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Aboriginal Right: A Conciliatory Concept

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ABSTRACT *The confusion that persists over Aboriginal claim in North America calls for close examination. The paper begins by sorting out various versions of 'Aboriginal right' and some of the main factors that govern its use. Confusion is analysed as the result of conflating different frames of reference which determine different sets of expectations by Aboriginal and government representatives.*

To appreciate the significance of this conflation, it is helpful if not necessary to view the move to use the concept 'Aboriginal right' as a strategic rather than a legally substantive one. Understanding the move in this way helps to explain why it is that definitions remain elusive. The effect of using the concept has indeed been to enable Aboriginals finally and effectively to table their claim. However, the strategy has its cost. Using the language of the courts places Aboriginal negotiators at a disadvantage, since that language is ineluctably tied to European social and legal sensibilities that militate against understanding Aboriginal claim.

If, in the end, we understand that the move to use the language of the courts has been conciliatory, we can better recognise the nature of Aboriginal claim. We can begin to understand that it involves a complex web of responsibilities and commitments, most of which have either been forgotten or perverted to suit government agendas. We can begin to see that it has to do with restoring a relationship of mutual respect and protection.

The attempt to resolve conflicts and overcome the impasses encountered in negotiations between North American Aboriginal peoples and governments has acquired a peculiarity; the negotiation process seems simultaneously to suit and to misrepresent the nature of the conflict. Initial observations suggest that government and Aboriginal representatives alike are engaged in bargaining ploys. Both seem to be posturing and entrenching positions in the anticipation of negotiated compromise. Using the language of the courts has had much to do with generating the assumption that Aboriginal claim can and is to be recognized according to a negotiation conflict-resolution process. The right to self-determination, the right to self-government, the right to restoration of a land base all suggest that negotiations are being played out on the same field as are labour-management disputes. Each side seems to want a fair share of a commonly valued item, such as land, profit, security conditions.

But not all Aboriginal peoples want their rights recognised in the same way as those who are demanding a place on the negotiation platform (e.g., many elders and hereditary or traditional chiefs). Throughout North America, native populations are split between supporters of more traditional ways and those who are prepared to negotiate legal, political, and economic divisions of power. The band council system of government, for example, while recognized by the Canadian government [1], is rejected in some Aboriginal

communities. Consequently, it is difficult, not only to know which body represents the Aboriginal claim, but to know to what that claim and its corresponding right amount.

I will attempt to sort out and analyse the use of rights language in Aboriginal claim, in order to clarify the significance of its use. Once sorted out, the variety of uses of 'Aboriginal right' can be analysed as having a common basis in the experience of injustice. My analytical focus will be on the moral significance, rather than meaning or definition of the term, since, as will soon become evident, the meaning of Aboriginal right is unclear and controversial. I hope, therefore to suggest a possible re-formulation of Aboriginal claim through this shift in emphasis. I am not reformulating Aboriginal claim in order to get it right, so to speak, but simply to shed new light on the issue, in the interest of overcoming some of the misunderstanding and seemingly deliberate misconceptions of the claim.

Accordingly, coming to use rights language by Aboriginals can be understood as a kind of conciliatory move. Caution, however, must be exercised here. I am not saying that Aboriginal peoples have been prepared to compromise their autonomy, culture, and aspirations, that is, the substance of their claim. They have, nevertheless, been conciliatory by virtue of the fact that adopting the language of the courts creates a disadvantage when attempting to articulate their claim.

One final cautionary note seems appropriate at this time. So divergent are the Aboriginal and European-based political-legal perspectives that some have recommended separate systems of justice [2]. I do not, therefore, write with the presumption of having special insight into the Aboriginal perspective. My argument, despite utilizing statements by Aboriginal persons, rests entirely on the European moral sensibilities. All claims to understanding Aboriginal claim are, therefore, to be qualified as claims to an understanding based on what has been (or can be) cross-culturally established as common points of reference.

I

Sorting Out The Use of 'Aboriginal Right' and Its Meanings

The adoption of terms such as 'right' and 'justice' has provided a platform on which negotiations with Aboriginals have appeared to advance while confusion festers. Keith Conn [3] of the Assembly of First Nations, among others, has noted that there is no corresponding concept for 'right' in the Ojibwa language. This lack of a corresponding concept seems fairly common among the tribes in North America [4]. Consequently, use of the term 'right' may in fact pervert Aboriginal claim. If the language does not support a translation of 'right' or even 'justice', 'Aboriginal right', if defined in terms of the European legal/political framework, cannot be an accurate representation of Aboriginal values, principles and practice.

This conceptual difficulty warns that the meaning of rights language is likely to resist disclosure. Most of us are by now familiar with statements of the sort, 'We do not understand what it would mean to own the land,' [5] 'The land and the Cree are one' (chief of the Nishnawbe-Aski), [6] or, 'When I see the land being torn up, I feel like my own flesh is being torn.' [7] Ownership and development of the land can itself be seen as unjust to the Aboriginal. In the mouth of a European, whose sensibilities are in line with traditional liberalism, such statements might be perceived as nonsense. They tend to be dismissed as

romantic rhetoric when brought to bear on European-based legal systems; those who make the statements have been seen as immature, perhaps even savage simpletons [8]. The frame of reference required for understanding Aboriginal claim seems so different from that of the legal/political status quo that communication of the claim appears impossible.

Historically, Canada has explicitly announced as much. Prime Minister Pierre Trudeau initially rejected Indian land claims and demands for redress, because he understood statements about Aboriginal title and relations to the land to be fuzzy and devoid of substance. His recommendation (Aug. 8, 1969, Vancouver B.C.) was to have Indians accept full Canadian status and to be accorded the rights all Canadians enjoy, not special status or distinctive 'Aboriginal' rights [9]. Admittedly, after Justice Thomas Berger submitted his report on the treatment of Aboriginal peoples [10], Trudeau acknowledged that he had been wrong in asserting that Aboriginal claims were hopelessly couched in shadowy language. He concluded that negotiation between Aboriginals and the Government of Canada must take place: hence, the entrenchment of Aboriginal rights in the Constitution Act of 1982 [11]. Since then, Canada has officially recognized Aboriginal claim as distinctive and substantive. Trudeau's shift, however, illustrates a programmatic change in North American attitudes, whereas the recognition of the distinctive substance of Aboriginal claim has yet to be established.

We can also grant that, in some cases, e.g., the Navajo in the United States, 'Aboriginal right' seems clearly formulated. The Navajo have achieved limited political, economic, and legal jurisdiction over an area of land. They have their own police force and judicial system. But not all Aboriginal claimants are calling for the same manifestation of the right to self-government. Indeed, not all within the Navajo system itself agree with the system, since many on the reservation remain committed to traditional forms of government.

Similarly, in the Canadian context, deceptively clear formulations have arisen. Elijah Harper has been quoted as saying that the only thing Aboriginal peoples want is to be accorded the same rights and treatment as any other Canadian [12]. Herb George of the Gitskan-Wet'suwet'en tribe has declared that he wants jurisdictional powers similar to those of the Federal and provincial governments. Neil Sterrit, negotiator for the Assembly of First Nations, explains that sovereignty is the freedom to take responsibility for decisions within one's own territories. 'Sovereignty' refers to a degree of authority and responsibility within these territories. Despite the apparent clarity in the claims of these representatives, their pronouncements have the ring of political preamble.

From the Canadian North through to the American West, we find that at the heart of many if not most Aboriginal claims lies a different sense of justice than has been accommodated by the European-based legal systems. For example, unlike typical land claims in North America, where exclusionary ownership and bounded properties define the land claim, Aboriginals often reject such definitions (e.g., the Cree have quite explicitly described the incompatibility of claims in this way). Gary Potts (Chief of the Teme Augama Anishnawbe Aski) has gone as far as to say that the land claim requires that Aboriginal peoples teach others how to steward the land. Many among the Cree and Ojibwa in Ontario and Quebec, not to mention the Inuit of the North and Innu of Labrador, do not want the Navajo solution to be treated as the paradigm case for Aboriginal land claim settlement. The fact that the implications of a so-called land-claim are so different from what we would normally expect should lead us to worry about expecting readily formulable definitions of sovereignty and land claim.

The Royal Commission on Aboriginal Peoples [13] similarly expresses a need for a

different approach to justice issues for Aboriginal peoples. One presenter, James Dumont [14], describes the differences in the notions of sovereignty, morality, community, and values as they pertain to an understanding of justice. Without understanding the Aboriginal frame of reference or world view, it is impossible to do justice to the Aboriginal peoples, he argues. When we understand the community orientation, for instance, we can understand why it is that justice is not for the individual as such. It is for the individual-in-community. Achieving justice in situations of conflict or deviance was 'restoring the peace and equilibrium within the community and reconciling the accused with his-her conscience and with the individual or family that was wronged.'[15]

Dumont's point turns on peculiar uses of the term 'justice' and 'individual'. On the one hand, his use is unfamiliar inasmuch as he asserts that the Aboriginal senses of justice and person have not yet been recognized by Canadian authorities. On the other hand, his use is familiar to the extent that we can acknowledge that this lack of recognition is itself unjust. While I am not about to undertake the task of sorting out these senses or levels, I do wish to make note of the difficulty that many Aboriginal representatives have in formulating their concept of justice. Likewise, with the concept of the individual, we are meant to acknowledge that the Aboriginal sense of being a person is distinct from and perhaps foreign to European concepts.

Coming to understand these different senses or concepts can perhaps fruitfully be approached by examining how differently they operate in the two traditions. In our tradition, reconciliation to community and self has more to do with matters of supererogation in the interest of charity or of establishing healthy social relationships, than with justice. While justice in the European system certainly need not exclude matters of reconciliation, the system is indifferent if not antagonistic toward the idea that a perpetrator of a crime ought to be reconciled with himself as a matter of conscience, especially when a criminal offence has been committed. Although much of our correctional system is ostensibly directed by the principle of rehabilitation, the primary reasons we cite for incarceration are punishment, prevention and deterrence. All are designed to re-establish the respect for individual privacy and private property, versions of the non-interference principle. Reconciliation with oneself remains an odd and perhaps foreign notion, where exclusionary privacy expectations dominate. Moreover, to expect a victim of a crime to accept self-reconciliation for the perpetrator as central to justice would more likely be viewed as unjust, both by the victim and the legal system. From a victim's perspective, justice requires punishment, compensation or reparation of some sort for the victim, not healing for the perpetrator. Thus, neither from the system's nor the victim's point of view is self-reconciliation expected.

So, while the language of sovereignty, jurisdiction, power and the like might sound familiar and ring clearly, it is far from certain that its Aboriginal meaning is the same as its meaning for government and the dominant society. If Dumont, traditional Aboriginal leaders and elders are correct, Aboriginal claim cannot be adequately articulated within the European-based legal tradition. Coupled with the fact that Aboriginal languages tend not to support translations of European legal language, the need to articulate Aboriginal claim in accordance with a unique frame of reference implies that imposing a European-based system of justice is totalitarian in nature, even if not in intent. Certain hereditary chiefs and their supporters have, in fact, rejected the European system outright, because impositional and reductive. For example, they reject the imposed 'band council' system that the government has established to represent the Haudenosaunee (Iroquois of Southern Ontario

and Northern New York State) as its negotiating team [16]. Some reject the officially recognised National Assembly of First Nations (headed by Ovide Mercredi) as their legitimate representative, because it, allegedly, does not represent the Native peoples as native peoples. It accepts a reduction of claims and values to those acceptable to European sensibilities.

Confusion over Aboriginal claim and the use of rights, as Dumont suggests, is due to persisting differences at the level of cosmology and metaphysical commitments [17]. At this level, commitments are radically different. Dominant European metaphysical commitments deny claims that humans are inseparable from the land. It is not only taken to be a foreign, but a morally perverted idea. The European, under the influences of Locke, among others (Aquinas, Descartes, Kant), assumes that a radical axiological separation exists between the human agent and nature [18]. Humanity is in a place of privilege to use and exploit an otherwise wasted land. Two and a half millennia of entrenching the idea of superiority from Greek philosophy to Christianity, furthermore, have made the dominant Western political body see itself as distinct from nature by virtue of its rationality. Rationality constitutes a difference in kind and in value (intrinsic versus instrumental) from the land. Despite a great deal of work in European-based philosophy designed to undermine these commitments, they nevertheless persist, not only in common opinion, but within professional academic circles as well [19]. The view that oneness with the land (a metaphysical and moral holism) is to be treated as a primary concept, moreover, has often been denounced for its support of fascism and totalitarianism [20].

Moreover, America's celestially grounded Manifest Destiny to subdue and expand into the North American continent (if not the world) proceeded to the destruction of the North American Indian as both an economic right and a moral duty. This, coupled with the Christian mission of converting the heathen, demonstrated that it was all but impossible for the American/European to recognise Aboriginal culture as a viable frame of reference for the legal system. Historical inertia, as embodied in legal and political tradition, then, further entrenches the antagonism toward Aboriginal metaphysics. North America's heroes are those who conquered and tamed a wild land, not those who found harmony with it. This rejection of Aboriginal claim and perspective demonstrates how wide the gap is between traditional Aboriginal leadership and government. It explains why the use of 'Aboriginal right' diverges so dramatically from expectation.

Epistemological and methodological commitments also play an important role in explaining why government has not moved very much to form a univocal meaning for the concept. The vision quest [21] which is governed by a spiritual understanding of how the land and animals communicate with human beings, is either ignored or at best treated as an idiosyncratic and entertaining peculiarity within our epistemological traditions. More often, however, such notions of knowledge are treated as laughable. Perhaps the best way to illustrate our attitudes on such matters is through a dramatic representation.

On a Canadian Broadcasting Corporation production, *North of Sixty*, a modern Dene community in the Canadian North is portrayed as struggling with its Aboriginal history and European-influenced aspirations. The community is served by both white and native Royal Canadian Mounted Police officers, a white band manager, and white shop-keeper. In one episode, the justice system allows the Dene to exercise their form of justice in dealing with a member who had committed a criminal offence. That system involved a sentencing circle, during which the perpetrator was required to sit in a room surrounded by silent members (elders) of the community. While this session was taking place, there was a transition to a

scene in which three of the white males, who were not allowed into the circle, met in the cafeteria. They began discussing what might be transpiring in the circle, which was taking the better part of the day. The RCMP officer in a half-joking, half-cynical manner remarked, 'They're not going to sentence him; they're going to heal him.' With that, all three broke into a giddy laughter which gave way to nervous laughter and ended in silence.

That scene captured more deeply why it is next to impossible to understand the Aboriginal frame of reference. On one plane, we find such justice-cum-healing unintelligible or perhaps a misunderstanding of what justice actually is. On another plane, we find it laughable, as if perpetrators can evade true justice in such a 'soft' system. On yet another, the nervous animosity associated with the laughter and which eventually yields to silence indicates a profound discomfort. A discomfort that engenders silence is produced, because we are unable intelligently to participate in the processes that we are encountering. Yet we feel that we ought to be able to participate and pass judgment. I stress the element of feeling, here, because, while lack of understanding has to do with conceptual difficulties, it has equally to do with emotional reactions.

Our inability to understand Aboriginal claim involves feelings of offence. Aboriginal approaches, as in the vision quest and in the sentencing circle, are by definition, personal and idiosyncratic [22]. We not only tend to think of these latter modes of knowledge as primitive and undeveloped, we also tend to carry an attitude of disdain toward them, as if their examination were unworthy of a dignified, self-respecting inquirer. Similarly, Aboriginal justice, as a healing-cum-reconciliation process, not only seems to allow for the breaking of law, but it tends to offend our moral sensibilities, because it appears that the perpetrator is 'getting away' with the crime. Resistance to Aboriginal claim has intimately to do with our own primitive moral and emotional reactions.

Walter Berns [23] argues that anger unites people and strengthens the bonds of justice that exist between them, when threatened by those who would do them injury. Anger [and perhaps fear], when tamed and educated through the forming of laws and procedures, grounds systems of justice (especially criminal). Concepts of justice, as they pertain to security, protection, freedom and self-esteem are supported and perhaps generated by fundamental passions. The insight on which I wish to focus here is this: unless a community experiences and shares an anger or passion as a response to injury or threat, it is next to impossible to understand how that community could become knit as a moral community united under law. Berns demonstrates that our laws, especially those surrounding matters of crime and fundamental justice (matters having to do with equality, freedom and dignity) are grounded in primitive passions that underlie our normative, and related, metaphysical/epistemological commitments. This is the level at which we personally and sometimes socially either include or exclude someone from the moral community.

Considering the influence of more traditional leadership, the metaphysical underpinnings of cultural and epistemological resistance, and the confusion over the use of 'right' by Aboriginals can be described as unavoidable. The dispute over definition may then be irresolvable. Taking historical and cultural contexts into account alone make the meaning of 'right' opaque. If we add the epistemological resistance to the mix, that opacity becomes more dense. With emotional factors, metaphysical and epistemological resistance becomes associated with feelings of offence. Assigning a meaning to 'Aboriginal right' is so difficult, in part, because of volitional factors, our unwillingness to overcome emotional predispositions.

II

The History and Use of Legal Language

What is striking, given the European dominance over the Aboriginal, is that there has been any advance in Aboriginal claims such that we could have arrived at the stage of conflict in negotiations at all. Indeed, we know in Canadian history, religious and philosophical underpinnings of Aboriginal culture were the targets of eradication. The banning of the sundance, potlatch, use of native language, and use of ceremonial (narcotic) substances are cases in point. We have a long history of explicitly and implicitly denying the grounding values of Aboriginal culture. More than sufficient emotional and institutional momentum, then, has existed in North America to prevent negotiations based on Aboriginal rights from being initiated at all. Nevertheless, negotiations have begun and have come a considerable distance. An important factor in advancing Aboriginal claim to the level of the courts and in avoiding complete deadlock has been the fact that Aboriginals and the government are beginning to use common terms of reference. These terms are those of traditional European political and legal systems; movement has been the result of native leaders becoming versed in the language of the courts.

The language of Aboriginal right, sovereignty, the inherent right to self-government, and of land claim, unlike the fuzzy texture of statements which assert a oneness and identity with the land, are familiar. Aboriginals have adopted the role of plaintiff and have put the matter of justice in terms of redress and failure to honour agreements (contracts or treaties). Having been placed in the role of defendant, the Canadian public and government now see themselves as having something to lose. To articulate claims in the language of the courts, therefore, is to pose a threat to property rights and political stability. Thus, by using the language of the courts, Aboriginal claims have become more effective.

Paradoxically, while Aboriginal's *use* of European-based moral and legal language has served to advance their claim, it has also produced the confusion previously described. Since we know that the term 'right' is foreign to the Aboriginal when Ovide Mercredi tells us that '"Inherent right" can mean whatever we want it to mean'[24], we immediately suspect him of committing some serious error in understanding the concept. Further, in Canada, the Aboriginal demand that the inherent right to self-government be recognised in the Constitution, without first being defined [25], amply indicates that the concept of right and its associated concepts, 'justice,' 'fairness,' 'title,' etc. imply different sets of consequences for Aboriginals than for other Canadians. Thus, even some of those who appear to have adopted the European model of justice and who are criticized by hereditary leaders seem to conflate and confuse traditional frames of reference with European ones.

Moreover, Winona Stevenson has told us that 'inherent' in 'inherent right' refers to something that comes from within as the source of self-government [26]. For Aboriginals, there seems to be an internal relation between 'right' and 'individual will.' There is no disconnection between knowing what one must do to govern properly and one's will. Putting aside the equivocation on the use of 'inherent right' [27], it is obvious that Aboriginals are claiming that a type of relationship between the individual and the governing power, unfamiliar to our political and legal expectations, needs to be recognised.

We are being asked to recognise the idea that to be governed is to be able to acknowledge the truth and trustworthiness of a decision. For the Aboriginal, that trustworthiness can be embodied in a leader, e.g., a chief, elder, or clan mother, where that leader is a decision-

maker recognised as expressing the will and spirit of each member of the community. The chief does not enforce rights so much as serve as the focus through which rights are to be exercised. According to Dumont, this means that 'self-interest was [is] inextricably intertwined with the tribal interest, that is, the general good and the individual good were [are to be] taken to be virtually identical.' [28]. If there is to be constraint or restraint practised in the community, an internal motivation is to be sought as the 'force' governing the action.

One may be tempted to argue that the apparent advance in negotiations has been nothing more than an exercise in futility. Native peoples' use of legal language has been naive and confused. Like the early Trudeau, many (e.g., the Reform Party) in Canada believe that Native peoples must accept compensation for the past and realise that reference to historical tradition is nothing but counter-productive and confused.

However, Aboriginal negotiators and representatives are far from legally and politically naive and are unlikely to be confused. Ovide Mercredi, among others (e.g., Mark Dockstater, Osgoode Law School, Ph.D candidate; Patricia A. Monture-Okanee, University of Ottawa, Faculty of Common Law; Mary Ellen Turpel, Dalhousie University), is trained in the legal profession. Technical legal expertise has come on the scene in force (e.g., Justice Thomas Berger's report, *Northern Frontier, Northern Homeland*; Bruce Clark's book, *Native Liberty, Crown Sovereignty* [29]. An increasing number of lobby groups working from within the legal system to support Aboriginal claim are also under way. Clark's book has likewise challenged the letter of the law on matters concerning treaties and the law concerning Aboriginal peoples. With all of this legal machinery continually forcing the message that Canada (and the United States) has acted unjustly, it is implausible to conclude that Aboriginal claim is naive and confused.

It is perhaps best to view the present situation as follows: with the legal machinery in place, an ironic situation has arisen. While the machinery is used to bring the issue of justice for Aboriginals before the legal system, it is at the same time denounced as inadequate to address Aboriginal claim. Evidence for this conclusion is Section 35 of the Constitution Act 1982. It specifically recognises Aboriginal rights. At the same time, these rights are being used to argue that the system in which they are recognised is inadequate to define them. Coming to use legal language, does not appear to be the result of confusion, but of a strategic move to use the legal system to overcome barriers to communication. The use of legal language is, for the most part, not substantive, in the sense that it indicates acceptance of terms on which negotiation is to proceed. A closer look at the historical context of Aboriginal claim further supports this 'strategy' interpretation.

The history of injustice involves the destruction of traditional forms of government, the relocating of entire communities and the banning of traditional religious practices essential to the culture by Canadian and American authorities. Aboriginal claim is connected to the loss of a way of life, an environment (more precisely, a sense of place) and an identity as individuals and as communities. Lloyd Barber (former federal land claims negotiator) has sugested that justice requires *empowering* natives to live in a manner similar to the time before Europeans came to North America [30]. Clearly, Barber recognises that the loss has been a way of life. Berger's report to the Canadian government is filled with warnings that Canada must be aware of the fact that development of the North will mean the destruction not only of tangible items such as wildlife and clean water, but of intangible items such as a way of life and cultural values that are tied to the land. He goes as far as to cite Chief Justice John Marshall of U.S. Supreme court (1823) to make his point: European arrogance and

imposition of 'civilisation' and 'religion' have been a major force in disenfranchising Aboriginal peoples from just dealings [31]. Hence, an explicit recognition of unjust treatment defined as disenfranchisement from a way of life has existed within official circles for many years.

Particularly helpful in the recognition of the order of injustice is a statement by Marlene Castelano of Trent University: 'it [the inherent right to self-government] is the re-creating of trust relationships that we once had.' This trust, as the Royal Proclamation of 1763 [32] implies, is between nations, sovereign nations, whose autonomy is to be respected and protected under law. King George III's Proclamation was intended to protect Aboriginal peoples from undue exploitation by ensuring that fair settlements over land claims and ceding of land west of the Appalachians (all land west of the Atlantic watershed) could be done only through representatives of the Crown. History is all too clear on the fact that few European settlements since the Proclamation were actually established through legitimate channels. What has been lost through unjust treatment, then, is a matter of both cultural and inter-cultural integrity. Castelano's statement is critical, because it expresses a truth that has been largely ignored in debates over Aboriginal rights. For the most part, negotiations have to do with rights to territories, self-government, resource rights and the like. These rights tend to separate and isolate Aboriginal and European communities in such a way as to cause negotiations to take the form of dividing jurisdictions, powers, and resources. But buried within these disputes is the more fundamental issue of inter-cultural well-being and the lack of respect that has been paid to agreements that have been designed to protect the integrity of the web of cultures.

While Barber's formulation is programmatically helpful in aiding us to see how comprehensive in scope the injustice to Aboriginal peoples has been, Castelano's formulation is more substantive, since it targets the relationship between Aboriginal and European civilizations. At the time of the Proclamation, this relationship was clearly formulated as one between sovereign nations. The sense of injustice and what has been lost, consequently, can be articulated in terms of the relation between the two parties, and does not rely entirely on our having to understand the Aboriginal perspective. The order of injustice has to do with fiduciary relationships that mutually protected the well-being of diverse societies, relationships built on honour and law. Historically, Aboriginal claim has had principally to do with sovereignty and autonomy (self-determination) within the relationship between Aboriginal and European nations.

To what did this relationship amount? If we note that the meaning of 'treaty' has to do with agreements in order to maintain peace, a peace which both sides are to enjoy, at the very least, the relationship between Aboriginal and government involved a degree of mutual respect. At the time of the Proclamation of 1763, both parties agreed to peaceful co-existence and the rule of law. Without the agreement neither side could have had its way of life guaranteed, since a perpetual threat of war would have prevailed. According to Berger [33], the Proclamation was formed after the seven year war with the French to ensure that the Iroquois would not side with the French. Both the British and the French vied for alliances with the Iroquois, Micmacs and the Huron as they waged battle with each other. Even if only for reasons of expediency, the relationship between Aboriginal groups and Europeans has been understood to be one of mutual respect for sovereign peoples. Treaties, like the Proclamation, in principle, respect the conditions of honour and dignity of the signatories. They are not mere contracts, moreover, but agreements based on the mutual recognition of the power each signatory possesses.

Since from the time of Trudeau's pronouncement governments have not denied the fact that treaties and agreements have been broken, there is no issue to be sorted out. The issue now is to determine the significance of having been the victims of broken agreements. The significance cannot be determined solely by the law, for in fact the legitimacy of some of the treaties and laws has been rejected (evidence to follow in the next section). What we must focus on, if we are to take Aboriginal rights as distinctive, is what it signifies for Aboriginals to have been denied autonomy, the sort of self-rule compatible with a web of cultures. Having virtually dismissed sovereignty agreements, our governments have allowed the destruction of a people, their corresponding sense of freedom and self-esteem. If we focus less on what has happened to Aboriginal peoples and more on what we have done, a more readily intelligible context for understanding the implications for just dealings can be established.

Even if we claim not to understand the grounding values and passions of the Aboriginal peoples, we cannot fail to understand what disenfranchising a signatory, a community, and a nation means for us as moral agents. These are acts of commission, not merely omission. We cannot explain away our actions as oversights or the results of unavoidable confusion over the meaning of Aboriginal claim. Once we adopt this point of view as perpetrators of injustice, we can clearly understand the nature of the injustice under question. It includes arbitrarily, deliberately and maliciously excluding Aboriginal peoples from the moral community to which they originally belonged.

It is impossible to claim that the perpetrators of injustice did not know that they were excluding Aboriginal peoples from the moral community. More empirical evidence for this claim will be examined in the following section. For the moment, it is sufficient to note that the significance of 'Aboriginal right' is determined by their disenfranchisement. In the final analysis, it is used to repudiate the system of justice that has engineered their exclusion from the moral community. This right is not something yet to be established, but to be recognised. Thus, definitional difficulties are to some extent irrelevant, when determining significance. 'Aboriginal right' operates more to announce a claim rather than form the substance of that claim. Such being the case, the move to use rights language is best seen as a strategic move to communicate in an effective manner. I submit that the underlying motivation for the move is the recognition that governments have indeed had the capacity to understand their claim, but have chosen not to understand.

III

Rights as Conciliatory

I turn now to the question, 'What kind of move is the move to use "Aboriginal" right?' If the move is conciliatory, it must be shown that Aboriginal peoples lose something by adopting the language. What they lose is the likelihood of negotiating on a level playing field and of having their claims adequately represented. The history of injustice can once again serve as a springboard. I begin with a sketch of some of the main conditions of cultural autonomy that have been denied Aboriginal peoples, in order to provide the background against which the move can be understood.

The land is the place in which an identity is born and nurtured. To have a spiritual connection to the land is at minimum to have an identity relation with the land, where

identity is formulated in holistic terms. That is, identity implies that the Aboriginal person takes him or herself to be an aspect of the land such that what the person is depends on what the land is. In this way, Aboriginal persons would be incapable of adopting a system of government and law that separates their identity as individuals from that of the land as a living being.

Chief Seattle (or Sealth of the Duwamish tribe) is said to have expressed incredulity over the idea that the land could be owned; exploiting the land, to him, would be like exploiting ourselves (plural intended). Whether Sealth actually made this statement is not critical here. The statement serves to capture what many other Aboriginal peoples have said about their relation to the land and what their stories and myths are meant to teach [34]. What we are to note when encountering the Aboriginal wisdom, myths, stories, and religion, is this: to be an Ojibwa, a Cree, or Iroquois (Haudenosaunee) is to be an integral part of a particular land, a relationship which is formed by an intricate web of mutually dependent members. It is to understand community in a wide and pluralistic sense. It is to understand that one's dignity is tied to the generosity, courage, and respect with which one treats and interacts with other members of the community [35]. The loss of a land base is different for Aboriginals than for Europeans. Nevertheless, it is tied to their sense of autonomy (self-determination). In being denied the right to the land on which they and their ancestors lived and thrived, the right to exercise their values and to fulfil their aspirations as persons and communities have also been denied.

In relation to this denial, George Erasmus has said, 'What we want is self-reliance, self-control, internal growth (autonomy). We want to start a process of healing.' [36] Despite seeming an odd way to formulate a claim, Erasmus makes it clear that part of being disenfranchised has been to have the conditions necessary for personhood and community identity (basic constituents of the autonomous being) denied or eradicated. Depriving Aboriginals of a land base by moving them to reservations destroys the integrated network of relationships that form the basis of autonomy. The form of deprivation taken, therefore, was an injustice of the most fundamental order conceivable.

It is not beyond the capacity of the political and legal system to recognise these conditions of autonomy, as Trudeau once thought. Notions of oneness with the land and healing, granted, may be fuzzy and foreign. But the frame of reference to which they belong is not all that fuzzy and foreign. The idea of justice as righting balances and restoring harmony in a community is to be found in Plato. His theory of justice in Book IV of the *Republic* [37] takes justice to be what makes the three essential qualities of a city (moderation, courage and wisdom) first appear and then to remain in the city. Justice, here, is an ordering principle, harmonising the three virtues as the city becomes vibrant and strong, characteristics closely aligned with health. Moreover, as it is not itself clearly formulable, justice is something that brings about the other virtues and the consequent harmony in the city, much like justice as a process does in Aboriginal tradition.

This remark on Plato is meant to demonstrate that there has been little reason to be so dismissive even of the more opaque elements of Aboriginal perspective. My earlier remark on our having willed not to understand, as much as we have found that we cannot understand the Aboriginal perspective, can now be modified. Our lack of will has been a larger factor than our lack of cognitive devices in failing to recognise Aboriginal perspective. Promising routes to the disclosure of the conditions of Aboriginal autonomy have wilfully remained unexamined both politically and legally. Destruction of persons and communities cannot, therefore, be explained as an unforeseeable consequence of denying a land base.

Although not unforeseeable, it might be argued that it is beyond the responsibility of governing powers to understand the implications of their actions, when those implications are determined by a foreign frame of reference. However, when addressing the concerns of members of the moral community, such argument is inadmissible. In a landmark decision by the Supreme Court of Canada, 1988, Justice Bertha Wilson explained why the abortion law established in 1969 had to be abolished. She cites Neil MacCormick [38]: one's self-respect as a human being and the contentment that resides in the ability to pursue one's own conception of a full and rewarding life is foundational in a free and democratic society. The ability to make autonomous decisions is vital to this pursuit. Thus, Wilson argues, in order to re-instate respect for the dignity and self-esteem of women, the paternalistic abortion laws which take the decision making power away from individual women must be seen as unconstitutional.

The treatment of Aboriginal peoples has violated the same fundamental values. The phrase, 'one's conception of a full and rewarding life,' implies that the courts can and do recognise that embracing a plurality of terms of reference when determining what constitutes dignity and self-esteem is critical in a truly democratic society. The Wilson decision called those who were alien to the experience of womanhood to recognise the principle that, notwithstanding the inability to appreciate a woman's experience and situation, the male members of society are to accept women's conditions of autonomy, dignity and self-esteem. It is incumbent on those in positions of power in a liberal society to recognise distinctive situations, despite the fact that such recognition conflicts with basic moral sensibilities, such as those pertaining to the status of the fetus. The Supreme Court decision implies that, when the claimant's injury involves matters of dignity and self-esteem, his or her injury must be addressed in accordance with those terms of reference, even though the decision-makers may lack an understanding of the terms. When we can demonstrate that dignity and self-esteem have been lost or denied as the result of some system or practice of the dominant society, it is incumbent on that society to recognise the need to change its systems and practices in order to establish suitable conditions.

If there has, in principle, been room in the liberal European tradition for acknowledging some elements of Aboriginal perspective and culture, and more poignantly, for making pursuit of understanding the conditions of Aboriginal autonomy a responsibility, then Aboriginal peoples would be justified in expecting the political and legal systems to have protected those conditions of autonomy. They would be justified in standing firm on the claim that it is incumbent on the government to acknowledge the Aboriginal terms of reference. If so, then the government would also be responsible for facilitating the development of a mutually satisfying framework of justice before negotiation could proceed.

Indeed, at points early in the developing relationship between the European and Aboriginal nations, a mutually recognised sense of justice governed the relationship. Despite their differing elements, the two approaches to justice shared fundamental values and principles, as reflected in the Proclamation. What the following describes, therefore, is a belligerent denial of this common ground and a once recognised responsibility. (It also serves as evidence for the view that disenfranchisement was the product of deliberate acts of exclusion.)

As an elder of the Nishnawbe-Aski [39] has described, many treaties were enacted by a mere show of hands or 'X's' on pieces of paper. But, those treaties meant fundamentally different things to the Crown and to the Cree/Ojibwa of Hudson Bay, for example. The

representatives of the Crown are said to have announced that the Queen wanted all of them (the Cree and the Ojibwa) to be her children. She did not want their islands, their fish and water; she wanted only ten inches of top soil. For the Cree and Ojibwa, whose tradition found ownership a foreign idea, it could not be foreseen that the Queen meant that they would be ceding the land to her. Indeed, if Dumont's account of the Aboriginal world view is correct, sharing [40] is an essential value whose manifestations in attitudes and principles of social conduct excludes any notion of property. Hence, treaty 'signing' was advantageous to the government in the sense that the playing field on which negotiations were to be played out was that which the government had designed. Imposing European-based legal procedure onto negotiations and treaty signings was itself a denial of the common ground that existed between the nations. Such imposition was an act of substituting the legal process recognised by only one party for a process that should have been mutually constructed.

Treaty signing was, as a result, in many instances, a misrepresentation of Aboriginal claim, because Aboriginal signatories would not have agreed to sign had they understood the consequences of signing. From the point of view of the government such treaties were in effect expressions of a dismissive attitude toward Aboriginal procedures for reaching agreement, since little concern for representing their perspective was shown. Legal procedure was devised as a means for gaining an advantage over the Aboriginal, not for achieving just relations.

Outright contempt for Aboriginal peoples has been demonstrated throughout the history of European occupation of North America. The intention of the Canadian government has been to use whatever means was necessary to acquire lands from Aboriginal peoples. The following instructions to the Lieutenant-governor of Northwest Territories after the cession of Rupert's land are particularly noteworthy: "Turn attention promptly toward North and West assuring Indians of your desire to establish friendly relations with them, you will ascertain and report to His Excellency the course you may think most advisable to pursue, whether by treaty or otherwise, for the removal of any obstructions that might be presented to the flow of population into the fertile lands that lie between Manitoba and the Rocky Mountains" [41]. Two observations can be made. First, a common ground in a sense of justice must have prevailed at the time for the government to have anticipated using legal devices to gain possession of the Prairies. Second, the legal machinery was not employed to develop just relations but to exploit the common ground.

Similar contempt and condescension is illustrated in the Indian Act, which allows the government to assume all responsibility for handling Indian moneys and deprives Aboriginal communities of the responsibility for decision-making. Taking decision-making responsibility away from Aboriginal peoples is tantamount to depriving the Aboriginal person of the context in which self-esteem and dignity gain support. Both policy and legislation demonstrate a contempt that led to the exclusion of Aboriginal peoples from the protection and responsibilities of the moral community. What were virtual genocide programmes followed. Taking native children from their parents and community to educate them in the ways of a Christian world was in effect an officially sanctioned way of eliminating a culture, a people. Dislocation and forced 'Catholic' residential schooling were the government's ways of responding to its fear that native children, if allowed to return to their communities, would slip back into savagery.

More devious routes were taken to exercise complete disregard: these took the form of assimilation programmes. Assimilation programmes would appear initially to be a step toward accepting Aboriginals as members of the community. This, however, turned out not

to be the case. A prime example is the assimilation programme of Alberta. It was deemed that the Indian would have to become civilized and not be allowed to continue in his way of hunting and nomadic life. He would have to be trained as a farmer. In Alberta, ironically, many natives proved to be extremely good farmers. Settlers lobbied, as a result, to have 'Indians'' productivity proclaimed unfair. Indians were to be put onto reserves. The then (1888) Deputy Minister of Indian Affairs Haiter Reid, proclaimed that the Indian would have to evolve from hunter to peasant and only then to modern man. He would have to work only with hand tools, not machinery. It became illegal for natives to borrow for machinery, to kill their own livestock, or to sell their products of labour [42]. Disaster and starvation ensued. Rather than perceiving this outcome as a tragedy, it was seen as proof that the Indians would never learn. A later rendition of this contempt is cited by George Erasmus [43]. In a House of Commons speech by Deputy Superintendent of Indian Affairs, Duncan Campbell Scott, the House was told that 'Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and there is no Indian Department.' This, together with the residential school policy, demonstrates a clear disregard for the moral status of Aboriginals. It, by definition, ignores this status by the fact that assimilation programmes are designed to 'civilize' the amoral savage.

The only way to interpret the actions of Canada and the United States is that they are blatant denials of justice. The sanctioned deceitfulness of the early Indian treaties and policies, the paternalism of the Indian Act, and the utter denial of the conditions of autonomy in the assimilation programmes signify far more than contempt for persons and communities. One can be contemptuous of persons without violating their autonomy and privacy. One can simply leave them alone. The significance of contempt, in the case of the Canadian government, is that it created an atmosphere in which a blindness to justice was developed and formalized into law. The government's use of law has been either to eliminate Aboriginal people as Aboriginals, or to eliminate them, period.

What have the law and legal language been to the Aboriginal people, then? They have been the instruments of disenfranchisement. They have been the tools with which governments have eradicated the conditions of autonomy. In the light of the history of unjust use of the law, adopting the language of rights is best interpreted as a conciliatory move. The move is conciliatory, because it gives the same advantage to the dominant society as was once forcibly and arbitrarily taken by that society. It runs the risk of having the legal machinery that once was used to deny justice, to do so once again. Moreover, rights language does not immediately call for an examination of the morally outrageous violations against the community and culture. Rather, it calls for an examination of the infractions against law (i.e., against the formal legal institutions, the treaties). If the government so chooses, it could frustrate negotiations over the legal interpretations of the treaties (as is being done in numerous cases) without acknowledging the more profound violations. Even if it were to acknowledge the more profound violations, ones that place the legal institutions themselves in the dock, the government still retains the advantage, since such matters have slowly to wind their way to the Supreme Court, which can refuse to hear the claim. Further, adopting the legal language and its concomitant procedures predisposes negotiators to adopt European legal and ethical sensibilities, which make it more difficult to formulate the Aboriginal claim in appropriate terms. By adopting the language of rights, it is unlikely that the full extent of the violation will be recognized or acted upon in the legal and political system.

But most importantly, Aboriginal peoples have come to use a system of concepts and principles that have been instrumental in the destruction of their culture and identity. As a strategic move to communicate, coming to use the language of the courts must be understood to be an act of choosing to bear, without recognition, the humiliation and despair that come from being denied moral status. Being conciliatory, in this respect, does not so much signify an attitude of compromise but of magnanimity.

Conclusion

In contexts where conciliation by the disadvantaged group has led to systematic misunderstanding of that group, a special dispensation of justice needs to be considered. We should acknowledge that apart from the conciliatory move, Aboriginal claim would probably still have not gained any purchase on the dominant community's sensibilities. We should not ignore the conciliatory nature of present Aboriginal claim, for, if we understand why it is conciliatory and how the conciliation developed, we cannot fail to recognise the extent of the injustice that demands righting.

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NOTES

[1] Minister of Supply and Services Canada (1993) *Indian Act*, R. S., 1985, c. 1–5, amended by R.S., 1985, C. 32 (1st Supp.) R.S., 1985, c. 17, 43, 48 (4th Supp.), Sept. 1989, Sect 2 (1) (c). A band council will be that declared by the Governor in Council for purposes of the Act.

The band council is a regional governing body constituted by band members. It, however, is not a traditional form of government, but one imposed by the Canadian government.

[2] JOHN GIOKAS (1992) How Can The Canadian Justice System Be Adapted To Accommodate The Concerns of Aboriginal Peoples?, in The Royal Commission on Aboriginal Peoples, *National Roundtable on Justice Issues*, November 25–27, 1992, Vol. 1, Tab 4, p. 2.

[3] KEITH CONN is the Co-ordinator of Environmental Issues for the Assembly of First Nations. In 1992, at a meeting of the Canadian Society for the Study of Practical Ethics, he informed me of this matter. Others corroborate this view of language. PATRICIA A. MONTURE-OKANEE (1992) Reclaiming Justice: Aboriginal Women and Justice Initiatives in the 1990's, in the Royal Commission on Aboriginal Peoples, *National Roundtable on Justice Issues*, November 25–27, 1992, Vol. 1, Tab 2, p. 36.

[4] Ibid., MONTURE-OKANEE, p. 36 and in footnote 47. She cites Professor LEROY LITTLEBEAR (Blackfoot tribe) of the Native American Studies Department, University of Lethbridge: 'Justice is not a concept but a process.' The import of the remark seems to be that formal conceptualisation is the wrong approach to understanding Aboriginal traditions and practices. Monture-Okanee also cites Ojibwa elders who have instructed her on the lack of words in the language for 'justice'.

[5] Although considerable controversy exists over whether Chief Seattle actually said this, it has been attributed to him in popular representations of the Aboriginal peoples. But it is not simply sympathetic Romanticism that casts the Aboriginal in this light. The idea of not being able to own the land is a complex one that has to do with notions of stewardship and having one's identity tied up with the land (see ANNIE BOOTH and HARVEY JACOBS (1990) Ties That Bind: Native American Beliefs as a Foundation for Environmental Consciousness, *Environmental Ethics* 12, pp. 27–43.

Perhaps most poignant for those governed by European tradition are the pronouncements of Justice Berger in his report to the Canadian Government concerning Native peoples and the development of the Canadian North. THOMAS R. BERGER (1988) *Northern Frontier Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry* (Toronto and Vancouver, Douglas and McIntyre, revised edition, copyrighted 1977). Pages 137–40 cite

a variety of Native expressions on how the land and the Aboriginal person (here, Dene and Inuit) are one and the same, identified, or inextricably connected.

[6] The Canadian National Film Board's production, 'The People, The Land,' quotes an elder of the tribe as saying that the relation between the people and the land is intimate and not extractive. 'Development' as defined by the 'Southerners' is equivalent to destruction in the eyes of the Aboriginal, who understands that it has taken many centuries for nature to 'develop' the forests, lakes, and rivers that support their life. The people are therefore inseparable from the land, for they come from the land.

[7] GEORGINA TOBAC of Fort Good Hope, quoted in Berger, op. cit. p. 137 [file number C1952]. The full statement is: 'Every time the white people come to the North or come to our land and start tearing up the land, I feel as if they are cutting our own flesh because that is the way we feel about our land. It is our flesh.'

[8] The early Roman Catholic Missionaries are examples of those who held this attitude. The primitive and heathen ideas of Native peoples had to be eradicated through dispossessing children of their heritage, a process carried out by the church's residential schools.

[9] PIERRE E. TRUDEAU (1992) Remarks on Aboriginal and Treaty Rights in WESLEY CRAGG (ed.) *Contemporary Moral Issues (Third Ed.)* (Toronto, McGraw-Hill, Ryerson Inc.) pp. 267–8.

[10] The key publication here is Thomas Berger, op. cit.

[11] Minister of Supply and Services Canada (1990) *Constitution Act* 1982, Part II, sect. 35(1). The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognised and affirmed.

[12] The Canadian Broadcasting Corporation (1992) Legacy: Land Power and the First Nations, presented on *The Journal.* This and the following references are taken from this production.

[13] The Royal Commission on Aboriginal Peoples, Vol. 1, Tabs 1–4.

[14] Ibid., Tab 1, pp. 1–53.

[15] Ibid., p. 32.

[16] Discussion on this matter with NORMAN JACOBS and his wife CAROL revealed important distinctions between the hereditary leadership and the federally officially sanctioned leadership. The hereditary system is often not represented in official proceedings. I have chosen to try to include the hereditary voice in my discussion.

[17] JAMES DUMONT (1992) Aboriginal people and justice, in The Royal Commission on Aboriginal Peoples, *National Roundtable on Justice Issues*, Nov. 25–27, Vol. 1, Tab. 1.

[18] I develop this idea more at length in, BRUCE MORITO (1993) Holism, interest-identity and value, *The Journal of Value Inquiry*, 27:49–62.

[19] One need only cite liberal proponents of pro-choice in the abortion debate to witness the extent to which rationality is used as a criterion for determining superiority or privilege. See for example, MARY ANNE WARREN (1983) The moral and legal status of abortion, in JOHN THOMAS (ed.) *Medical Ethics and Human Life* (Toronto, Samuel Stevens), pp. 100–1; and MICHAEL TOOLEY Abortion and infanticide, in R. ABELSON and M-L FRIQUEGNON (Eds.) (1982) *Ethics for Modern Life* (second editn) (New York, St Martin's Press), p. 96; and WILLIAM FRANKENA (1962) The concept of social justice, in BRANDT (Ed.) *Social Justice* (Englewood Cliffs, N. J., Prentice-Hall), p. 19.

[20] See, for example, TOM REGAN (1993) Ethical thinking and theory, in SUSAN J. ARMSTRONG and RICHARD G. BOTZLER (Eds.) *Environmental Ethics: Divergence and Convergence* (New York, McGraw-Hill;, pp. 321–329, see especially, 327; and DON E. MARIETTA Jr. (1992) Environmental holism and individuals, in the same as above, pp. 405–410.

[21] This epistemically important process is one in which the individual undergoes stress (e.g., sweat lodge, dreams, hallucination-like experiences) to achieve his vision and personal fulfilment.

[22] See DENNIS H. MCPHERSON and J. DOUGLAS RABB (1993) *Indian from the Inside*, Chapter Three, Phenomenology of the vision quest, Lakehead University, Centre for Northern Studies. Occasional Paper 14, pp. 59–82.

[23] WALTER BERNS (1992) Defending the death penalty in Wesley Cragg op. cit., p. 437.

[24] This now famous statement was made during the 1992 Constitutional hearings with the then Minister of Constitutional Affairs, Joe Clark.

[25] The fact that 'Aboriginal right' or 'inherent right to self-government' would not be defined prior to its entrenchment in the Constitution was part of a package of proposals that the Canadian people were asked to vote on in a referendum. The package was called the 'Charlottetown Accord.'

[26] WINONA STEVENSON as cited on the Canadian Broadcasting Corporation documentary, 'Legacy.'

[27] Stevenson is playing on an ambiguity as far as I can tell. On the one hand, 'inherent right' is used in the context of association with Canada. Her definition, on the other hand, has only to do with what it means for an Aboriginal person to govern him or herself.

[28] Dumont, p. 2.
[29] BRUCE CLARK (1990) *Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada* (Montreal & Kingston, McGill-Queens University Press).
[30] LLOYD BARBER (1992) cited on the Canadian Broadcasting Corporation production, 'Legacy'.
[31] BERGER, p. 128.
[32] KING GEORGE II, (October 7, 1763) *The Royal Proclamation*, RSC 1970, app. no. 1 at 125 and 127 as cited in Bruce Clark op. cit., p. 75.
[33] Berger, p. 217.
[34] In his careful albeit highly specific examination of Aboriginal world views, J. BAIRD CALLICOTT, in THOMAS W. OVERHOLT AND J. BAIRD CALLICOT with Ojibwa Texts by WILLIAM JONES (1982) *Clothed in Fur and Other Tales* (New York, University Press of America), p.153, shows how the stories and myths of the Ojibwa people were used to educate people of all ages in accordance with the view that the Ojibwa belonged to a wider community of smaller communities (species). The idea that a human being could transform into a beaver or coyote, was meant to convey the notion that humanity was constituted of persons with a sense of dignity and place no less than any other creatures. Hence, a sense of respect for all creatures together with a sense that the place in which one was nurtured was critical in developing the identity of an Ojibwa.
[35] See Dumont op. cit., 23. This message is partially reflected in Aldo Leopold's attempt to develop what has become known as the 'Land Ethic.' ALDO LEOPOLD (1949) *A Sand County Almanac* (Oxford, Oxford University Press) pp. 202–204. I mention this here to indicate that such views need not be so foreign to us that we are justified in claiming that the views expressed by Aboriginal peoples are so alien that they are unintelligible to the European-based liberal. My taking the trouble to mention this has to do with several encounters with those deeply entrenched in European liberal tradition who simply refuse to acknowledge the intelligibility of Aboriginal philosophy.
[36] GEORGE ERASMUS (1989) Twenty years of disappointed hopes, in BOYCE RICHARDSON (Ed.) *Drumbeat: Anger and Renewal in Indian Country*, (Toronto, Summerhill Press), p. 5).
[37] G. M. A. GRUBE (Trans.) (1974) *Plato's Republic* (Indianapolis, Hackett Publishing Co.) [433b-c].
[38] NEIL MACCORMICK (1982) *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford, Clarendon Press), pp. 39 & 41.
[39] The National Film Board of Canada, 'The People, The Land.'
[40] Dumont op. cit., p. 23.
[41] Canada, Sessional Papers, 1871, No. 20 p. 8.
[42] *The Indian Act*, although at present is being eliminated as law, retains this condition in Sect. 32 (1).
[43] Erasmus op. cit., p. 11.