of Diversity Within First Nations Property Interests," *Wind. Y.B Access Justice* 12 (1992) 179; "A Genealogy of Law: Inherent Sovereignty and First Nations Self- Government," *Osgoode Hall LJ.* 30 (1992) 291; "The Trickster: Integral to a Distinctive Culture," *Constitutional Forum*, Vol 8, no.2 Winter 1997. See also JY Henderson and Russell Barsh, "Aboriginal Rights, Treaty Rights and Human Rights: Tribes and Constitutional Renewal," *Journal of Canadian Studies*, 17 (1982) 55; D.M Johnston, *The Taking of Indian Lands in Canada: Consent or Coercion*, (Saskatoon: University of Saskatchewan Native Law Centre, 1989); Mary Ellen Turpel, "Patriarchy and Paternalism: The Legacy of the Canadian State for

First Nations Women," *Canadian Journal of Women and the Law* 6 (1993)174; Mary Ellen Turpel-Lafond, *First Nations' Resistance: Post-Colonial Law* (Toronto: University of Toronto Press, 1997).

²⁸ One of the significant points about the Sparrow case was that the Judges used contemporary academic discourse to help them rule on the case. This legal research will become more important in the future, so it makes sense to think that this is an opportunity for Aboriginal voices to find their way into the theoretical and practical problems of understanding Aboriginal sovereignty.

²⁹ Bruce Trigger, *The Cambridge History of the Native Peoples of the Americas, Volume 1: North America Part 2*, Ed. Bruce Trigger and Wilcomb E. Washburn (Cambridge: Cambridge University Press, 1996), p.xvii.

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