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Non-Aboriginal Responsibilities Pertaining to Understanding Aboriginal Rights

The question of non-aboriginal responsibility to aboriginal peoples unavoidably arises whenever one engages in research about the relationship between Aboriginal and non-Aboriginal peoples. The injustices inherent in this relationship and the oppressive nature of these injustices mean one is confronted by the only appropriate response to injustice on such a scale,- a call for change, -a call to action. Something *must* be done! The only questions are: What should be done? By whom? Do I have particular obligations as a political philosopher? I have struggled with these questions since beginning my research in the area of aboriginal justice issues.

Even before I called the injustice 'oppression', it seemed clear to me that non-aboriginal Canadians, in particular governments, were neglecting their obligations to aboriginal peoples in a manner that was reprehensible. Initially, my confidence in this belief was supported by the evidence of conditions in Aboriginal communities and statistics comparing the well-being of Aboriginal and non-Aboriginal people. However, as I began to focus my research on what I labeled 'Aboriginal justice issues' my understanding of the basis for and hence content of the obligations was transformed. My papers and presentations for the past ten years regularly concluded with an assertion of the moral requirement, based in justice not charity or utility, to transform the institutional structures imposing the injustices I was discovering. I argued that non-Aboriginal governments were morally obliged to implement the conditions for a just relationship. In their current relationship, non-aboriginal people exercise more sovereign authority over more territory and people in Canada than their rights permit. Therefore, the benefits non-Aboriginal Canadians enjoy daily, which are rooted in these injustices, are tainted by the injustices. On the other hand, Aboriginal peoples exercise less authority over less territory than their rights permit. Therefore, the burdens Aboriginal peoples and people carry daily because they are denied authority over their lands and themselves multiplies the injustices for which non-Aboriginal people are responsible. Since all non-Aboriginal exercise of sovereign power and economic activity can be associated with the injustices being experienced by Aboriginal peoples, the scope and extent of the moral obligations of non-Aboriginal people appears to be immense. Only when self-determination and lands are restored to aboriginal peoples and when the sovereignty claimed and exercised by non-Aboriginal governments is sovereignty legitimate will Canada truthfully be described as just and there will be peace between the peoples on the territory. Until non-Aboriginal people act on their obligations to Aboriginal peoples, they continue to live a lie and Aboriginal peoples continue to suffer the consequences of their colonial rule.

Recently, non-Aboriginal responsibility questions became the focus of my research rather than briefly alluded to in the conclusion. The collective weight of the works of three aboriginal scholars, Dale Turner, Taiaiake Alfred and Sakej Henderson, which I was studying because of questions pertaining to Aboriginal rights and Aboriginal world views, made the responsibility loom large and unavoidable. Research regarding non-Aboriginal responsibilities pertaining to

Aboriginal rights was not undertaken because it would be an interesting topic for a paper for the CPSA and would allow me to continue to analyze, assess and learn from Turner, Alfred and Henderson. Indeed, I was sceptical about whether the CPSA would accept such a paper and very certain the CPA would not. However, whether the research netted a conference presentation or a journal article, these Aboriginal scholars had written words which created the conditions for a deontic experience which made this research a moral imperative. Moral theorists such as Tom Birch and Bruce Morito use the expression ‘deontic experience’ to refer experiences which produce a sense of obligation.¹ The experience *compels* our attention, reveals the duty, and motivates the appropriate response. In the Western philosophical tradition the deontic experience might be described as providing not only understanding of what one’s duty is but also the motivation to act upon duty. One is moved to respond. In *Wasase: indigenous pathways of action and freedom*, Alfred explains that in indigenous understanding of responsibility there is no space between ethics and experience. “As Onkwehonwe who are committed to the Original Teachings, there is not supposed to be any space between the principles we hold and the practice of our lives.”² Deontic experience might be as close to this way of explaining obligation that the Western traditions comes. Now to explain the conditions for my deontic experience.

Dale Turner’s *This is not a Peace Pipe: Towards a Critical Indigenous Philosophy*, Taiaike Alfred’s *Wasase: indigenous pathways of action and freedom* and Sakej Henderson’s *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society* make different aspects of the injustice trap in which Aboriginal peoples live visible. Consequently, they make non-Aboriginal responsibility for the injustice visible. Moreover it is painfully clear in the careful analysis of these scholars (1) injustice is ongoing (2) what appear to non-Aboriginal people to be ways out of the unjust relationship are new ways of continuing the unjust relationship. Whether it is Pierre Trudeau’s and Jean Chretien’s White Paper, Alan Cairn’s *citizens plus*, Will Kymlicka’s national minority rights, Robert Nault’s First Nations Governance Act, or judgements of the Supreme Court which purport to define the Aboriginal rights recognized in the Constitution, the proposals of politicians and academics, like the actions of the Supreme Court, would add further injustice layers to what Leroy Little Bear calls the ‘colonizer’s quagmire’.³ I now explain more specifically the contribution of Turner, Alfred and Henderson to producing my deontic experience and providing some understanding of non-Aboriginal responsibilities pertaining to Aboriginal rights.

Dale Turner

In *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*, Dale Turner explains that the fundamental dispute between Aboriginal nationalists and Canadian sovereigntists is that Aboriginal peoples believe they ‘own’ their lands and non-Aboriginal Canadian governments act as if they do not.⁴ Although Turner does not, I qualify the notion of ownership because the ownership of lands by the sovereign should be distinguished from the private ownership of lands by the citizens. If the actions of the Canadian state are evidence of the beliefs of non-Aboriginal Canadians, they believe the Canadian state now owns (in the sovereign sense) what used to be Aboriginal territory and they also believe that this means their now owning (in the private property sense) what used to be Aboriginal lands is just. Both beliefs depend upon Aboriginal territory and Aboriginal lands belonging to the past rather than the

present. Turner demonstrates this presumption is problematic. The legitimacy of the Canadian state and the incorporation of Aboriginal peoples are contested claims. Since the legitimacy of the Canada's unilateral claim of sovereignty over Aboriginal lands and peoples is conditional upon the creation of the Canadian state in just interaction with Aboriginal peoples *and* the just incorporation of Aboriginal peoples, Turner exposes the injustice of this unilateral claim. Although Turner explicitly situates his arguments in an Aboriginal perspective, I have argued elsewhere that placing his evidence within the context of liberal theory, results in similar justice judgements.

These serious justice problems which have their origins in non-Aboriginal thinking and activity suffice to create awareness of non-Aboriginal culpability and hence non-Aboriginal obligations. However, because *This Is Not a Peace Pipe* is an extended argument to demonstrate that some indigenous scholars have special responsibilities in the unjust institutional arrangements in which indigenous peoples find themselves, non-Aboriginal readers cannot readily escape being confronted with questions about non-Aboriginal responsibilities pertaining to Aboriginal rights. Turner's reasoning places us in a situation of awareness in which accepting the status quo is impossible and the sense of obligation is experienced. In calling indigenous scholars to become word warriors in the service of their communities, Turner maintains that the survival of indigenous peoples as sui generis political nations requires engaging the 'discourses of the state more effectively.' Whereas indigenous responsibilities are based upon survival, the non-Aboriginal obligations I discover in Turner's reasoning are based upon justice's demands. Although the justice context for grounding non-Aboriginal obligations is essential for understanding their moral weight and determining their content, Turner's survival argument prompted the question "Is there also a survival argument for non-Aboriginal responsibilities?" My efforts to answer this question shaped my deontic experience.

Turner's challenge regarding the legitimacy of the Canadian state and the presumption of the incorporation of Aboriginal peoples exposes the shaky foundations upon which the Canadian state sits. Most non-Aboriginal Canadians have a set of beliefs about the nature of Canada, Canadian sovereignty and Aboriginal rights which distort reality and create an epistemological prison which prevents seeing what is real. The research of non-Aboriginal scholars provides the opportunity to escape our epistemological prison, particularly when a growing number of indigenous scholars such as Turner, Alfred, Henderson in the company of non-Aboriginal scholars are exposing the complex illusion for what it is. As understanding replaces the illusion, the conditions for the deontic experience I am discussing emerge. Those now acknowledging obligations pertaining to Aboriginal rights see the survival of the Canadian state in a new light. The Canadian state ought not to survive. They are obliged in their reasoning to resist its survival and to determine how to reconfigure the artificial construct created by injustice.

Turner argues that indigenous scholars have the responsibility (obligation) to be word warriors because their non-Aboriginal education equips them to successfully engage the legal and political discourses of the state and their connections with their communities, most especially indigenous philosophers, ensures participation in accordance with indigenous ways of knowing the world.⁵ Indigenous understandings must be in the dialogue to create legal and political spaces "that will allow indigenous forms of government - and consequently indigenous ways of being - to thrive within a more inclusive Canadian democratic state."⁶ Turner's discussion of

liberalism's failed peace pipes and the constraints imposed by the discourse requiring Aboriginal participation leaves no doubt that this discourse is *enemy* territory. Accepting his description of enemy territory, encapsulated in what Turner calls 'Kymlicka's constraint', does Turner's discussion of the indigenous word warrior's responsibility disclose non-Aboriginal obligations?

Turner's argument for the need for word warriors and hence the responsibility of indigenous scholars to become word warriors has Kymlicka's constraint as its starting point. I believe it also provides the starting point for recognizing and understanding non-indigenous responsibilities pertaining to Aboriginal rights. According to Kymlicka,

For better or worse, it is predominantly non-aboriginal judges and politicians who have the ultimate power to protect and enforce aboriginal rights, and so it is important to find a justification of them that such people can recognize and understand... Aboriginal rights, at least in their robust form, will only be secure when they are viewed, not as competing with liberalism, but as an essential component of liberal political practice.⁷

It is hard to disagree with Kymlicka's blunt assertion of the power possessed by the non-Aboriginal persons occupying the institutional roles accorded this power in Canada's courts and governments. Given the loci of power, Kymlicka's conclusion, which Turner refers to as Kymlicka's constraint, that Aboriginal rights must be justified in the liberal theory which these non-Aboriginal holders of power understand and accept seems perfectly reasonable. Turner accepts the constraint Kymlicka has explained as the reality within which indigenous peoples must struggle to change "...the racist and oppressive public policies that have held Aboriginal peoples captive for more than one hundred thirty years..."⁸ Accepting the constraint as unavoidable, he calls the imposed requirement unjust.⁹ Unjust exercise of non-Aboriginal sovereignty violating the sovereignty of Aboriginal peoples compounds injustice by imposing upon Aboriginal peoples the sovereignty of the non-Aboriginal world view. Non-Aboriginal persons who seeing this injustice are obliged to make it visible and to resist it.

When I examine aspects of Taiaiake Alfred's account of the responsibilities of indigenous people, it will become clear that indigenous scholars are not in agreement with Turner that the survival of indigenous peoples depends upon accepting and appropriately responding to Kymlicka's constraint. For the purposes of this paper, I treat both Turner's and Alfred's responses to Kymlicka's constraint as appropriate means to their shared goal. But, I think Kymlicka's 'for better or for worse' assessment of the power of non-Aboriginal judges and politicians over Aboriginal peoples shows a lack of understanding of the responsibility of non-Aboriginal scholars to the injustice in the circumstances of Aboriginal peoples. Describing the real world in which non-Aboriginal power is exercised over Aboriginal peoples is one thing. To assess these circumstances with the words 'for better or worse' is to contribute to the complex illusion of non-Aboriginal Canadians rather than to resist colonialism and its injustice. Turner demonstrates Kymlicka's unwillingness to challenge the legitimacy of the Canadian state and its underlying sovereignty.¹⁰ Acknowledging incorporation for many Aboriginal communities was unjust, Kymlicka is not prompted by this realization to raise justice questions about Canada's assumption of underlying title and sovereignty. So, the non-assessment implied by 'for better or worse' is consistent with avoiding these larger justice issues. However, non-Aboriginal scholars who share deontic experiences similar to the one I am discussing here recognize confronting

these justice questions is an obligation. One does not have the right to turn away from or to obscure the injustice one has discovered. Not critiquing Kymlicka's 'for better or worse' assessment is choosing to turn away.

Turner's account of the obligations of indigenous scholars contains opportunities where he could reasonably claim that non-Aboriginal scholars also have obligations pertaining to Aboriginal rights. It is not moral obligation Turner identifies when he comments on a role for non-Aboriginal scholars. Claiming that word warriors cannot do their job alone, he indicates that they need non-indigenous intellectuals "...who can help indigenous people make their arguments count."¹¹ They can make enemy territory less hostile to Aboriginal rights. By so informing non-indigenous scholars who are beginning to see colonialism and to understand Aboriginal peoples' circumstances in the light of the systemic injustice of non-Aboriginal institutional arrangements, Turner has provided content for the obligation that is sensed.

Turner points to the necessity for 'a very special kind of dialogue - one grounded in a renewed and more respectful legal and political relationship' if Aboriginal and non-Aboriginal understandings of Aboriginal rights are to be reconciled.¹² The mediator role he envisions word warriors (indigenous scholars) playing in this dialogue has a non-Aboriginal analogue. As word warriors must be able to engage "the European history of ideas," supportive non-indigenous scholars must "listen and learn from indigenous philosophies".¹³ Turner understands the two groups of scholars as engaged in overlapping intellectual practices. However, he is not talking about disinterested knowledge gathering. They all share a commitment to seeking a just relationship: -justice for indigenous peoples and justice for non-Aboriginal Canadians. The non-indigenous scholar's commitment must be informed, that is, like indigenous word warriors, one sees colonialism and calls it oppression. The non-indigenous scholars may not see colonialism from an indigenous perspective, but, seeing colonialism as unjust, they acknowledge they have an obligation. They recognize that in order for colonialism to be dismantled, they must accept their portion of the responsibility for de-constructing the conceptual framework upon which it is built.

Turner more explicitly asserts non-Aboriginal governments have obligations pertaining to Aboriginal rights than non-Aboriginal scholars. Given his reasoned exposure of colonialism and non-Aboriginal government's responsibility for these conditions, the obligation he identifies appears at first as less than he justified. The obligation is to ensure Aboriginal participation in decision-making about Aboriginal rights. Turner claims "In view of Aboriginal understandings of their political sovereignty, justice demands that contemporary and future policy makers include Aboriginal voices when drafting legislation and policies that affect the welfare of Aboriginal peoples. In other words, a robust account of Aboriginal rights must include greater Aboriginal participation."¹⁴ Turner is not asserting that non-Aboriginal governments are obliged to listen to some Aboriginal people as part of *their* decision-making process. He explains that Aboriginal participation is the "...process of critically undermining colonialism and returning Aboriginal voices to their rightful place in the relationship between Aboriginal peoples and the Canadian state..."¹⁵ So non-Aboriginal governments are obliged to facilitate in dismantling colonialism. Those freed from colonialism's epistemological prison recognize that justice demands that colonialism be dismantled and also see that only Aboriginal participation can make this happen.

In Turner's extensive discussion of James Tully's three conventions of constitutionalism and his notion of the mediator there are further hints at obligations of non-Aboriginal governments pertaining to Aboriginal rights. Tully has argued that the three conventions, namely, mutual recognition, continuity and consent are justice principles which ought to govern the Aboriginal-European newcomer political relationship. The conventions can be formulated as the following non-Aboriginal obligations:

1. The obligation to recognize and accommodate the fact that Aboriginal peoples constitute equal and self-governing nations. (Mutual Recognition)
2. The obligation to recognize and accommodate the fact that Aboriginal nations did not relinquish their sovereignty when they entered into treaty relationships with the Crown. (Continuity)
3. The obligation to seek the consent of Aboriginal peoples for any changes in the political relationship which affect the nature of the relationship. (Consent)¹⁶

In a Canada in which non-Aboriginal governments accepted in word and deed these obligations, Kymlicka's constraint would be radically transformed. Each obligation constrains non-Aboriginal sovereignty and establishes the equality of Aboriginal sovereignty. The Aboriginal veto implied by the consent principle means that non-Aboriginal governments no longer control the dialogue. They must open the door to Aboriginal participation.

The responsibilities of the word warrior and the non-Aboriginal scholar have not changed in these new and more just circumstances. As Tully explains, the principles apply to a dialogical relationship, and the political dialogue (the negotiation) is ongoing. Rather than become redundant, the two groups of intellectuals can spend less time making visible colonialization and the epistemological prison and more time engaging the discussion of Aboriginal rights. Without agreement on the part of non-Aboriginal governments that these justice principles are to provide the moral landscape for the dialogue, the work for both Aboriginal and non-Aboriginal intellectuals can be seen as the struggle to establish these principles as the basis of the appropriate relationship and negotiations.

If one compares the obligations arising from Tully's justice principles with the four reasons Turner employs in critiquing proposals to accommodate Aboriginal rights based in liberal theory, it is evident that accepting the principles will go far to eliminate these reasons for failure. According to Turner, the White Paper, *citizens plus* and national minority rights fail to take account of Aboriginal understandings of Aboriginal rights because:

1. They do not adequately address the legacy of colonialism.
2. They do not respect the sui generis nature of indigenous rights as a class of political rights that flow out of indigenous nationhood and that are not bestowed by the Canadian state.
3. They do not question the legitimacy of the Canadian state's unilateral claim of sovereignty over Aboriginal lands and peoples.
4. They do not recognize that a meaningful theory of Aboriginal rights in Canada is impossible without Aboriginal participation.¹⁷

All three of the justice based obligations address the legacy of colonialism. The sui generis nature of indigenous rights is presumed by continuity. The three obligations presume that present non-Aboriginal understanding of the legitimacy of the Canadian state, which I have labeled the complex illusion, has been replaced by a new understanding of the nature of non-Aboriginal

sovereignty. Hence, non-Aboriginal governments accepting of these obligations deny they have sovereignty over Aboriginal lands and peoples. The third obligation (consent) mandates Aboriginal participation. Furthermore, the mutual recognition and continuity obligations ensure that it is precisely the type of Aboriginal participation Turner deems necessary.

Tully's theory not only is consistent with Turner's position, it is supportive of it. Tully could well be the model Turner has in mind when he speaks of the supportive non-indigenous scholars needed to secure Aboriginal participation. Tully certainly fulfills the obligations which I argue non-Aboriginal scholars have pertaining to Aboriginal rights. Unlike the White Paper, Cairns, Kymlicka, Canada's non-Aboriginal governments and the Supreme Court, Tully respects Aboriginal peoples. He respects their ways of being in the world and their ways of understanding the world. He does not approach questions about Aboriginal rights and the relationship between Aboriginal and non-Aboriginal peoples presuming the superiority of non-Aboriginal understanding, law and culture. Turner claims, Tully's non-Aboriginal mediator (the one who embodies the three justice principles and guides others regarding appropriate action in negotiations) not only recognizes and respects the legitimacy of Aboriginal ways of thinking and living but "...she weaves them into her own philosophical attitudes."¹⁸ The mediator has moved beyond tolerance, beyond respecting the right of Aboriginal peoples to their beliefs and ways of life. In becoming part of *her* philosophical attitudes, these beliefs *are* her and the dichotomy between Aboriginal/non-Aboriginal has been transformed so that she is suited to be a mediator. She has not replaced her non-Aboriginal world view with an Aboriginal one. However, her *felt* valuing of both (as opposed to believing one and tolerating the other) equips her to fill the mediator role well.

Arguably Tully's mediator is essential to ensure negotiations are actually in accordance with the three justice principles and to prevent non-Aboriginal reconstruction of Kymlicka's constraint, intentionally or not. Unless non-Aboriginal people in general have acquired the philosophical attitudes of the mediator, mediators will be needed as living and actively engaged reminders of the non-Aboriginal obligations pertaining to Aboriginal rights which are implied by the justice principles. Similar problems must be overcome in order to have either Turner's word warriors or Tully's mediators guiding and enriching the negotiations. Turner cannot be sure that there are indigenous warriors to participate in the negotiations or that indigenous communities will concur that their special knowledge and skills are essential to securing recognition of Aboriginal rights. Taiaiake Alfred, for example, is a strong indigenous voice arguing indigenous warriors ought to avoid the state's legal and political discourses, resist non-Aboriginal oppression, and become self-determining. Although Alfred and Turner agree about the urgency of the situation and the need for warriors and the goal, the warrior's tasks are radically different. Only Turner has any confidence that indigenous involvement in legal and political discourses makes it possible for indigenous understandings to influence or shape the normative language of these discourses. Analogous uncertainties apply regarding Tully's mediators. We cannot be sure that non-Aboriginal scholars will be able to acquire the knowledge, skills and philosophical attitudes required or accept the mediator's role. Moreover, non-Aboriginal governments have to be convinced that Tully's mediators ought to be part of the negotiation process. If agreement with Tully's justice principles has been institutionalized and there is widespread understanding of the obligations they imply, the major obstacles to accepting the mediator role will have been

overcome. In 2008, there is no evidence that non-Aboriginal governments are closer today to agreeing that they are obliged by Tully's justice principles in their relationship with Aboriginal peoples than they were in 1969 when Trudeau and Chretien brought forward their White Paper. Despite constitutional recognition of Aboriginal rights in 1982 and the recommendations of the 1996 Report of the Royal Commission on Aboriginal Peoples (RRCAP) that the relationship between Aboriginal and non-Aboriginal peoples be based upon these principles, non-Aboriginal governments maintain their silence regarding these obligations. Moreover, their actions imply they have not seen or refuse to accept these obligations.

In his discussion of RRCAP, Turner indicates that the last chapter of volume 1 "The Principles of a Renewed Relationship" calls for "two improbable (if not impossible) events to occur. First, *as a matter of justice*, Canadian governments ought to recognize the nationhood of Aboriginal peoples and return portions of their land to them. Second, *as a matter of justice*, Canadian governments ought to begin the process of empowering Aboriginal communities so that they can become more economically and politically self-sufficient." Turner does not reject these justice demands, however, he makes the following observation: "The lesson that we have learned, and that history has shown Aboriginal peoples time and time again, is that even in the best of moral worlds, justice may demand a certain course of action but by no means guarantees it."¹⁹ The justice of an action does not guarantee it will be done; even by persons who understand the action is demanded by justice. However, it is not unreasonable to hold that when understanding of justice's demands replaces ignorance about justice's demands, there is greater likelihood that the action will be done. I will not plead ignorance on behalf of non-Aboriginal governments when they originally asserted sovereignty over Aboriginal peoples and their lands. I will not claim they did not see rights being violated. I do not plead ignorance on behalf of non-Aboriginal governments today acting as if their earlier assertions were morally or legally effective in creating their sovereignty. However, I think ignorance of history in combination with the epistemological prison and liberalism's normative framework justify some confusion and uncertainty about what is morally required now.

Uncertainty may be an epistemically warranted stance, but, it is a position I have only observed in students and the general public. Non-Aboriginal governments, such as the present Conservative minority government, assert what should be done without expressing uncertainty about what is just. By way of illustration, the Conservative Party Policy on Aboriginal Affairs developed in 2005 contains the following statement on Self-Government. "The Indian Act (and related legislation) should be replaced by a modern legislative framework which provides for the devolution of full legal and democratic responsibility to First Nations, including the Inuit, for their own affairs within the overall constitutional framework of our federal state." There is no suggestion that Aboriginal peoples understand their 'rights' differently or that their position could have some merit. There is no acknowledgment that it is necessary to agree with Aboriginal peoples on a just process. The expression "First Nations" is used, but there is no hint here or elsewhere in the document that Aboriginal peoples are nations, and that the Canadian government is in a treaty relationship with these nations. Tully's mutual recognition principle is not understood as relevant to the formation and implementation of Aboriginal policy. The policy statement claims the legislation reform which will be undertaken "should be pursued following full consultation with First nations." But, consultation is a far cry from Tully's principle of

consent, -the justice principle that applies between nations. Consulting citizens in any manner it deems appropriate is fine when the federal government is proposing new. However, consultation does not suffice when one is entering an agreement with another nation. Nation-to-nation agreements require the consent of both parties. Moreover, legislation passed by Canada's Parliament is not a substitute for a treaty.

The Conservative Party's policy document contains an express commitment which implies a rejection of the *sui generis* nature of Aboriginal rights and presupposes non-Aboriginal sovereignty over Aboriginal peoples. "We are a nation governed by the Constitution Act, under which the rights of all citizens are protected and advanced by the Charter of Rights and Freedoms. Our future together as a country must be built upon the universal application of that framework." This categorical statement imposing the non-Aboriginal understanding of what is best upon Aboriginal peoples and constraining Aboriginal rights allows no room for the dialogical process which Tully argues for, RRCAP recommends and which Turner envisions as a means for securing the survival of indigenous peoples as distinct societies. The Constitution's recognition of Aboriginal rights and inherent rights compels the Conservative party and Canada's other political parties to avoid explicit endorsement of the White Paper. However, their policies, which are consistent with Cairns' *citizens plus*, are inconsistent with RRCAP and Tully's principles. Unsurprisingly, applying Turner's four tests for liberalism's peace pipes reveals that the actions the Conservative Party promises to undertake would not accommodate Aboriginal peoples understandings of their rights.

In "The Struggles of Indigenous Peoples for and of Freedom," Tully claims that western political theory contributes to the colonization of indigenous peoples.²⁰ Although its theories could in principle legitimize or delegitimize colonization, largely it has "played the role of legitimization in the past and continues to do so today." In this article and other publications, Tully's analysis and reasoning constitutes an exception to and challenge to the theoretical efforts to justify Canada's internal colonialism. He not only supports non-Aboriginal scholars in their understanding that they have responsibilities pertaining to Aboriginal rights, but he illustrates the kind of activity which this responsibility requires. My analysis of Conservative Party policy is an attempt to be clearer about the political reality in which Turner's word warrior and supporting non-Aboriginal scholars are exercising their responsibilities. Following Tully's example, it also illustrates the kind of critical engagement with government policy which assists Turner's word warriors in making their arguments count.

The present duties of non-Aboriginal scholars pertaining to Aboriginal rights at least include the following:

1. Increase historical understanding.
2. Establish the nation status of Aboriginal peoples
3. Analyze the injustice of the present relationship and make visible colonialism
4. Establish Tully's principles as justice's demands
5. Engage Tully's political discourse

Research related to the first four obligations needs to be undertaken and actively encouraged. Informing activities in universities and the media need to be ongoing. Departments of Political Science, Politics and Philosophy, which often provide the academic background of those who seek political office and roles in political institutions, need to ensure that universities become

places where the political discourse which Tully, RRCAP and Turner advocate is engaged. Also, the ordinary Canadians being courted by all parties must also be provided with opportunities to witness and be part of the political discourse which non-Aboriginal governments refuse to engage.

According to Turner, the Royal Commission's non-Aboriginal Commissioners "...were profoundly affected by the testimony at the public hearings."²¹ My experience in teaching and in community presentations is that most are open to being informed and to changing their beliefs and attitudes towards the rights of Aboriginal peoples. Moreover, they can discover that proclamations of sovereignty do not have moral or causal powers and that non-Aboriginal rights are as contested as Aboriginal rights in the political dialogue that is necessary between Aboriginal peoples and non-Aboriginal people. They recognize that governments are not addressing these questions and that there is a justice requirement to do so. If non-Aboriginal scholars were supporting with their arguments the arguments of Aboriginal peoples for new processes which respect their rights, then non-Aboriginal ignorance and fear could be reduced. It is important that there be widespread understanding that many, if not all, of the justice demands of Aboriginal peoples are justified from the non-Aboriginal world view as well as Aboriginal world views. When this happens and a sense of injustice replaces the ignorance and fear, the shared deontic experience made possible by new understanding will support the demand for type political discourse between nations. Only then will discourse which has been effectively changing beliefs and attitudes begin to change institutional structures.

Taiiaki Alfred

In the First Words section of *Wasase*, Taiiaki Alfred claims "These words are an attempt to bring forward an indigenously rooted voice of contention, unconstrained and uncompromised by colonial mentalities. A total commitment to the challenge of regenerating our indigeneity, to rootedness in indigenous cultures, to a fundamental commitment to the centrality of our truths – this book is an effort to work through the philosophical, spiritual, and practical implications of holding such commitments."²² Like Turner, Alfred claims that indigenous persons are engaged in a fight and have a responsibility to be warriors. Unlike Turner, the battle ground is not the legal and political discourses constructed and controlled by the Canadian state. The battle is in indigenous communities against internalized colonization and its aim is freedom from colonial attitudes and behaviours.²³ Alfred's discussion is explicitly about moral responsibility and moral principles. Although justice in terms of a new relationship is a goal, justice principles and rights are not the fundamental normative concepts, indeed justice is not understood as the end but rather as a means.²⁴ The real goals, as Alfred calls them, are peace, happiness and freedom.

Alfred does not provide a tidy analysis of the notion of freedom but the notion clearly applies to indigenous individuals and communities and in both cases requires escaping colonialism. Alfred affirms that indigenous peoples have the moral and legal right to govern themselves, but, asserts that there is no capacity in indigenous communities for indigenous governance. Accommodating colonialism, the path which Alfred maintains indigenous politicians are walking, is not a commitment to self-determination and freedom. It is Aboriginalism, the ideology and identity of assimilation; -it is surrender and defeat. This enemy

within, Alfred's target, is the Aboriginal identity constructed by the state. It has displaced indigenous values and principles. So, Alfred claims "There is great danger in attempting to negotiate structural changes to our relationship before our minds and hearts are cleansed of the stains of colonialism."²⁵ Therefore, he maintains that indigenous people are not ready to do battle in the legal and political discourse which Turner sees as the way indigenous peoples will survive.

Alfred's characterization of the politics in indigenous communities is important to the question of non-Aboriginal responsibilities pertaining to Aboriginal rights for many reasons. It highlights the potential for injustice in the Conservative Party's policy statement's explicit reference to the "need for certainty and finality of terms in negotiated settlements". This approach is in keeping with the Canadian state's efforts in all negotiations with Aboriginal peoples to extinguish their rights and foreclose the possibility of future Aboriginal rights claims. It serves as a reminder of why indigenous peoples need to negotiate from the source of their power which Alfred and Turner agree is being indigenous.

Equally important for non-indigenous scholars who have been assisted by Turner and Tully to see non-indigenous responsibilities pertaining to Aboriginal rights, is Alfred's distinction between authentic indigenous persons and colonized indigenous persons. This distinction has important implications for the notion of Aboriginal participation in legal and political discourse. Turner acknowledges that indigenous persons are not in agreement regarding the means to achieving respect and protection of Aboriginal rights and calls for discussion about who should represent indigenous peoples. He does, however, suggest that there is general agreement about the basis of the rights and what these rights are and he suggests that this agreement is rooted in an indigenous perspective. Alfred's analysis of indigenous politics challenges this agreement. Alfred's challenge does not justify a moral prohibition of Turner's Aboriginal participation, since the participation Turner calls for is rooted in indigenous philosophy. Nevertheless, it contains a heads-up regarding the complexity and difficulties caused by colonialism's genocide of the mind that will provide significant obstacles to a just outcome, even if Tully's principles rule the process.

Non-Aboriginal scholars informed by Alfred's analysis of indigenous politics become aware of new research obligations as well as practical problems to overcome. For years I have protested the injustice of the Canadian government's refusal to engage in nation-to-nation negotiations with Aboriginal peoples. However, if Alfred is correct, this injustice perpetuating present violations of Aboriginal rights may be preventing the creation of new ways of violating of those rights. If Alfred's assessment of indigenous leaders is correct, what is the just way for the Canadian state to proceed in moving away from injustice and toward achieving justice? I believe that a discussion of the principles governing the relationship and political dialogue is a safe place to start. As Turner points out, the principles which RRCAP argued should be accepted in the nation-to-nation relationship can be justified from within Aboriginal and non-Aboriginal normative frameworks. There is nothing in Alfred's discussion of indigenous values and principles which contradicts this assertion. Like Turner, Alfred would reject RRCAP's recommendations regarding Aboriginal sovereignty, since it constrains the governance of indigenous communities and hence not permit them to live as authentic indigenous peoples. However, since his own moral grounded reasoning is analogous to RRCAP's justice principle

approach, like Turner, he might have more praise for RRCAP's starting points than its recommendations.

Another aspect of Alfred's account of indigenous values and principles is important for understanding non-Aboriginal obligations pertaining to Aboriginal rights. He provides a fuller account than Turner of the scope of institutional change presupposed by a just relationship. He is explicit that non-Aboriginal world views must change and regarding some of the changes. The following quotations speak to institutional and world view changes:

It is impossible either to transform the colonial society from within colonial institutions or to achieve justice and peaceful coexistence without fundamentally transforming the institutions of the colonial society themselves. Put simply, the imperial enterprises operating in the guise of liberal democratic states are by design and culture incapable of just and peaceful relations with Onkwehonwe. Change will happen only when Settlers are forced into a reckoning with who they are, what they have done and what they have inherited; then they will be unable to function as colonials and begin instead to engage other peoples as respectful human beings.²⁶

On a theoretical level, the enemy of our struggle is the noxious mix of monotheistic religiosity, liberal political theory, neoliberal capitalist economics and their supportive theories of racial superiority, and the false assumption of Euroamerican cultural superiority.²⁷

Other aspects of my research into indigenous philosophy prompted questions about indigenous world views being commensurable with Euroamerican economic values and way of life. Turner leaves open the commensurability of world view question, although there is some suggestion in his discussion of Tully that the Aboriginal-non-Aboriginal political discourse could be transformative for liberal theory. Turner also keeps open the two row wampum understanding of the just relationship which allows for separation *and* self determination consistent with both world views. Alfred identifies a characteristic of liberal democracy which poses a fundamental problem for this understanding, that is, liberalism's imperative to assimilate all difference. Turner's discussion of liberal theory shows understanding of its superiority complex. But, his discussion of Kymlicka shows liberalism is labouring to find space for indigenous difference. Still, Turner sees the normative framework of Euroamerican philosophy as resisting being respectful of indigenous values. In his brief mention of indigenous epistemology hints that he recognizes that Euro-american philosophy is more likely to be dismissive of indigenous epistemology than respectful. Alfred's more detailed discussion of capitalism and its incompatibility with indigenous understandings of their relationship with the land provides a full picture of the kind of radical changes to the Canadian state that may be necessary for the state to not be assimilative and to respect these understandings.

Alfred's comprehensive rejection of liberal theory which is summarized in the quotation characterizing the theoretical enemy will not prove problematic for most non-Aboriginal persons who are supportive of Aboriginal rights. They already have detached liberal theory from Christianity and reject as false and unjust theories of racial and cultural superiority. When liberal theory is employed without these false beliefs and attendant values and attitudes, it is less obvious that it contains the possibility to justify colonialism or a refusal to accept Tully's justice

principles as basis for the relationship. My dissertation was devoted to showing that liberal theory is fundamentally incompatible with private property, so I believe that the realization Alfred ascribes to indigenous people "... that capitalist economics and liberal delusions of progress are not opportunities for indigenous peoples' gain, but the very engines of colonial aggression and injustice towards their peoples." is consistent with an informed and reformed liberal theory.²⁸ What Alfred contributes to my deontic experience and understanding of non-Aboriginal responsibility is the realization that what he calls 'a rising tide of consumerist materialism' threatens indigenous communities to the same extent as the assimilation of political leaders. From this insight comes a greater awareness of the collaborative work that needs to be done by indigenous and non-Aboriginal scholars to gain a fuller understanding of the injustice in the present circumstances and the shape of justice in a Canada which is at peace and no one's freedom and happiness depends upon injustice. Therefore, non-Aboriginal people are obliged to work very closely with indigenous people, if they seek to understand their obligations pertaining to Aboriginal rights.

Although Alfred is addressing his words to indigenous people, he does indicate that non-indigenous Canadians will also benefit when indigenous people live by their values and principles and deconstruct colonialism. To non-indigenous readers he says the following: "If non-indigenous readers are capable of listening, they will learn from these shared words, and they will discover that while we are envisioning a new relationship between Onkwehonwe and the land, we are at the same time offering a decolonized alternative to the Settler society by inviting them to share our vision of respect and peaceful coexistence."²⁹ I can see non-Aboriginal readers asking 'Does this mean that the just relationship requires non-Aboriginal people to adopt indigenous valuing of the land?' I think that the move away from the dominant Euro-american view that nature should be controlled and exploited and towards the view that nature ought to be respected which is supported by environmental ethics, environmental science and environmental studies shows that the best answer to this question is yes/no. Consequently, it would be erroneous to accuse Alfred of insisting that non-Aboriginal peoples be assimilated into indigenous world views and ways of living and that Aboriginal sovereignty replace non-Aboriginal underlying sovereignty. Arguably, history and liberal theory's justice principles could be used to show that justice requires understanding Aboriginal sovereignty as non-Aboriginal governments currently understand their sovereignty. However, Alfred indicates his rejection of such thinking when he rejects liberal theory's notions of rights, sovereignty and state.

James Youngblood Henderson

Philosopher and legal scholar, Sakej Henderson has also contributed significantly to my recent deontic experience. *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society* exposes how the Supreme Court of Canada defines Aboriginal rights in decisions supportive of non-aboriginal sovereignty and consistently violating aboriginal sovereignty and aboriginal rights. Henderson's book opens with a Preface which introduces the affirmation of Aboriginal rights in the Constitution Act of 1982 and the hopes and fears which this generated. Henderson promises to provide an analysis of the Supreme Court's subsequent failures to provide adequate accounts of aboriginal rights, -rights which it has declared to be *sui generis*. He does not permit the non-Aboriginal reader to forget the sui generis nature of these rights or that they

exist independent of and prior to the Canadian state. They are rights for the Supreme Court to understand and protect not construct or define. Their basis is in First Nations jurisprudence, hence, their content is not appropriately determined by reasoning which assigns primacy to non-Aboriginal sovereignty. As a non-aboriginal reader of the Supreme Court's decisions pertaining to aboriginal rights I have been puzzled by what seemed like unwarranted assertions and even inconsistencies in reasoning. And, I have been troubled by the resulting judgements. However, by enabling me to hear the reasoning and judgments of the Supreme Court in the manner of an aboriginal expert on aboriginal rights, Henderson clarifies the inconsistencies and contortions in reasoning and established the pervasive nature of colonialism. Hence his book became a condition making possible my deontic experience.

Henderson argues convincingly that non-aboriginal legitimacy and a just relationship presuppose that aboriginal rights are respected by Canada's courts. His analysis reveals the responsibilities of non-Aboriginal judges in their judgements pertaining to Aboriginal rights. One of the most significant injustices in the practice of the Supreme Court in its decisions pertaining to Aboriginal rights is that it has excluded Aboriginal Elders and law-keepers from the process. Consequently, Aboriginal Elders have not shared "...the Aboriginal teachings and jurisprudence necessary for them to properly identify or define these sui generis rights together with the Canadian judiciary or litigators. They have not been seen as expert witnesses in First Nations jurisprudences."³⁰ Henderson's book is an extended argument which documents and protests as unjust the absence of Aboriginal participation in the legal discourse which has been determining the scope and content of Aboriginal rights. There is much that is important in this book for coming to a fuller understanding of non-Aboriginal responsibilities pertaining to Aboriginal rights. For my purposes here, it is the fit between Henderson's justification of the role of First Nations jurisprudences and Aboriginal elders and important components of Turner's and Alfred's arguments that matters. Henderson's arguments supported Turner's argument for Aboriginal participation in the legal and political discourses defining Aboriginal rights. He also Alfred's insistence that the Court's decisions are a component of the Canadian state's imposition of colonialism. Henderson explains how the Court's practice, which appears to allow for Aboriginal participation by hearing Aboriginal and non-Aboriginal voices, does not actually permit the Aboriginal participation which Henderson and Turner in their different ways demonstrate is necessary for Aboriginal understandings of their rights to be respected and protected. This failure explains the failure of the Court's decisions to respect and protect sui generis Aboriginal rights. The Court's inability to see the need for (or unwillingness to allow) the appropriate kind of Aboriginal participation has allowed non-Aboriginal understandings about the nature and scope of Aboriginal rights to be represented in the Courts decisions. Hence, Alfred correctly describes Aboriginal rights as a state construct rather than reflecting indigenous understanding of their rights. The Court's decisions are not steps forward in the direction of a just relationship. What appear to be Aboriginal rights *recognized* by the Court are in fact Aboriginal rights *defined* by the Court and presupposing non-Aboriginal rights which are unconstrained by Aboriginal rights. Hence, Aboriginal rights constitute new ways for the Canadian state to impose colonialism.

So, in conjunction with the works of the other two indigenous scholars, *First Nations Prudence and Aboriginal Rights* contributed to my deontic experience by providing evidence and

insight that deepened my sense of obligation. His analysis of the problematic reasoning supporting the Court's pronouncements about Aboriginal rights and his explanation of the relationship that constitutional recognition of Aboriginal rights establishes between First Nations Jurisprudence and Supreme Court judgements about Aboriginal rights provided evidence for my intuition that non-Aboriginal persons who have particular roles in government and the judicial system have obligations pertaining to Aboriginal rights. It was when I added Henderson's work to the 'research pot' that I was able to formulate what I will call justice's epistemic demand. I mentioned above an obligation on the part of non-indigenous scholars to displace ignorance. Colonialism has to be made visible and its sources and what sustains it revealed. Henderson's discussion of the Supreme Court allows one to discover that more specific epistemic obligations attach to some roles. Members of parliament and judges have many opportunities to seriously violate Aboriginal rights. Minimally, persons who are so positioned that they could harm Aboriginal peoples by their decisions are morally obliged to be aware of history, colonialism and of indigenous accounts of Aboriginal and non-Aboriginal sovereignty.

Conclusion

Part of the insight emerging from my deontic experience is I have been reminded that although in my writing about Aboriginal rights I have tended to draw conclusions about the obligations of non-Aboriginal governments, the obligations are necessarily acted upon by individuals. Turner, Alfred and Henderson have written about the responsibilities of indigenous persons, and as I have reflected on their claims and arguments it has become increasingly clear that there will be no institutional changes unless first there are changes in individuals. Alfred especially has written at length about the changes that are necessary for communities of indigenous persons. I have provided some suggestions for the changes that are necessary in the thinking and activities of non-Aboriginal persons. The possibility of a just relationship between aboriginal and non-aboriginal Canadians ultimately depends upon persons doing what they are morally required to do. For non-Aboriginal persons, this means working to understand the obligations that we have if we are to transform non-Aboriginal sovereignty into the legitimate exercise of non-Aboriginal treaty rights. It is only as individuals act in accordance with their responsibilities that Aboriginal communities and non-Aboriginal governments will be able to move in the direction of a right relationship.

Endnotes

1. Morito reference.
2. Taiaiake Alfred, *Wasase: indigenous pathways of action and freedom*, Peterborough: Broadview Press, 2005, p. 114.
3. *Ibid.*, 11.
4. Dale Turner, *This Is Not a Peace Pipe: Towards a Critical Indigenous Philosophy*, Toronto: The University of Toronto Press, 2006, p.5.
5. Turner, 75.

6. Ibid.

7. Will Kymlicka, *Liberalism, Community, and Culture*, Oxford: Oxford University Press, 1989, p.154

8. Turner, 59.

9. Ibid., 10

10. Ibid., 7.

11. Ibid., 120

12. Ibid., 5.

13. Ibid., 120.

14. Ibid.,58.

15. Ibid., 31.

16. Ibid.,85.

17. Ibid.,7.

18. Ibid. 86.

19. Ibid.,78.

20. James Tully, “The Struggles of Indigenous Peoples for and of Freedom”, in *Political Theory and the Rights of Indigenous Peoples*, eds Duncan Ivison, Paul Patton and Will Sanders, Cambridge: Cambridge University Press, 2000, 43.

21. Ibid.,76.

22. *Wasase*, 33.

23. Ibid.,34.

24. Ibid., 27-28.

25. Ibid., 180.

26. Ibid., 154.

27. Ibid., 103.

28. Ibid., 133.

29. Ibid.,35.

30. James Youngblood Henderson, *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society*: Saskatoon: Native Law Centre, 2006, 238.