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## Seeing Differences Differently: Peter Best and Morally Relevant Differences<sup>1</sup>

Sandra Tomsons

**Bio:** Sandra Tomsons, Ph.D., Research Affiliate, Centre for Health Care Ethics, Lakehead University and Co-Editor of the *Canadian Journal of Practical Philosophy*. My research focus is ethical/just relationships. Currently, I am studying three unethical relationships: 1) Canada's colonial relationships with Indigenous Peoples; 2) European nations' past/present colonial relationships, and 3) Western societies' unethical/ unjust and unhealthy relationships with Earth, locally and wholistically. I study these relationships in terms of two *desiderata*: i) what ethical/just relationships look like and ii) how unethical/unjust relationships could become ethical.

**Abstract :** Recently, I benefited from reflecting on Best's arguments in *There is no Difference*. Accepting his argument chain to establish that there is no difference between individual Indigenous persons<sup>2</sup> and European persons, we agree that Indigenous persons and Europeans have the *same* humanity, moral worth and individual moral human rights. Hence, we agree that Indigenous persons in *Canada* should legally have equal human rights.<sup>3</sup> The moral difference Best sees, and I no longer see, is between Indigenous nations and European nations. For Best, differences between nations can make one nation superior to another. Challenging Best's superior-inferior-nation hierarchy, I argue that liberal theory assigns normative status to a difference between *Canada* and Indigenous Nations which justifies Best's normative judgment, "The nation-to-nation treaty relationship is a fiction." However, I show that the *nation* in the nation-to-nation relationship is *Canada*.

**Keywords:** Aboriginal rights, Peter Best, Colonial-Perceptual-Reality Cave, Tom Flanagan, Will Kymlicka, Lorraine Mayer, nation-to-nation treaty relationship, Plato, Dale Turner, Francis Widdowson, James (Sa'ke'j) Youngblood Henderson

My objectives in the following are to show that:

1. Peter Best's arguments to prove that Indigenous nations are not nations are invalid and hence unsound.
2. The starting point of Best's argument to justify his proposal for a just resolution to 'Canada's Aboriginal problem', that is, "Canada is a nation," is false.
3. I see moral differences on Turtle Island Best cannot see because of my ongoing dialogue with Indigenous scholars. They helped me discover colonial-perceptual-reality and the Colonial-perceptual-reality-Cave. Best and I were both born into this Cave. With their

assistance, I now think about normative reality on Turtle Island, not the artificial constructs (shadows on The Cave wall) about which Best is thinking.

## Introduction

I write this compelled by my hardwiring, by my conscience, by my wish not to die with the ‘awful knowledge’ ... that I didn’t speak up as a call to ordinary Canadians (including Indian Canadians) to overcome their natural fears and speak up on this crucial issue and--as much or more for the best interests of Indian Canadians--to start demanding that this occur.

Peter Best<sup>4</sup>

Peter Best’s words could be mine. We are equally passionate about what he calls Indians’ “intractable problems” or “the troubled situation of our Indigenous peoples.” I call this reality the “systemic injustice of colonialism” or “ongoing violation of Indigenous Peoples’ rights to sovereignty and land” (Tomsons, 2013.2, 2019). Our passion and focus on justice notwithstanding, we see Canada and First Nations differently. When I began writing this paper, I intended to challenge Best’s claim that the nation-to-nation treaty relationship is a fiction. My presentations and publications prior to reading Best argued that Canada has a duty to establish the just nation-to-nation treaty relationship as requested by Indigenous politicians and scholars and recommended by The Report of the Royal Commission on Aboriginal Peoples (RCAP). However, in writing this paper, I discovered that I agree with Best. The treaty relationship is a nation-to-*nation* relationship. I thank Best for helping me discover that, for many years, my argument chains have been that there is a non-nation in the nation-to-nation treaty relationship.

I have established the following conclusions:

1. Canada's exercise of sovereignty, hence underlying title, is unjust since it cannot possess these rights legally/morally (Mayer & Tomsons, 2013; Tomsons, 2013.2 & 2019).
2. Because Indigenous Peoples never transferred their inherent (*sui generis*) legal/moral rights to sovereignty, only Indigenous Peoples have legal/moral rights to sovereignty on Turtle Island (Mayer & Tomsons, 2013; Tomsons, 2013.2).
3. Therefore, Canada is an illegitimate *nation* on Turtle Island.
4. Therefore, Canada is fundamentally unjust.

If I am challenging *Canada's* sovereignty and legitimacy, am I not contesting its nationhood, and, hence, the nation-to-nation relationship? If Indigenous Peoples are the only sovereigns on Turtle Island, because they haven't transferred their sovereignty to any European nation or *Canada*, there is a *nation* in what I have presumed is a nation-to-nation relationship. According to liberal theory's origin-of-nation story and justice principles, what we call Canada is really *Canada*. Unless/until Indigenous nations make *Canada* legitimate, the treaty relationship Indigenous and non-Indigenous politicians and scholars talk about is not between nations. Until Indigenous Peoples confer legitimacy upon *Canada*, its exercise of sovereignty is the exercise of brute force and unjust rule.

In what follows, I explain the normative differences underlying the radically different ways in which Best and I see *Canada* and Indigenous nations. I begin by establishing our shared starting points in liberal theory's principle of equality of humans and the belief that all human beings have the same human rights. I show that we part company when Best applies the Eurocentric inferior-superior dichotomy to aggregates of persons, thereby creating an inferior-superior-nation

hierarchy.<sup>5</sup> Using the naturalistic fallacy, I show that individual arguments in his argument chain are invalid, in which case the chain is unsound.

In the last section of the paper, I use Lorraine Mayer's notion of perceptual reality and Plato's analogy of the Cave to explain why Best and his experts, like most non-Indigenous scholars, keep providing unjust solutions to what they call "Canada's Aboriginal problem." I show why they cannot see and will resist seeing Turtle Island and *Canada*. *Canada's* legitimacy is the automatic starting point for legal/political discourse about justice and reconciliation, although it is presumed rather than stated. I also show that, unless *Canada* becomes our starting point in this discourse, we engage normative-shadow-based thinking which endlessly creates new costumes for colonialism.

Confident that Peter Best and most scholars seeking solutions to colonialism on Turtle Island want justice to prevail, I hope that exposing the source and content of much of our misunderstanding of normative reality on Turtle Island will convince them to switch from passionately persuading Indigenous persons to assimilate to passionately persuading *Canada* to negotiate with Indigenous Peoples from sea-to-sea-to-sea to create Canada. This will transform our fictional treaty relationship into a just nation-to-nation treaty relationship and all people on Turtle Island can be trained to respect the reformulated sovereignty and land rights of Peoples living on Turtle Island.

### **Inferior-Superior Hierarchies**

Best and I base our questions and argue for our recommendations in the context of liberal theory's notions of justice. Justice being our goal, justice principles, specifically notions of rights

(individual and collective), provide normative support for the justice problems we see and our solutions. Best primarily uses equality and proposes establishing an equal human rights regime in *Canada*. This would replace *Canada*'s failed implementation of Section 35 Aboriginal Peoples inherent and treaty rights. Agreeing with Best that *Canada*'s present nation-to-nation treaty approach is failing and unjust, and that *Canada* doesn't understand recognizing Aboriginal rights, I reject his solution. Assimilation for Indians, Best's equal Canadians justice solution, creates only more injustice for everyone. Basing my justice proposal on Indigenous Peoples' collective human rights and proving *Canada*'s collective human rights are very unlike the rights it exercises, I propose non-Indigenous people ask Indigenous nations whether we can transform our nation-to-nation treaty relationship into a just nation-to-nation treaty relationship.

I accept the uncontroversial normative premises Best used to establish that Indians are equal to other Canadians:

1. All human beings are equal.
2. There is no moral difference between Indians and non-Indians.
3. Neither Indians nor non-Indians have more or superior human rights.

I also agree with his conclusion, following logically from these premises, namely, that "All Canadians have the same human rights."<sup>6</sup> Agreeing that there is no hierarchy of persons (micro level), we disagree about there being a hierarchy of nations (macro level). Best argues for an inferior-superior hierarchy of nations. However, I show that he provides no justification for claiming that this hierarchy exists.

As I explain in the next section, Best rejects the notion and existence of Indian Nations because he accepts illicit arguments by political scientists (Tom Flanagan, Frances Widdowson), a Supreme Court judge (USA Chief Justice John Marshall)<sup>7</sup>, and an historian (Peter Heather).<sup>8</sup> Best's experts' arguments are infected by the naturalistic fallacy, thereby making every link in his argument chain invalid and hence unsound.

### **The Inferior-Superior Nations Hierarchy**

To justify his claim that First Nations are inferior and European nations and *Canada* are superior, Best quotes social scientists who assert or presume an inferior-superior-nation hierarchy. However, none of his quotations or paraphrases *justifies* asserting that the hierarchy exists. Peter Heather's descriptions of European and Indian aggregate groups do not prove that nations fitting one set of descriptions are inferior or superior.<sup>9</sup> Inferior-superior judgments, that is, normative claims, cannot be proven by lists of descriptions, no matter how long the lists. Leaving aside the problem of false claims in Heather's lists,<sup>10</sup> and that Best apparently sees no problem in the fact that several of the descriptions of superior nations imply that these nations are unjust,<sup>11</sup> the biggest problem for Best's theory is inherited from his academic experts. No one *proves* that European nations are superior to Indigenous nations. To the extent that Heather's descriptions are true, they prove that European and Indigenous nations were/are *different*. Showing that Tom and Betty differ, however, does not prove that one is inferior/superior to the other.

Best, following his experts, makes no effort to show why/how one set of characteristics make a nation superior and the other makes a nation inferior. White, of European ancestry, and socialized to value features of the nation into which they are born, European nations,

unsurprisingly, are regarded as superior. However, their preference for Canada over an Indigenous nation cannot provide the basis for claiming that Indigenous nations are *nations*. Similarly, their preference is not a good reason for claiming that *Canada* is more-developed/superior.

There is nothing wrong, in principle, with Best, Flanagan, Widdowson and Heather valuing characteristics of *Canada* more. However, their valuing and disvaluing cannot serve as stand-alone premises for their arguments. Their values cannot prove that European nations are superior any more than Indigenous people valuing more the characteristics of Indigenous nations can prove that their nations are superior. Examining Best's argument chain, he appears to presume that the superiority of European-type nations is self-evident. Whether looking at Heather's list, Flanagan's civilized/uncivilized comparison, or surveying a First Nation community, he cannot imagine any rational person preferring to live in a First Nation, if living in *Canada* were an option. Since Indigenous persons, whom Best is presuming are rational humans, and I, a non-Indigenous human being, would prefer to live in a First Nation, Best's appeal to self-evident truth does not work. It is reasonable to ask him to justify his normative premises, and that is what I am doing here.

### **Social Darwinism and the Inferior-Superior Nations Hierarchy**

In *Progress: Its Law and Cause*, published two years before Darwin's *On the Origins of Species*, philosopher Herbert Spencer applied evolutionary theory's notions of natural selection and survival of the fittest to human development.<sup>12</sup> By the end of WW2, Spencer's Social Darwinist theory was discredited by biologists and sociologists.<sup>13</sup> His *philosophical* theory provides the building blocks upon which Flanagan and Widdowson construct purportedly scientific theories of Aboriginal rights.<sup>14</sup> Flanagan claimed, and Widdowson and Best concur,



that, at first contact, Indians were uncivilized, living in a Hobbesian state of nature, not political societies (Flanagan, 2000). On the basis of Flanagan's three normative claims (declared true but not proven true), Best makes these normative claims:

1. There are no First *Nations*.
2. There never was a nation-to-nation treaty relationship between First *Nations* and France or Britain.
3. There isn't a nation-to-nation treaty relationship between First *Nations* and Canada.

If these normative judgments are true, the treaty relationship with First Nations is a fiction. Best confidently asserts these conclusions about Indian Nations and *Canada*. However, without normative reason(s) to justify normative assertions and presumptions in Flanagan's claim, "at first contact, Indians were uncivilized, living in a Hobbesian state of nature, not political societies," Best's argument has no empirical or normative foundation.<sup>15</sup> As I show below, Bruce Morito's analysis of our historical record repudiates Hobbesian (and Lockian) stipulations which assign Indigenous persons to a lawless State of Nature. Without a State of Nature premise, Best has no empirical starting point for his inferior-superior hierarchy and no argument to establish that Indigenous Peoples were/are not nations.

### **Social Science, Social Scientists, and Normative Judgments**

Showing that Best's normative judgments about the inferiority of First Nations are false would require several papers.<sup>16</sup> However, it is easy to establish the invalidity, and hence the

unsoundness, of his argument chain. Best's experts are social scientists, who don't want to be philosophers. When they opted to become scientists, i.e., to make empirical data collected by scientific methodologies the basis for explanation and theorizing, freshly minted "social scientists" separated from philosophy. No longer under philosophy's umbrella, where they lived for thousands of years, social scientists forgot philosophy's methodologies and the normative questions which only philosophy's methodologies are designed to answer.<sup>17</sup> Accordingly, social scientists *qua* scientists were no longer privy to the only methodologies the West has devised to answer real or ideal world normative questions. In the 21<sup>st</sup> century, typically only philosophers acquire these skills.

Since Best and his social scientists ask explicitly normative questions and create arguments that are awash in implicit normative premises and explicit normative conclusions, they are doing something that requires the methodologies of philosophy while construing themselves as engaged in social science. The result is argument chains infected by the naturalistic fallacy.

### **Best's Argument Chain and the Naturalistic Fallacy**

Best's argument to prove First Nations are *nations* uses nation comparisons. The Oxford Dictionary provides Best with the following definition of nation:

An aggregate of persons so closely associated with each other by common descent, language or history as to form a distinct race or people, usually organized as a separate political state and occupying a definite territory. In early examples, the racial idea is usually stronger than the political; in recent use, the notion of political unity and independence is more prominent (Best, 221).<sup>18</sup>

Reporting English word usage, this definition distinguishes two types of nation. The definition is not making normative judgments. It neither explicitly nor implicitly employs the idea of

progressing or developing from being an inferior *nation* into a superior nation. It provides no evidence for claiming that at some point an earlier type of *nation* stops being a *nation* and becomes a nation, in which case it provides no justification for claiming Indigenous nations are *nations*. To the contrary. cultural/racial aggregate groups are identified as a type of nation, mentioned precisely because they *are* nations.

Best engages invisible normative reasoning when he introduces Heather's earlier-recent nation distinction and Flanagan's civilized-uncivilized distinction. *Earlier* nations are nations in the racial, linguistic, and people-of-common-experience sense. According to Best, Indigenous nations only ever constituted earlier nations. Great Britain and *Canada*, however, signed treaties as "...nations in the more *recent* political, sovereign, precisely-defined territory, "nation-state" sense..." (Best, 221; italics mine). Without justification, the earlier-recent difference has morphed into a qualitative normative/prescriptive difference. Earlier nations are *declared/presumed* inferior/uncivilized relative to historically later superior/civilized nations.

Best *presumes* that Heather's features of political states are necessary and sufficient conditions for being a real nation, that is, a political state. He also presumes that Flanagan's distinction between civilized and uncivilized peoples is a real distinction which applies to European and Indigenous peoples, making the former more developed (superior) to the latter. Best regards the developmental difference established by Heather's and Flanagan's comparisons as proving that aggregates of European humans constitute nations whereas Indigenous aggregates of humans constitute *nations*. Following in the footsteps of his experts produces normative and empirical reality gaps in Best's argument chain. Like Heather and Flanagan, Best can only make his argument valid by *proving* that an aggregate of humans must possess the features of European

nations to be a nation, i.e., that *their* normative criteria for nation are necessary characteristics of being a nation.<sup>19</sup>

To be fair, it is unlikely that Best or his social scientist experts intended/wanted to stipulate the necessary characteristics of a real nation based on their subjective valuing of characteristics. Best is reading historians and political scientists who profess to be historians and political scientists. Heather, Flanagan and Widdowson would be dismissive of any suggestion they are constructing philosophical arguments which depend on their personal value systems for validity and soundness. They regard their normative superior-inferior judgments as descriptive, the conclusions of arguments based on facts discovered by scientific means. Flanagan rests his distinction between civilized and uncivilized nations on the work of anthropologists, explicitly stating:

‘Civilization’ as I use the term here is a factual, not a normative, concept.<sup>20</sup> It describes a certain type of social organization that has gradually emerged and spread around the entire world. It is not that savagery is bad and civilization is good; both are stages of social development that have arisen sequentially in the historical process...But, even if civilization is a factually descriptive concept, the world-wide spread of civilization as defined has certain moral implications. If we pretend that civilization as defined here does not exist or that it does not absorb and replace earlier forms of society, we ignore basic aspects of the contemporary human condition at our peril, for any political program based on ignorance or rejection of reality is bound to fail. (Flanagan, 35)

Flanagan’s insistence that his civilized/uncivilized distinction is not normative provides problems for his argument. I am interested in the problems his false claim creates for Best’s argument chain. Best’s argument needs an inferior-superior-nation hierarchy. If Indigenous Peoples are nations in an earlier stage of the development of nations, this does not give Best a basis for claiming that Indigenous nations are *nations*. A nation at an earlier stage in its development is still a nation. So, the treaty relationship between Canada and Indigenous Peoples would be a nation-to-nation relationship. Best’s nation-*nation* distinction, and fictional treaty relationship,

need comparisons which Heather and Flanagan make to imply that their preferred way of organizing an aggregate of persons is superior to other ways an aggregate of persons organizes itself. Since Heather and Flanagan only list differences, either they are stating preferences or presume what they value most in a society is more valuable than what others value. What they cannot truthfully claim is that their explicit and implicit normative judgments are descriptive. Their nation hierarchy rests upon a set of values. In 2021, these values are widely regarded by scholars, including anthropologists, as Eurocentric racism.

Factual problems with Heather's comparison and Flanagan's analysis notwithstanding, even if accurate and descriptive, they *cannot*, by their very nature, justify inferior/superior judgments. Best needs the Indigenous side of the comparison to be inferior to the European. His argument needs these normative judgments. Citing Heather, Flanagan and Widdowson shows that others share his values. It does not show that European-based values are superior to Indigenous values. At the end of Best's long book, the inferior-superior nation hierarchy remains unjustified. His argument-chain is unsound.

Inferior-superior judgments arguably describe the world. To make them, we pass empirical data through values, feelings, and attitudes.<sup>21</sup> Since normative judgments attach to values, they are problematic for social scientists. Aside from the difficulty of access to someone else's values, how do we determine that the values we assign to what we experience are appropriate? Best's values hide behind his normative assertions and presumptions. The values hiding behind his comparative descriptions seem to be as invisible to him as they are to Flanagan and Widdowson. Training in normative methodologies allows one to see the hidden normative judgments behind Best's conclusions which are necessary for his arguments to be valid. Only if Best were able to

see that his normative presumptions rest on racist values/beliefs, which he rejected when he claimed that all humans are equal, would he be able to discern the untenability of his position.

### **Best's Case Study: Anishnabek 'Nation' and the HST<sup>22</sup>**

After thinking that he has established that Indigenous nations are *nations*, Best uses an example of Indigenous Nations claiming nationhood and sovereignty to illustrate the absurdity and terrible consequences of Indians believing that they are nations. He analyses the Anishnabek Nation's response to Ontario's imposition of the Harmonized Sales Tax (HST).<sup>23</sup> The Anishnabek Nation argued that the HST cannot apply to its citizens for the following reasons:

1. Treaty relationships with the Crown reflect First Nations sovereignty as Nations.
2. First Nations never relinquished nor surrendered sovereignty to governments of France, Britain, Canada, or provinces.

Therefore,

Conclusion 1: First Nations are not subjects of the Crown.

Conclusion 2: First Nations citizens don't have to pay taxes to the government of another nation.

Conclusion 3: First Nations are exempt from the HST, unilaterally imposed by another government.

Arguing that their reasoning is nonsensical, Best blames the Anishnabek Nation's HST challenge on Indian leaders propagating

... the general falsehood that the treaties their forebearers entered into with Canada were the result of ‘nation-to-nation’ dealings, in the sense of two sovereign, independent nation-states entering into a treaty agreement and then--subject to the carrying out of the treaty obligations incurred--carrying on as before on their own sovereign, independent tracks... The Indian industry propagates ‘this false, even mythological, historical view of the original treaties’ (Best, 218-219).

For Best, the Chiefs’ argument rests on myth/fiction. Falsely believing he has proven Indigenous nations are *nations* and the treaty relationship is a fiction, Best asserts that the first premise of the immunity argument is false. If it is false, First Nations had no sovereignty to transfer, so premise 2 is a meaningless assertion. If premises 1 and 2 are false, so are the 3 conclusions inferred from them.

Best’s chapter on “The Myth of Nation-to-Nation Dealings” contains his argument for proving the treaty relationship is fiction/myth. The dictionary definition, Heather’s features of political states, and a quotation from a column by *Globe and Mail* columnist Jeffrey Simpson provide the content for his argument. Two sentences from Simpson’s piece suffice to show the tenor of Best’s argument:

The royal commission on aboriginal affairs, established by the Mulroney government, took up the cause of these “nations” and designed an entire parallel political superstructure of “nation-to-nation” dealings. That the majority of these nations had fewer people than a small Saskatchewan town and that many of the members had drifted into cities, did not seem to matter within the commissioners’ dream palaces (Best 225).

Simpson feeds Best’s confidence that

Modern Indian leaders propagate the general falsehood that the treaties their forefathers entered into with Canada were the result of “nation-to-nation” dealings, in the sense of two sovereign, independent nation-states entering into a treaty agreement and then—subject to the carrying out of the treaty obligations incurred—carrying on as before on their own sovereign, independent tracks (Best, 281).

I won't address misleading claims and innuendo in Simpson's column. Space only permits gesturing in the direction of several problems with Best's dismissal of Indian leaders' assertions about treaties based on Simpson's dismissal of the notion of Indigenous nations.

1. Do Indigenous politicians propagate falsehoods about nation-to-nation treaties?

Indian leaders, ancient and modern, agree with OED's definition of treaty: a formal agreement between two or more countries. OED's definition of country: the most usual, neutral word for a geographical area that has or used to have its own government.

Conclusion: According to the OED, Anishabek Nation's leaders are not propagating falsehoods. They are in a nation-to-nation treaty relationship.

2. Do Indigenous politicians propagate falsehoods about a treaty relationship between "two sovereign, independent nation-states entering into a treaty agreement and then--subject to the carrying out of the treaty obligations incurred--carrying on as before on their own sovereign, independent tracks?"

Best denies Indigenous nations nationhood and hence sovereignty. However, he believes that Canada is a sovereign nation because Britain transferred sovereignty to Canada at confederation. This raises the question: Where did Britain's sovereignty come from? As the Anishinabek Nation's Chiefs explained, their ancestors never relinquished nor surrendered sovereignty. So how did Britain become a *legitimate* sovereign on Turtle Island? Britain did not satisfy liberal theory's justice requirements for a legitimate sovereign by simply declaring and exercising sovereignty. According to liberal theory, a People or people have the right to self-



determination. Therefore, anyone exercising the legitimate right to rule over a People would have to have obtained their free and informed consent.

Liberal theory requires that sovereigns respect other sovereigns. It does not differentiate between inferior/superior nations, giving the superior the right to rule inferior nations. European nations at first contact and beyond treated Indigenous Peoples across Turtle Island as if they were nations. Even if Indigenous nations were inferior, and their sovereignty were inferior, an inferior nation would still be inhabited by self-determining people. According to the liberal theory Best believes in, it would be racist to say that these people do not have the right to consent to be ruled by the superior nation.

### **The Moral Difference Best Does Not See**

So, how did our land get to be a country called Canada  
Without our consent?...You consider us your possessions  
At best; at worst we are like a personal footnote to the  
Canada that is owned by Canadians. When did we ever  
Agree to all this? (Maracle, 9)<sup>24</sup>

Best's unsound argument for the conclusion, "There is a normative difference between European and Indigenous *nations*," prompted me to understand more fully the moral difference between Indigenous nations and *Canada* which I see. I see *Canada*. Best sees Canada. Rejecting his inferior-superior-nation hierarchy and dismissing his unsound arguments for claiming Indigenous nations are *nations*, I nevertheless agree with Best that the nation-to-nation treaty relationship between Indigenous nations and *Canada* is a fiction. This is not because one nation in the relationship is superior to the other. It is because there is only one nation in the relationship. Because Indigenous nations are nations, their legitimacy challenges the legitimacy of any country

Europeans believed they could create by declarations or passing laws in Europe. *Canada* could only exist as a nation as the result of negotiations with Indigenous Peoples in which they consented to share their land with self-determining peoples. Although Indigenous Peoples were and are willing to share their land and be in a treaty relationship characterized by mutual respect and just processes and distribution of benefits and burdens, they have made it very clear for decades that they have never and will never agree to the existence of *Canada*. It is an illegitimate fiction/myth, to use Best's notions, unlawfully exercising sovereignty rights *Canada* does not have and violating sovereignty rights Indigenous Peoples do have.

Declarations and laws can no more create and build a legitimate nation on top of Indigenous nations on Turtle Island than ongoing violations of Indigenous nations' sovereignty and forced removal of Indigenous Peoples from their land. *Canada's* Constitution, Indian Act, Prime Ministers, Cabinet Ministers, and legal institutions are also equally powerless to create or build a legitimate nation where legitimate nations exist and protest these actions.

### Discovering *Canada*

In 2006, Dale Turner (Anishinaabe, citizen of Temagami First Nation and the United Kingdom) in *This is Not A Peace Pipe* introduced me to the legitimacy of Canada problem. I had been researching Aboriginal rights since 1995, so was familiar with the work of Flanagan, Cairns, James Tully and Will Kymlicka. At the CPA's Aboriginal Rights conference in 2001, I had the opportunity to listen to many Indigenous scholars and Elders provide an account of the history of the relationships between European and Indigenous Peoples on Turtle Island that I never before encountered.<sup>25</sup> They explained their understanding of Aboriginal rights, sovereignty,

responsibility, and the treaty relationship. I had known for some time that European nations and Canada violated and were violating Aboriginal rights. However, like all non-Indigenous scholars I knew, I never drew the dots between what they did and the legitimacy of Canada question. Reading Dale's analysis and critique of several non-Indigenous proposals for just resolution of the Aboriginal problem (Trudeau's *White Paper*, Cairns' citizens plus, and Will Kymlicka's minority nations), I discovered that they all not only all *presumed* the legitimacy of Canada, but, like me, they did not seem to know that they were doing it.<sup>26</sup>

The *White Paper* does not provide the historical background Flanagan, Cairns, and Kymlicka afford. However, situating their thinking in non-Indigenous injustices, past or present, does not prevent them from repeating its mistake. They ignore the legitimacy of Canada problem, something which is implied by their historical accounts when analyzing Canada's most significant justice problem and proposing solutions. Like Canada's proposals for Aboriginal rights generally, other than making justice their goal, these authors treat the specifics of the historical account as irrelevant to the normative starting point for their thinking. They do not see that *Canada's* legitimacy is challenged by Europe's and *Canada's* actions and omissions. They do not comprehend the implications of Indigenous Peoples' understanding of their rights and *Canada's* rights. *Canada's* legitimacy is the invisible normative presumption in all their legal/ political discourse about Aboriginal rights. As Turner showed me, if one asks the legitimacy question, eventually, if not immediately, one discovers that presumptive legitimacy cannot be justified.

This seems to put me at odds with many non-Indigenous politicians and scholars and perhaps even some Indigenous politicians and scholars, however. Agreeing with Turner means I also agree with Best's assessment of the treaty relationship.<sup>27</sup> Since confederation, there hasn't been a nation-to-nation relationship on Turtle Island. The relationship became a fiction when

*Canada* transformed a centuries-long, nation-to-nation treaty relationship, established in Peace and Friendship treaties in L'nu and sustained in Covenant Chain treaties, into a series of nation-to-nation relationships. When we began perceiving Canada as the only real nation in the treaty process, we created *Canada*, thereby creating the nation-to-nation relationship. When we created *Canada*, we extended our notion of a treaty relationship in which only *Canada* is a real nation back in time. This meant that we began to regard the original treaties as being between a superior/real European nation and inferior/unreal Indian *nations*/tribes. Ironically, when *Canada* perceives and treats Indigenous nations as *nations*, from the perspective of liberal theory justice theory it firmly establishes itself as the *nation* in the nation-to-nation relationship.

#### Credit Where Credit is Due

I credit Best for making explicit/visible the intentions of *Canada*'s politicians' words (spoken and written), which were invisible but which their actions/omissions reveal. Best also facilitates seeing the implicit normative premises in the work of non-Indigenous scholars which frequently remain invisible to readers of their publications. When politicians and scholars speak, we often cannot tell whether they mean "nation" or *nation*. Hence, we do not know whether they are saying that Canada is committed to a nation-to-nation, or a nation-to-*nation*, treaty relationship. Politicians' actions/omissions in all federal and provincial parties across *Canada* indicate that they either believe that the nation-to-nation relationship is a fiction or they are intentionally exercising sovereignty which they know is illegitimate. Tom Flanagan's *First Nations? Second Thoughts* was criticized for denying Indigenous nationhood and sovereignty. However, as Lorraine Mayer and I explain in *Philosophy and Aboriginal Rights: Critical Dialogues*, every non-Indigenous scholar

in the anthology presumes that Canada is not *Canada*. So, for example, while we recognize that neither Alan Cairns nor Will Kymlicka in their discussions of Aboriginal rights wields Flanagan's or Widdowson's big stick, seeing *Canada's* Aboriginal problem as its most serious justice problem, they leave no doubt that *Canada* is the only nation in the treaty relationship (Mayer and Tomsons, 2013; Tomsons, 2013.2).<sup>28</sup> Political philosopher Will Kymlicka is the only non-Indigenous scholar I know of who uses 'nation' to represent the special/different kind of nation status of First Nations. For Kymlicka, 'nation' does not so much contest the reality of a centuries-long, nation-to-nation relationship, on the one hand, but rather crystalizes liberal theory's resistance to nations within a nation and First Nation's minority nation status, on the other.<sup>29</sup> In either case, Kymlicka presumes Best's inferior-superior nation hierarchy by implying in his theorizing a positive answer to the "Is *Canada* a legitimate nation?" question. Like Best, Kymlicka fails to justify either the presumptions supporting the inferior-superior-nation hierarchy or his presumption that Canada is not *Canada*. Unlike Best, Kymlicka does not attempt these justifications, apparently seeing no need to do so.

### **The Colonial-Perceptual-Reality-Cave: Our Epistemological Predicament**

Best's confidence in his belief that 'Indian nations' is an oxymoron is captured in the following:

Examining in more detail the events and circumstances surrounding the making of some of the treaties themselves highlights and confirms that in no way was the making of the treaties a result of political-nation-to-political-nation dealings. Also, looking at what actually occurred when some of the treaties were signed--how and why the parties came together, what different people actually said, looking at what some of the treaties themselves actually say--confirms that, contrary to what Indian leaders like Chiefs Madahbee and Day (as they then were) said, these were no 'nation-to-nation' dealings.

They were pathos-filled, *de facto*-surrender talks between small, broken tribes of cultural nations only, and a powerful, modern, political nation-state (Best, 227-228).

It is painful to record words so disrespectful of First Nations and their citizens. I do so because every sentence demonstrates that Best is a prisoner in what I call the “Colonial-Perceptual-Reality-Cave” (The Cave). In The Cave, false and unjustified empirical statements and normative judgments are commonplace among epistemic prisoners. So is the confidence/epistemic conceit with which Best asserts them. Many prisoners are silent, ignoring the “Indian problem”. It attests to Best’s passion for justice and confidence in his experts that he devotes time and work to educate non-Indigenous and Indigenous Canadians whom he believes are misinformed and continuously dubbed so by their politicians and pundits. In his view, Indigenous Canadians are more than deceived. Their misconceptions cause them unnecessary harms.

In 2009, I wrote a paper criticizing Widdowson’s attack on Indigenous methodologies based on a problematic analysis of the objective/subjective distinction and an unjustified disrespect for traditional knowledge. In the paper, I used Plato’s Allegory of the Cave to explain the epistemological predicament of non-Indigenous people when we think about Aboriginal Rights. (Tomsons, 2009). Situating us in The Cave explained simultaneously our i) wanting Canada to be just, ii) accepting the nation-to-nation treaty relationship notion, iii) not comprehending Indigenous politicians’ and academics’ explanations of the justice problem to be resolved, and iv) not hearing my liberal-theory-based arguments about *Canada*’s illegitimacy.

For as long as *Canada* is old, from birth, non-Indigenous children are socialized into The Cave.<sup>30</sup> During Best’s childhood in The Cave, he acquired beliefs, values and attitudes consistent with perceiving Europeans as superior to Indians. He came to perceive *Canada* as one of the greatest countries in the world and to perceive Indians as people living apart from us on

reservations, and having some rights the rest of *Canadians* do not have. During his lifetime, like most prisoners, Best learned that Indians are not inferior humans. They have the same human rights as non-Indians. As Best attests, although Europeans did not believe it at the time, at first contact, one group of equal humans was meeting another group of equal humans. However, like other prisoners, Best has failed to realize that his beliefs that, at first contact, Indians were uncivilized savages, living in a State of Nature, that is, not nations, are false normative judgments. No one in The Cave questions their beliefs, so no one attempts to prove that they are false. However, Indigenous voices are now being heard in The Cave, challenging prisoners' misconceptions about *Canada*, Indigenous Peoples, sovereignty rights, and the responsibilities of sovereigns on Turtle Island.

Having perceived that all humans are equal because they have figured out that the ways in which we are different are morally irrelevant, prisoners like Best still regard European nations and *Canada* differently from Indigenous nations. Their perceptions are still filtered through the inferior-superior-nation lens. Best's version of the nation-*nation* argument sits on the shifting sands of this unjustified and unjustifiable hierarchy. The belief that some aggregates of equal humans live in ways sufficiently less valuable than ours to make it rational to judge these aggregates *nations* is typically unquestioned in The Cave. I commend Best for seeing that it is a belief that requires justification. I hope I have shown him that his justification presumes FREISD (false-racist-Eurocentric-inferior-superior-dichotomy) every step of the argument chain. If I have done this, then I have helped Best free himself from his prisoners' chains.

When Best is released from those chains, he will begin to understand the origins of his FREISD beliefs, values, and attitudes. He will understand that the prisoners shared set of false empirical and normative beliefs about *Canada* and Indigenous Peoples and nations creates many

epistemological obstacles to perceiving normative reality on Turtle Island. Prisoners' ongoing agreement creates unshakeable confidence that their false beliefs are true and the values attending these beliefs are unproblematic. If no one knows where we are, how do we discover this and recognize that we are theorizing about shadows? Because those best equipped to get us out of The Cave are Indigenous people. Western academics' dominant epistemic disrespect for Indigenous methodologies, hence Indigenous scholars, poses another huge stumbling block.

### Indigenous Scholars Help Me Discover the Colonial-Perceptual-Reality-Cave

In 1997, I met Lorraine Mayer at the Native Philosophy Project at Lakehead University. When we were in the university bookstore, I asked what I should buy. Lorraine's response was simple: "Buy Indian." I have been following this wise advice ever since and by doing so I encountered many Indigenous instructors who gradually helped me discover my epistemic predicament. Dale Turner's *This is not a Peace Pipe* was a significant impetus in my journey from The Cave after Lorraine released my chains. For many years, I have had the good fortune to collaborate with Sa'ke'j Youngblood Henderson. Sa'ke'j introduced me to the fallacy of the inferior-superior dichotomy, providing a tool with which I could overcome many epistemological obstacles to understanding nations, sovereignty, and land title on Turtle Island.<sup>31</sup> As I show above in my analysis of the theories of Best, Flanagan, Widdowson, Cairns, and Kymlicka, non-Indigenous scholars automatically use the inferior-superior dichotomy when theorizing about Aboriginal rights. I am now skilled at identifying *Canada* and other FREISD-based presuppositions in the theories of these scholars.



## Inter-Philosophy(ies) Dialogue and Escaping The Cave

In conversations (in person, e-mail, Zoom) and publications, I have dialogued with many Indigenous scholars including Lorraine Mayer (Metis), Lee Hester (Choctaw), Dale Turner (Anishinaabe), Paul Chartrand (Metis),<sup>32</sup> Taiaiake Alfred (Mohawk), Leroy Little Bear (Blackfoot), Sa'ke'j Youngblood Henderson (Chickasaw), John Borrows (Anishinaabe) and Robert Hamilton (Anishinaabe); Indigenous Elders including Dr. Tobasonakwut Kinew, Janice Greene, and Linda McEvoy,<sup>33</sup> and Indigenous Scholar-Elders like Lee Hester, Leroy Little Bear, John Borrows and Lee Maracle. Lorraine Mayer released my chains and others named above nudged, challenged, encouraged and moved me to deep reflection, while allowing me opportunities to experience in their company what I was learning in their words about Indigenous ethics, politics, epistemology and law.<sup>34</sup> Gradually, I saw the artificial constructs we had created on Turtle Island hide a normative reality we do not want to see. Indeed, it is almost impossible for us to see it.<sup>35</sup>

Working on collaborative pieces for *Philosophy and Aboriginal Rights*, Lorraine and I coined the expression “inter-philosophy(ies) dialogue” to identify the kind of conversations we had. We saw our dialogues resolving around what Dale Turner calls the standoff between Indigenous and non-Indigenous understandings of Aboriginal rights, and others see as the incommensurability of Indigenous and Western paradigms/philosophies.<sup>36</sup> We have engaged in inter-philosophy dialogues since 1997 and our anthology stands as proof of the power of these dialogues for bridging standoffs and achieving consensus. We co-wrote many pieces for the anthology. They show agreement on the many issues creating real world standoffs and incommensurability arguments. One reviewer saw our lack of disagreement in our co-authored pieces as proof that we were not actually engaged in inter-philosophy dialogue. If we argue for

only one conclusion, how can we be arguing from two points of view?<sup>37</sup> As we explain in “This is not a Conclusion,” we dialogued about every line and paragraph in our co-authored pieces and about the arguments of every contributor to the anthology. We also agreed with the content and arguments in each other’s articles. The road to consensus was sometimes bumpy with twists, turns, and backtracking. Because our dialogue aimed for understanding and expression of our shared understanding, it was intense and could even become tense. Our friendship was undoubtedly the glue that sustained the dialogue and ensured its success. Our success proves that someone from the standpoint of Cree philosophy and someone from the standpoint of Western philosophy can dialogue their way to consensus.

In dialoguing with Lorraine, I acquired knowledge, skills, and intellectual virtues that enabled me to engage inter-philosophy dialogues with Indigenous scholars and Elders I meet at the Philosophy and Aboriginal Rights conference in 2001 and with whom Lorraine and I worked to create our anthology. At this point, it is important to say that, while my prisoner’s chains needed to be released and I received a lot of Indigenous instruction during my journey to my present understanding of normative reality on Turtle Island, the journey was mine.

I am a philosopher, trained to be critical and questioning rather than accepting of premises, arguments, and theories. My training makes me disposed to assess critically the assertions of experts. Unlike social scientists, I am trained to accord citations almost zero epistemic status. While acknowledging the assistance of many Indigenous persons to arrive at this point in my evolving understanding of the collective rights of *Canada* and Indigenous nations, like Best, I have done the cognitive work to arrive at my position.

Indigenous colleagues have never told me how to think, what to think, or that my thinking was wrongheaded (Lorraine looked this thought occasionally.). We engaged in *critical* dialogue.

Sharing their understanding and answering my questions, they gave me new information, and ultimately a new perspective. No Indigenous colleague told me that we are prisoners in the Colonial-Perceptual-Reality-Cave. I decided that this metaphor captured our predicament when I put together insights gained from Socrates + Lorraine + Sa'ke'j., all of whom abetted my discovery. Socrates also gave me the responsibility he assigned to the released prisoner, namely, to return to The Cave and help others escape. In this paper, I have returned to The Cave to release Best and hopefully other chained prisoners.

For years after my prisoner's chains were released, I could not understand why my non-Indigenous colleagues have apparently unshakable confidence in *Canada's* legitimacy. Why do politicians serving as Ministers overseeing the Indian Act, presumably working closely with Indigenous people, not come to see *Canada*. In short, why do others not see what I see? Whenever I presented my work at conferences, I had no difficulty responding to questions or challenges. If anyone thought my argument was sound, I was usually told that the legitimacy of most European nations, perhaps even most nation states, could be challenged by analogous arguments. This response, which at first frustrated me, still frustrates me but now makes me smile. My argument chain has survived another test. Telling me that my position implies there is a lot of unjust sovereignty exercised on Earth came as no surprise.<sup>38</sup> However, this response is epistemically frustrating. It dismisses my arguments; it does not address their soundness. Given the huge justice problems I am exposing which *Canada* and *Canadians* have moral obligations (and legal obligations) to address, dismissing my arguments is as problematic morally and politically as it is epistemically. Is it really in our best interests to turn away from the truth and build our solutions to *Canada's* most serious justice problems on shadows? Can non-Indigenous *Canadians* live with

*Canada*, adding centuries more of violating Indigenous human (individual and collective) rights to the centuries when we have already done so? Do we not care?

### **Another Treaty Relationship: Why We Should Care**

All justice recommendations regarding *Canada's* relationship with Indigenous Peoples should be based on accurate historical data. Best is to be commended for researching the history of the treaty relationship. His expert, Alexander Morris, was born in 1826. Morris was not reporting on the relationship between European and Indigenous nations at first contact.<sup>39</sup> Part of John A. MacDonald's negotiating team for the numbered treaties, Morris negotiated post-confederation treaties several centuries after European nations, including Britain, negotiated Peace and Friendship and Covenant Chain treaties. To learn why the nation-to-nation treaty relationship was not always a fiction, and to learn the content of the Crown's negotiations with Indigenous nations when it was settling British citizens on Turtle Island, I recommend Best read Bruce Morito's *An Ethic of Mutual Respect: The Covenant Chain and Aboriginal-Crown Relations*.

Morito, a non-Indigenous philosopher, provides insight into the historical record of the Covenant Chain treaties and a careful analysis of the moral framework which provided the basis for the early treaty relationship.<sup>40</sup> Morito spent many years studying the archival records kept by Europeans who negotiated, observed, or recorded treaty negotiations beginning in 1682.<sup>41</sup> To understand how *Canada* and Indigenous Nations arrived at today's fictional treaty relationship, Best should begin at the beginning. Morito's focus is Covenant Chain treaties, which followed Peace and Friendship treaties on the East Coast of Turtle Island. Nevertheless, he shows how Covenant Chain treaties evolved out of earlier nation-to-nation treaty processes. He also shows

how the Covenant Chain treaty relationship evolved into a new nation-to-*nation* relationship by the time Alexander Morris was negotiating numbered treaties for MacDonald. Morris documents a treaty process *Canada* regarded as a fiction. As Morito explains, Indigenous nations understood *Canada's* perception, and resisted it.<sup>42</sup> In a nation-to-*nation* treaty relationship, *Canada* was destined to become illegitimate, as fictional as the fictional treaty relationship it was establishing.

As Morito explains, the Crowns entered the Covenant Chain Treaty relationship knowing that this relationship

...was entered into, not by noble or ignoble Savages, but by people who well understood the process of negotiation and litigation. The Covenant Chain forum was one in which discourse was driven by the need for justification; Aboriginal people were not constantly duped by Crown officials; assuaged by gifts (often described as trinkets in the popular historiography), or cheated because they did not know any better" (Morito, 24).

Morito does not mince words when describing British and Canadian intentions/ aspirations in entering treaties:

(T)he Crown, from the beginning and in both of its renditions (British and Canadian), has striven to make First Nations dependents, children, and subjects. Even though military and political realities militated against this political aspiration, there is continuity in the Crown's aspiration. Once it could, the Crown attempted to transform treaties from peace and friendship into surrenders" (Morito, 195).

Indians discovered British intentions and understood *Canada's* intentions. Leroy Little Bear told me about this. He said negotiators for the Crown always had a Tickle Trunk of costumes at treaty negotiations.<sup>43</sup> They put on whatever costume they perceived would get them what they wanted. Normative beliefs in liberal theory(ies), though not its justice principles, provided materials for the government's costumes and accessories that covered up/justified/whitewashed its actions for its Eurocentric audience. The Crown (*Canada*) needed then, like *Canada* needs now, its actions, treaty promises and treaty implementation to be perceived as just.<sup>44</sup> The trunk was full

of costumes because Indigenous people kept exposing the injustice hidden by the costume, thereby necessitating making new one.

If the argument of my paper to date has shaken Best's confidence in his experts, he will be prepared at this point to rethink his nation-to-*nation* assessment of the treaty relationship. To help him do this, I will briefly explain Morito's account of how the earlier treaty relationship devolved into a nation-to-*nation* relationship. To the extent that the Crown and *Canada* justified beliefs about the inferiority of Indigenous persons and nations and treatment of Indigenous people and Peoples, justifications were largely based in political theories of 16<sup>th</sup> and 17<sup>th</sup> century British philosophers.<sup>45</sup> Liberal theory's notions of human rights, including the right to sovereignty and private property were created by Hobbes and Locke and refined by Hume and John Stuart Mill. The theories they created--and it is important to note they have different conflicting political theories—gave British politicians a collection of normative beliefs to justify violating the human and sovereignty rights of Indigenous Peoples anywhere on Earth.

These great white men in the canon of Western philosophy birthed political liberalism, and simultaneously dug the Colonial-Perceptual-Reality-Cave. In The Cave, non-Indigenous politicians, philosophers, political scientists, lawyers, and *Canadians* generally, used the normative frameworks they created. Their theories, rooted in a humanity-hierarchy, were founded on false beliefs and misguided valuing and disrespect for non-white humans, women, and non-human beings, and baseless empirical claims about Indians in North America. For the purposes of this paper, I only examine their assertion that Indians in North America lived in a State of Nature, not civil society.

As Morito explains, these philosophers populated The Cave wall with images of Indigenous Peoples living outside of civil society. These are the shadows Best and his experts use

to solve ‘the Aboriginal problem’. Thinking with other prisoners about Indigenous Peoples living in a non-existent State of Nature, the artificial construct Hobbes and Locke created based upon FREISD, the construction of Best’s argument chain is unsurprising. Best’s great confidence that his conclusions are true also no longer surprises.<sup>46</sup> Having grasped that all nations do not have to look the same, meaning that Indian nations can look different from European nations and still qualify as nations, Best will be heading out of The Cave. As Morito establishes from *our* historical records, there was a time when non-Indigenous negotiators behaved as though they perceived Indian nations as nations. I refer explicitly to the behavior of non-Indigenous treaty negotiators, because the Crown’s actual perception of Indigenous nations appears to be more in keeping with Best’s notion of *nation* than his notion of nation. In the Appendix, I provide the 1763 reference to Canada in the Treaty of Paris. Although early treaties only exist because negotiators treated with Indigenous Peoples as though they were nations, between themselves, it is clear the Crowns of France and Britain thought that they could transfer among themselves the sovereignty in the wording of the citizens of nations

Crown negotiators for Peace and Friendship and Covenant Chain treaties knew that they were negotiating with political leaders experienced in treating on behalf of Indian nations which had the political, legal, economic, cultural, and spiritual structures a nation has.

Are Equal Human Rights The Best Way?

“Although the White Paper was eventually rescinded as official policy, White Paper liberalism continues to capture many of the attitudes Canadians have about Aboriginal peoples in Canadian society” (Turner, 14). Best’s impassioned plea for equal individual human rights for all

Canadians, that is, Indigenous assimilation, indicates that Turner's assessment of Canadian society in 2006 applies equally well in 2021. Best draws many conclusions from his comparisons of the different ways Indigenous and non-Indigenous *Canadians* live. I respond to two: 1) the terrible living conditions in some Northern Ontario Indigenous communities and Indians being disproportionately represented in *Canada's* justice system are the result of the special rights of Indigenous people and 2) the only rational choice for Indigenous persons is to opt for equality with non-Indigenous *Canadians* in *Canada*.

Like *Canada's* past political and intellectual elites, and Pierre Trudeau and Jean Chrétien's *White Paper*, Best argues that Indians would be better off if they were not Indians. Urging Indians to choose quality of life, that is, the *Canadian* way of life, he only sees good consequences for those making this choice. In *The Cave*, looking at the shadows on the wall, Best can only see that Indians have everything to gain and nothing to lose by giving up their rights as citizens of Indian nations. Since he can only see Indigenous *nations* where Indigenous people see Indigenous nations, it is impossible for him to realize the irrationality of the choice he is offering Indigenous people. They deny who they are when they accept Best's offer.

In *The Cave*, Best can only see becoming *Canadians* as the rational choice for Indigenous people. An example will illustrate that this choice is only rational if one is in *The Cave*. Gunars has just driven Sandra, Lorraine, and Peter through some First Nation communities and some adjacent non-Indigenous communities in northern Ontario. He asks his passengers: "Where would you choose to live?" Obviously, Peter chooses a non-Indigenous community. *Cries from a Metis Heart* explains why Lorraine, a Métis, accepting her Cree and French heritage, and choosing Cree philosophy and its way-of-being-in-the-world in theory, in theory she could choose any of the communities. However, as she explains in *Cries*, an Indian community offers her love and support;



living in a non-Indian community can mean confronting racism every time she leaves her home. However, since the Anishinaabe communities in northern Ontario through which they are driving are reserved for Anishinaabe status Indians, not Métis, legally she cannot choose to live in these communities. Sandra, after three decades of IPD (inter-philosophy/ies dialogue) with Lorraine, is very attracted to the Indigenous community because of Indigenous all-my-relations ethics. However, she knows the colonial relationship, the Indian Act, and overcrowded First Nations' communities mean that she, like Lorraine, does not really have the choice Gunars offers. Because of *Canada's* unjust relationship with Indigenous Nations, Sandra, like Lorraine, cannot become a permanent resident of an Indigenous community.

Answering Gunars' question depends in part on one's perceptual reality, that is, beliefs, values, and attitudes as well as on constraints *Canada* has placed on Indigenous communities. When Best looks at an Indigenous community, he sees terrible material conditions and economic prospects resulting from Indigenous refusal to assimilate. When Sandra looks at the same Indigenous community, she sees the consequences of our FREISD-based violation of Indigenous Peoples' individual and collective rights. She sees a better way to live in an all-our-relations Indigenous ethics. Given their different perceptual realities, Best and Sandra's preferences are different though both are rational.

## **Conclusion**

I stated at the beginning of my paper that I aimed to prove Best's argument-chain proving Indigenous nations are *nations* is unsound. The naturalistic fallacy made it easy for me to deliver on this objective. Many decades of research establishing *Canada's* illegitimacy meant it was not

difficult to show that the starting point of Best's argument, i.e., "Canada is a nation," is false. While I am confident that non-Indigenous *Canadians* are socialized into the Colonial-Perceptual-Reality-Cave, since being epistemic prisoners provides huge obstacles to truth discovery, I am less confident that I have convinced Best and other Indigenous scholars that The Cave exists. Our being in The Cave explains ongoing colonialism as well as our repeated failure to propose a solution that Indigenous Peoples perceive as just.

The vast majority of my instructors about The Cave were Indigenous, so I do not know if a non-Indigenous scholar can assist other non-Indigenous scholars to discover The Cave and colonial-perceptual-reality. If the arguments in my paper give Best some doubt about *Canada's* legitimacy, I encourage him to spend time reading Indigenous authors, especially their scholarly works, autobiographies, biographies, fiction, poetry and plays. Time in the company of all the Indigenous scholars I mention above would provide him with many opportunities to discover The Cave and how it impedes and distorts our thinking about Indigenous Peoples and their nations. I especially encourage Best to read John Borrows recent book, *Law's Indigenous Ethics*. Borrows is a legal scholar who explicitly discusses the essential components of Best's argument in his chapter on the Grandmother's last teaching gift, Respect. Borrows respectfully examines the argument in Best's book and a letter Best wrote to the *Sudbury Star* in July 2013.

Borrows' response invites Best to engage in the IPD I have shown permits one to escape from The Cave. Examining the Grandmother's teaching about respect, Borrows demonstrates what this teaching requires when one engages with someone who perceives the world differently and may not be respectful of one's different perceptual reality. When Best compares my engagement with him in this paper with how Borrows analyses and assesses his position, he will

rightly conclude that “Tomsons is a Western philosopher who neither understands nor exemplifies the Indigenous notion of respect and caring for others it requires of practitioners.”

In the fall of 2018, when I decided to write a paper on *There is no Difference* to present at the Conference of the Canadian Society for the Study of Practical Ethics (CSSPE) as part of the 2019 Congress of the Humanities and Social Sciences, I had objectives 1 and 2 stated at the beginning of this paper. I wanted to deconstruct the argument-chain of someone who is as passionate as I am about justice, but, who, in 2018, was arguing for a solution to the Aboriginal justice problem which was discredited and discarded by politicians and scholars decades ago. Frustrated that the White Paper’s understanding of Indigenous persons and Peoples rights in *Canada* could still be promoted as the just solution, I was interested in how a lawyer in northern Ontario, every bit as concerned about the suffering in First Nations communities as I am, would justify his position in his very fat book.<sup>47</sup> As I worked on the paper, I discovered in the values and passion Best and I shared the basis for some confidence that we could have an inter-philosophy dialogue. Confident that Best’s position originated in The Cave, however, meant that I would have to explain why we saw First Nations and Canada so differently. How could I respectfully tell him that he was a prisoner in The Cave? Obviously, by telling him I had been there and was glad that I had made an exit. I was not surprised that Best’s argument-chain rested on theories of political *scientists* whose theories I refuted decades ago. In my one-sided dialogue with Best, I tried to show him that they lead him away from the truth about *Canada* and encouraged him to peer at shadows on The Cave wall because they too were chained prisoners. Working on the third objective of the paper has provided another opportunity to discuss with my friends at the CSSPE how colonial-perceptual-reality is an obstacle to a just solution to *Canada*’s justice problem, that is, to its legitimacy.

Best's commitment to rational persuasion, equality, and improving Indians' lives lead me to think that if we had the opportunity for IPD, and were in the company of Indigenous scholars, we could agree on the injustice of past/present relationships, see *Canada's* legitimacy problem, and agree on what justice would look like on Turtle Island.

Since there are important gaps in *Canada's* origin story in the normative landscape of Best's argument-chain, I was confident that providing some missing pieces would cancel the influence of FREISD in his thinking about Indigenous nations. If he could be brought to see the normative and empirical reality of First Nations, he would see that his equality-assimilation proposal is unjust and join me in promoting a justice proposal that seeks justice for Indigenous Peoples.

We could then urge *Canada* to respect the sovereignty rights of First Nations and implement the *UN Declaration on the Rights of Indigenous Peoples*. When Best's understanding of the normative reality on Turtle Island matches normative facts, he will realize that Indigenous legal traditions and ethics, not *Canada's* law and ethics, are the appropriate starting points for making the present nation-to-*nation* treaty relationship a nation-to-nation relationship. Present and future generations of non-Indigenous illegal immigrants negotiating from their *nation* position, can transform *Canada* into Canada. While creating a legitimate nation, we can become Indigenous law-abiding citizens on Turtle Island.

## Endnotes

<sup>1</sup> I thank participants in Zoom gatherings of the CSSPE, CPA and CS:IVR for helping me think more deeply about various components of my argument chain in this paper. Special thanks to Bruce Morito, Douglas Rabb, Kira Tomsons and second reviewers for challenging questions and invaluable revision recommendations.

<sup>2</sup> Best uses *Indian* and non-*Indian* throughout his book. For the most part, I use *Indigenous* and *European*. I don't use *Indian* because Indigenous people have good reasons for regarding Indian Act naming as disrespectful.

<sup>3</sup> I use *Canada* and *Canadian* throughout. I show that *Canada* fails the legitimacy test and I am unwilling in my writing to pretend it does and misrepresent its normative status.

<sup>4</sup> Peter Best, *There is no Difference: An Argument for the Abolition of the Indian Reserve System and Special Race-Based Laws and Entitlements for Canada's Indians*, 13.

<sup>5</sup> Sa'ke'j Youngblood Henderson helped me see that this dichotomy infuses Eurocentric perceiving and thinking and he schooled me in how to discern it in non-Indigenous theorizing about Indigenous Peoples and their rights.

<sup>6</sup> Best is unclear about whether he sees human rights as positive and negative. A positive interpretation requires *Canada* to put in place the conditions that would allow Indigenous people to exercise and enjoy their rights. Since *Canada's* public schools, universal health care and social services are premised on this interpretation, and since Best laments that Indians do not have these goods, I assume agreement on the conclusion, "Equal human rights for Indians means that *Canada* has an obligation to equalize Indigenous and non-Indigenous basic need satisfaction."

Best's insistence on Indigenous persons' equal human rights has important material consequences for their well-being. For example, it imposes costly obligations on *Canada* when it goes to Court, as it often does, to avoid equal medical coverage, access to education, and child welfare services. Best's vivid descriptions of many First Nations provide evidence of *Canada's* ongoing violations of Indigenous persons' basic human rights. Past and present omissions have violated their basic rights to healthy air, water and soil, housing, education, and health care. *Canada's* negligence is doubly unjust since these expenditures are required by a difference between Indigenous and non-Indigenous persons. Best does not discuss *Canada's* constitutional fiduciary obligations to Indians. *Canada* acquired this legal responsibility when, in 1867, Britain transferred its illegitimate sovereignty to the new illegitimate Dominion of Canada.

<sup>7</sup> In fairness to Chief Justice Marshall, Best cannot build his case against Indian nations on Marshall's judgment. Marshall misleadingly uses the expression *dependent nation*. However, his description of Indian nations and his judgments favouring the Cherokee both support seeing the Cherokee (Indian nations) as a real nation having land and sovereignty rights.

<sup>8</sup> Tom Flanagan, 2008; Francis Widdowson, 2008; Chief Justice John Marshall, 1831 & 1832; Peter Heather, 2010.

<sup>9</sup> Best notes that Flanagan's requirements for civilization include many of Heather's features. *Civilization* is a term "...commonly used and understood by historians, of which the political state is one of the highest expressions" (Best, 226-27). Best's discussion of Heather is based on Heather's book, *Empires and Barbarians* (2010). Heather's theories are deservedly controversial. Allowing for the possibility that his knowledge of antiquity and the Middle Ages in Europe is as extensive as that of Indigenous Knowledge Keepers on Turtle Island of their history during these times, nonetheless, *qua* historian, Heather's contribution is purely descriptive and explanatory. History's methodologies do not have the tools for *assessing* nations. Heather's normative assessments of events or nations are based on his values. However, when he is assessing, he is not being a social scientist. He is either doing philosophy or expressing an opinion. Since he does not use philosophy's methodologies, I conclude that he is expressing an opinion which adds no epistemic value to Best's argument.

<sup>10</sup> Factually, Indigenous Peoples at first contact, and thereafter, satisfy many features on Heather's list for superior nations: large scale regionally-based political structure, a defined border, political consolidation, architecture, private property, heritable leadership, a unifying ideology, a structured religion, wealth accumulation, material surpluses, an increase in the amount of movable wealth, a core of towns and villages, agriculture production, international trade, trade networks, transportation and communication networks, and grave sites. I removed some normative content from Heather's descriptors, which appear worded so as by definition/stipulation to allow only for Eurocentric peoples to be classified as political states or civilized.

Ironically, *Canada*, a superior political state, according to Best, does not satisfy the defensible border requirement. It has not existed long enough to know whether European criteria for permanent buildings are satisfied.

Also, for transportation, the water ecosystems Indigenous Peoples used are more permanent than anything *Canada* has built.

<sup>11</sup> It is relevant in assessing Best's argument-chain to establish *Canada's* superior nationhood that Heather ascribes unjust practices to so-called "superior" nations. Examples include predatory expansion, patronage, minimum internal movement, an unfree class to provide services, and exploiting outsiders. Best's entire argument chain is premised on valuing justice. Is this consistent with judging an unjust state to be a superior nation? Is a state which respects all humans equally and protects every person's rights not superior to an unjust state which denies in word and violates in deed the human rights of women and Indigenous persons? Are older buildings, cemeteries with monuments, and higher GDP more important criteria for determining the superiority of a nation than justice?

<sup>12</sup> Spencer coined the expression *the survival of the fittest*.

<sup>13</sup> By the end of World War II, biologists and sociologists agreed that Darwin's descriptive scientific theory does not support Social Darwinists' normative inferior-superior judgements. It cannot be inferred from the fittest surviving that the fittest is best and those not surviving are less good or bad. Since it is not based *merely* on empirical data, Social Darwinism is generally regarded as pseudoscience.

<sup>14</sup> The inferior-superior dichotomy is the normative core of any Social Darwinist theory. John A. MacDonald presumed Social Darwinism as Prime Minister in *Canada's* first government when engaging in negotiations with and decision-making about Indigenous Peoples. Social Darwinism 'justified' the Indian Act, which was created to define "Indian", institutionalize the reserve system and Indigenous band council self-governance, and to ensure non-Indigenous domination of every aspect of Indigenous individual and collective life.

<sup>15</sup> Best and his experts believe that *Canada* is a superior nation in every aspect of being a nation. Their normative judgments are conclusions of an argument-chain employing their values and value-hierarchy. Unfortunately for their argument, they have not even attempted to justify either. Presenting their theories and justice proposals in a Western society, they may believe that justification is unnecessary. Their values and value hierarchy are shared with many of their readers.

If it is reasonable to presume no one will dispute them, justifying premises in an argument is a waste of time and words. However, Best (and his experts) can reasonably predict that his values and value hierarchy will be contested. He explicitly directs his arguments and proposals to Indigenous persons, whom he would have good reasons to believe would not share his values and value hierarchy.

I also contest the values underlying the inferior-superior nation judgments. For decades, I have argued in my environmental ethics classes, papers, and presentations that an Indigenous all-my-relations-ethics, and Indigenous law and economies consistent with it, are superior to the West's anthropocentric ethics and Western societies' law and economies consistent with it.

<sup>16</sup> In brief, after refuting unwarranted normative presumptions such as Heather's descriptions of European and Indigenous nations, which presume to prove that the former (hence *Canada*) are superior nations, I would argue that, in fact, Indigenous nations are superior. For example, if Indigenous nations design economic and health care systems where good relationships are at the top of their value hierarchy, whereas European style nations put capitalism's notion of private property at the top of their value-hierarchy, Indian nations are superior because they are more just.

Note, my inferior-superior judgments are qualified. By itself, "Indigenous nations are superior," is empty of content. Something is superior to something else in a particular respect, that is, some value makes a nation superior or inferior.

<sup>17</sup> It is true that not all social scientists moved out from under the umbrella. Some have opted to keep a foot in both methodologies. For example, in the context of theorizing about Aboriginal rights, James Tully, Peter Russell, J. Anthony Long (Political Science), Michael Asch (Anthropology), and Menno Bolt (Sociology) know that they are engaging in normative reasoning and explicitly use normative premises when arguing for normative conclusions.

<sup>18</sup> Best isn't quoting the OED's definition of nation, which is "a country considered as a group of people with the same language, culture, and history, who live in a particular area under one government, an independent nation, the African nations." However, many sources attribute this definition to the OED; see for example, Joep Leerssen's *National Thought in Europe: A Cultural History* (16.) I assume that Best finds the definition he is using in one of these sources.

<sup>19</sup> Best does not use necessary and sufficient condition language; however, he treats lists provided by Heather and Flanagan as if this is what they are.

<sup>20</sup> OED's definition of "civilization" illustrates problems inherent in claiming that one *only* uses the word descriptively. "Civilization 1. state of human society that is very developed and organized; *the technology of modern civilization (The settlers saw themselves as bringing progress and civilization to the wilderness.);* 2. a society, its culture, and its way of life during a particular period of time or in a particular part of the world (*The civilizations of*

ancient Greece and Rome had diseases that are common in Western civilization.); 3. All the people in the world and the societies they live in, considered as a whole (*Environmental damage threatens the whole of civilization.*); 4. a place that offers you the comfortable way of life of a modern society (*It's good to be back in civilization after two weeks in a tent!*)."

It does not require a deep analysis to show that English speakers use *civilization* in inconsistent ways and only definitions 2 & 3 are unambiguously descriptive. According to definitions 1 & 4, the word applies only to modern societies. This would surprise those using it according to definition 2, which explicitly encompasses ancient Greece and Rome. Definitions 1 & 4 are very exclusive in a manner inconsistent with definition 3's inclusivity. 1 & 4 both restrict the application of "civilization". Definition 1 provides the criteria to be satisfied which definition 4 presumes, that is, developed, organized, having modern technology.

Some words have an inescapably normative definition. In these cases, the words, for example, 'right,' 'good,' 'beautiful,' 'false,' are explicitly normative. However, as the OED demonstrates, we use some words in descriptive and normative ways, and "civilization" is this type of word. When the definition of civilization is descriptive, it applies to any society/nation. If the definition is normative, it informs about the values in common usage by English speakers for sorting societies into civilized and uncivilized. However, saying what we do does not justify our practice. The OED, like Best and his experts, does not prove that the values we use are the values we should use. In conclusion, being consistent with the OED definition of "civilization" cannot justify Flanagan or Best claiming the values presumed by their "*Canada is superior to First Nations*" judgment are the appropriate values for assessing nations as superior. Best faces the same problem with his claim that *Canada* is the only nation in the nation-to-nation treaty relationship.

<sup>21</sup> I do not dispute understanding normative judgments as descriptive if one means that they are factual, applying to the world and not based wholly on empirical data. When I call a law, policy, or action "unjust", my normative judgments describe real things in the real world, and my justice judgments are either true or false. However, whereas empirical descriptive statements are based on reasoned perceptions, normative descriptive judgments include values and justifying these judgments adds a layer of value-based reasoning to empirical data.

<sup>22</sup> Best italicises *nation* to differentiate an inferior/unreal nation from a superior/real nation, *Canada*. He claims the Anishnabek nation is "a political alliance and lobby group of Robinson-Huron treaty bands" (Best, 218).

<sup>23</sup> I drop Best's italics since using them cannot be justified.

<sup>24</sup> In *My Conversations with Canadians*, Sto: Loh Elder Lee Maracle, who was the Traditional Teacher for First Nation's House, has written a conversational book for us. In the beginning, she points out that Canadians love causes "...but they love the causes that are far away--out of their backyard, so to speak. Oh, wait: they don't actually have a legitimate backyard. They are here at our goodwill and by our host laws and by way of honouring our treaties--should that happen. Most Canadians don't see it that way, however. Nothing that happens to Indigenous people, no matter how unlawful, is of much consequence to many of the people occupying Indigenous territories." (8). Lee is one of my Indigenous instructors *per* The Cave. She gifted me with wise words and riddles to solve. Lee died this month, and only this morning, November 25, 2021, did I read the first chapter of her book and discover our perceptual reality of *Canada* is so much the same. I urge anyone who has read this footnote to read the conversational book she has written for us.

<sup>25</sup> I was on the Canadian Philosophical Association's organizing committee for this conference, along with David Kahane, Dale Turner, and Lorraine Mayer. A generous grant from the SSHRC meant that all presenters were invited. Indigenous and non-Indigenous recognized experts on Aboriginal rights were invited to present at this multi-disciplinary conference. Indigenous presenters included an Elders Panel consisting of Leroy Little Bear and Tobasonakwut Kinew, among others. Scholars included Taiaiake Alfred, John Borrows, Gordon Christie, Sa'ke'j Youngblood Henderson, Lee Hester, Lorraine Mayer, Brian Rice; Dale Turner, and Mary Young.

<sup>26</sup> Turner's third reason for claiming that liberal theories are not peace pipes: "They do not question the legitimacy of the Canadian state's unilateral claim of sovereignty over Aboriginal lands and peoples" (7).

<sup>27</sup> My conclusion contradicts recommendations of the Royal Commission on Aboriginal Peoples. However, because Dale's analysis of the Commission's work and recommendations in *This is Not a Peace Pipe* also shows that they do not satisfy his third criterion, I am not as concerned as I would be otherwise. He worked for the Commission and argues that RCAP's recommendations do not understand the reality of Indigenous nations and sovereignty.

<sup>28</sup> In *Citizens Plus*, Allan Cairns challenges *The Royal Commission on Aboriginal Peoples Report* (RCAP) for recommending a parallel nation-to-nation relationship. Cairns sees such a relationship as problematic for many reasons, including the political reality that Aboriginal nations are *within* Canada. "The goal is for the Aboriginal nation to be a functioning partner in a contemporary state that is parliamentary, federal, monarchical, and endowed with a Charter of Rights and Freedoms. his makes nation-to-nation a somewhat misleading description, for the Canadian

nation encompasses the Aboriginal nation with which it is negotiating” (143). In an earlier argument to show why self-government is only half an answer to the Aboriginal problem, Cairns claims: “Self-government is a response to the failure of past policies... In large part, therefore, self-government was seized on because the obvious rival was an indefensible status quo, relentlessly attacked by Aboriginal nationalists who believed that Aboriginal peoples could do a better job of governing themselves.”

Cairns’ claim that Indian nations are within *Canada* is problematic. An illegitimate nation has drawn lines on the map of the world, putting Aboriginal nations within its borders. Aboriginal nations draw their own borders on maps of Turtle Island predating European declarations of sovereignty and treaty negotiations. Is *Canada* within Aboriginal nations or Aboriginal nations within *Canada*? History supports the former. It is also problematic to describe self-government as an Aboriginal response to *Canada*’s failures. Aboriginal nationalists demand sovereignty, not self-government regulated by *Canada*. They are claiming an entitlement they have had since time immemorial, so it is not a response to *Canada*’s failure to govern them. It is a response to *Canada*’s presumption to govern them. They correctly claim that *Canada* has no entitlement to govern them period.

<sup>29</sup> In *This is Not a Peace Pipe*, Dale Turner shows that Kymlicka does not see *Canada*’s legitimacy problem in his account of the relationship between European Crown’s and Aboriginal Peoples. After acknowledging Indigenous nations were unjustly incorporated into *Canada*, Kymlicka should see *Canada*’s legitimacy problem. If *Canada* exists by unjustly incorporating Indigenous nations, liberal theory cannot legitimize *Canada*.

If we unjustly incorporated Indigenous nations, Indigenous Peoples morally and legally still possess collective rights to sovereignty. This means that *Canada* does not possess rights to their lands and is not a legitimate sovereign on Turtle Island. After many years of presenting on *Canada*’s legitimacy problem, no one has ever provided me with a justice principle in liberal theory that gives Britain or *Canada* the right to unilaterally incorporate Indigenous Peoples, let alone incorporate them unjustly.

*Canada*’s legitimacy problem creates serious obstacles for Kymlicka’s theory of Aboriginal rights. Unless *Canada* is a legitimate nation, his notion of minority *nations* within a nation makes no sense. Since *Canada* is not legitimate, Kymlicka and other political philosophers have the problem of finding in liberal theory a way for *Canada* to become a nation while recognizing that liberal theory accords Indigenous nations legitimate nation status. I argue that liberal theory’s solution is the one which Indigenous Peoples have been offering/demanding all along.

<sup>30</sup> The non-Indigenous epistemic predicament since Confederation may be less serious for future generations than for me and for Best. My grandchildren Quinn and Simon were born in 2009, and Faye and Ezra in 2013. In 2021, they know more about the relationship between Indigenous Peoples and the Europeans than I knew when I graduated with a Ph.D. in philosophy. They perceive past and present actions and omissions of our governments as “unfair” (Quinn’s word). While dwelling in The Cave, since they have been socialized to perceive *Canada* as a legitimate, and even a great, nation, they nevertheless understand that *Canada* is not respecting Indigenous Peoples and ignores most of its obligations to them. Quinn understands what I mean when I call *Canada* a “pretend” nation. He does not understand most of the implications, however.

<sup>31</sup> It would be hard to exaggerate how important my collaboration with Sa’ke’j has been in discovering The Cave. He gave me the inferior-superior dichotomy, which, in my thinking, became the notion of FREISD. When Sa’ke’j pointed out our reliance on this dichotomy in all legal and political discourse about Aboriginal rights, I began to see it everywhere in non-Indigenous books and articles I was reading, most recently in Peter Best’s book.

<sup>32</sup> After the announcement of the Philosophy and Aboriginal Rights came out in 2001, Paul generously gave of his time to participate in an e-mail dialogue about Aboriginal rights and he came to the conference with several of his friends.

<sup>33</sup> Janice and Linda gifted me their friendship. In our relationships, I learned about being a virtuous Indigenous person.

Janice was my executive assistant when organizing the Aboriginal rights conference, and faithful friend thereafter. Janice’s guidance and unwavering good spirits got me through the trials and tribulations a non-Indigenous woman could be expected to have when she is the local organizer of such an important conference. Janice taught me the wisdom of laughter and where to buy the supplies for, and how to wrap, bundles of tobacco.

Over time, Elder McEvoy became for me the Platonic Form for Elder. In her presence, I felt that I encountered Plato’s formula for justice in the individual and the state: courage + moderation + wisdom = justice. She let me visit with her when students were not wanting her time; she talked to my Intro students about her experience in Residential School. She invited me to join her drum group and to walk beside her at a Pow Wow to celebrate Aboriginal students’ graduation.



Like Janice, Elder Linda taught by word and deed. I will be forever grateful for every moment I spent in their company.

<sup>34</sup> Lorraine makes the distinction between Community and Scholarly Elders in Mayer, 2013.1.

<sup>35</sup> I have no means to discover whether Lorraine or Dennis McPherson are recognized Elders in their communities. Despite an epistemic certainty that does not always seem consistent with Indigenous epistemic humility, Lorraine's deep understanding of Cree philosophy, her passion for justice and her endless good works have made her my personal Scholarly Elder since we met in 1997. It has taken me longer to get to know Dennis. Having learned from Lorraine and Tobasonakwut respectively that epistemic humility and being sweet are not necessary characteristics of Scholar Elders, but understanding your People's philosophy and speaking truth to power are, I have concluded that Dennis qualifies as a Scholarly Elder.

<sup>36</sup> When I interviewed Scholarly Elder Leroy Little Bear for his contribution to *Philosophy and Aboriginal Rights*, he explained why he prefers *paradigm to philosophy* (Little Bear, 2013).

<sup>37</sup> In his review Professor Larivière claims "...the most serious fault with *Philosophy and Aboriginal Rights* is its almost complete failure to instantiate a necessary critical dialogue. Although it promises the communication and exchange of views between persons of Aboriginal and non-Aboriginal ancestry (constructing these persons as representatives of and partly constituted by the intellectual context of that ancestry), it does not deliver. The book, in sum, is but half of a conversation. This lopsidedness is no more clearly shown than in the case of the 'dialogues' between Tomsons and Mayer. What occurs is not a dialogue between distinct, contrasting or competing viewpoints, but rather the two-voiced articulation of a single viewpoint" (233-34). What Larivière deems the most serious fault of our anthology, Lorraine and I deem its greatest virtue. Our dialogues seriously challenge those who claim that there is an incommensurability of Western and Indigenous philosophy regarding Aboriginal rights. While there are incommensurabilities between Western and Indigenous philosophy(ies), there is agreement between liberal theory's understanding of the right of Indigenous Peoples on Turtle Island and Indigenous Peoples' understanding thereof. The problem is to get non-Indigenous people in The Cave to realize this.

<sup>38</sup> Since this question could be intended to challenge the practicality of my conclusions, I began including in my presentations and papers a section on why admitting *Canada* has an illegitimacy problem is not something we should be fearful of doing. Knowing what the justice problem is means we can now begin to solve it. I have constructed argument chains of various lengths to show that Indigenous politicians are very unlikely to do unto us as we did unto them. Non-Indigenous listeners have never responded to my argument to show that admitting *Canada* illegitimacy would have positive, not dire, consequences for *Canadians*.

<sup>39</sup> Best claims that all his treaty references are from Alexander Ross' seminal book, *The Treaties of Canada With the Indians*. It took me several days, but I am confident that Alexander Ross has not authored a book by this title. However, Alexander Morris has. This seems to be Best's source for his discussion of treaty making after confederation.

<sup>40</sup> For a century, until the late 1700s, the Crown developed a treaty system with the Iroquois and other Indian Nations, known as The Covenant Chain.

<sup>41</sup> Morito focuses on William Johnson, an agent of the British Crown, and other British agents. He also examines van Curler explaining how his relationship with the Mohawk was crucial to Dutch dealings with the Mohawk nation which "...established the peace and friendship treaty of 1643" (Morito, 109). Van Curler's personal relationships with Aboriginal people illustrate an ethics of mutual respect at the micro-level. Having good relationships with Aboriginal people personally, he successfully established and renewed Crown-Aboriginal nations relationships. As Morito explains, "Whereas other traders made use of alcohol to manipulate Aboriginal hunters, van Curler used an approach designed to produce peace and friendship by constantly renewing the relationship, thus enabling the initial relationship to evolve from a rope into an iron chain" (Morito, 110). It is not surprising that what worked to produce peace and friendship between traders works to produce peace and friendship between nations.

Economic and political relationships do not require the deep affection that cements personal relationships; however, they do require mutual respect. Affection may accelerate the evolution from rope to iron. Affection likely even implies mutual trust supporting the mutual respect which binds together an economic or political relationship. In his careful analysis, Morito shows how the rope and chain disintegrated when the Crown stopped respecting Indian Nations. The Crown's exercise of brute power created the colonial nation-to-nation treaty relationship *Canada* has with First Nations in 2021.

<sup>42</sup> In Morito's book, Best will not learn about the first treaty relationships on Turtle Island. In the *Canada* part of Turtle Island, treaty relationship began with Peace and Friendship treaties with the Mi'kmaq nation in L'nu (Nova

Scotia on world maps.). For a short, informative discussion of this ongoing treaty process, I recommend Jaime Battiste's "Finding Forgiveness, Building Trust."

<sup>43</sup> Leroy Little Bear explained his tickle trunk metaphor when I interviewed him for his contribution to the Aboriginal rights anthology (Little Bear, 2013). When negotiating treaties with First Nations, the Crown always brought its tickle trunk. Like Mr. Dress-up on CBC's long-running popular children's TV programme, the Crown had many costumes in the trunk. It carefully selected the costume guaranteed to get it what it wanted.

<sup>44</sup> This desire on the part of Canada to be perceived as just is no less strong today. However, with Indigenous politicians and scholars from sea-to-sea-to-sea on Turtle Island saying, "It's all about the land, you have always tried to steal our land," *Canada* is running short of costumes and accessories. In my research, I have not found a policy proposed or made law by *Canada* pertaining to Indigenous Peoples which at birth or shortly thereafter is not a new costume for colonialism--a new way to steal land from Indigenous Peoples and violate their rights (inherent and treaty). Our wickedness would make me believe in Christianity's doctrine of original sin, if I did not have so many Indigenous friends.

<sup>45</sup> European philosophers gifted us with liberal theory and refined its notions of individual and collective rights: Britain: Hobbes and Locke, 17<sup>th</sup> century; Hume, 18<sup>th</sup> century, and John Stuart Mill, 19<sup>th</sup> century; France: Rousseau, 18<sup>th</sup> century; Germany: Kant, 18<sup>th</sup> century.

<sup>46</sup> As Bruce Morito explains "...European colonizers enjoyed an increasing social licence that allowed the ideas of Hobbes, Locke, and Rousseau (and later Darwin) the freedom to grow and influence. Together, these developments helped produce the historiographic bias that Aboriginal people were not fully developed and, therefore, could not be considered a civilized people with a clear conception of law. Any remnants of Aboriginal systems of law could be devalued and denigrated with impunity because Aboriginal military and economic power had dissolved. These developments also helped support the view that whatever Aboriginal systems had been in place could do nothing but fall victim to the irresistible revolutionary forces sweeping Europe and the rest of the world" (Morito, 66).

<sup>47</sup> I share with Best the penchant for writing fat books and fat articles.

## APPENDIX

### Canada in the Treaty of Paris (1763)

The article states:<sup>[12]</sup>

IV. His Most Christian Majesty renounces all pretensions which he has heretofore formed or might have formed to Nova Scotia or Acadia in all its parts, and guaranties the whole of it, and with all its dependencies, to the King of Great Britain: Moreover, his Most Christian Majesty cedes and guaranties to his said Britannick Majesty, in full right, Canada, with all its dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the gulph and river of St. Lawrence, and in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King, and to the Crown of Great Britain, and that in the most ample manner and form, without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned. His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannick Majesty farther agrees, that the French inhabitants, or others who had been subjects of the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates,

provided it be to the subjects of his Britannick Majesty, and bring away their effects as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts or of criminal prosecutions: The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty.

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