

Ockham's Razor

Cutting down a worn out scarecrow

January 29, 2005

Janice G.A.E. Switlo

B.Com (Sauder), LL.B (Osgoode)

“Pluralitas non est ponenda sine neccesitate”
(Plurality should not be posited without necessity)

William of Ockham (Occam) (1285-1349)
English philosopher and Franciscan monk

The Warring States Project was established on June 10, 1993 by Lee R Edwards, Dean of the College of Humanities and Fine Arts, University of Massachusetts, Amherst, as a centre and international contact point for research on China's classical period, considered a very formative period in Chinese history. This period is also referred to as the “Contending States” period and is usually understood as the period between 475–221 BC. It was a period of feuding Chinese kingdoms. The Warring States period was one of the most fertile and influential in Chinese history. It saw the rise of many of the great philosophers of Chinese civilization. Apart from it quickly becoming terribly important to understand China as it effectively positions itself as a major world power that moves into classic comfort zones, this scholarly discussion and forum on Warring States history and philology is helpful as it delves into larger questions of comparative history.

Offered as part of the Project’s work is an encapsulated description dated July 6, 2002 titled “The Ancient Economy” (<http://www.umass.edu/wsp/comparative/economy/>). There it is noted that the international community often defines “peace” as “the absence of war.” The better view, it proposes, is to understand economics as the “science of peace.”

Economics is explained as the exercise of three key societal functions:

1. Getting or not getting enough to eat;
2. Making or not making things for use or enjoyment; and
3. Moving food and objects from one place to another, or failing to do so.

“They are among the most important ways of cooperation within a society or between societies. They are how societies or communities interact for mutual benefit.”

What especially caught my eye was the line of reasoning on the expansion of an economy that may follow, and did arise during the Warring States period:

“Banditry, [an economic stage comprised of] “Predatory Economies” [and] Criminal Subcultures, ... forms a sort of transition to more warlike modes of interaction. We might perhaps usefully *define war as banditry between societies.*” [Emphasis added]

In deciding how far to extend the scope of the Project’s study, it says,

“It follows that it is tempting to make War a sixth category in the above [Ancient Economy] outline. But we would then immediately have to add a seventh Diplomacy category, and so on, until the entire culture was eventually included. For present purposes, we will leave War and its cousins to be separate specialties, with the reminder that the study of society is not divisible, and that ultimately, no aspect of it can be understood in isolation from the others. There can be no free-standing science of economics. There is at most the study of the economic aspects of a society, and those aspects continually fade into, and are affected by, other aspects of that society.”

This is something Canadian advisors, bureaucrats, and politicians supposedly intent on improving the economic circumstances of Indigenous peoples should past throne speeches be taken at face value, do not seem to understand. I concur with the Project's assessment. The obvious lesson for Canada is that it is not possible to walk towards peace – native economic development initiatives, while walking towards war – banditry, all in the same motion.

It cannot be expected that any economic initiatives for Indigenous peoples will adequately counter the predatory economy from which Canada benefits at the crushing expense of the Indigenous peoples.

It's like tossing someone a pair of driving gloves but running off with their vehicle. Their hands would have been warm in the vehicle so they really did not need the gloves, though they are always nice to have. It was only after having been jacked that they needed the gloves to prevent the serious risk of frostbite now that they had to walk instead of drive to where they needed to go. While the person shivering beside the road is no doubt grateful to receive the driving gloves though they were more in need of ski gloves, the answer to the situation is not to press car jackers to carry ski gloves instead of driving gloves to toss to their victims, or indeed any gloves at all. The answer is to stop the theft in the first place.

And when the victimized Indigenous people have spoken up about the need for the theft to stop, they have been met with cries about failure to account for the number of driving gloves they received, and how wasn't that enough, and to go get a job to buy their own gloves and quit complaining anyway, or that if they wanted ski gloves, they ought to be paying taxes. No mention is made about the stolen vehicle and what was being done to see to its return, including restitution for use and compensation for any damage done to it.

A real life example:

Email exchanges were busy last week sharing the announcement of a development promised to be the economic saviour for a local Indigenous community, Eagle Village First Nation: the Grand Opening of Migizy Gas Station on January 17, 2005.

I haven't come across any news reports on the event but Canada's news release is posted on government of Canada websites as well as a backgrounder:

“1,785 sq. ft., Migizy Gas is located in a log house with a roof design in the shape of a teepee, an Aboriginal traditional home.

This business will create 13 jobs for the members of the Eagle Village First Nation. The various positions offered include a manager, four clerks, four cashiers and four pump tenders. Furthermore, it is estimated that the project will create economic benefits amounting to \$1.15 million over a five-year period.”

Here are some of the glowing remarks released and posted by Canada:

“The Migizy Gas Station could not have gone ahead without the financial contribution of various partners: the Government of Quebec (Secrétariat aux affaires autochtones) provided \$536 000, the Band Council contributed \$143 224, the Government of Canada (Indian and Northern Affairs Canada) provided a contribution of \$99 500, and the Royal Bank of Canada provided a \$350 000 loan.

‘This project exemplifies the opportunity to provide a much needed service to the members of Eagle Village and surrounding municipalities, ... *creating our own source revenues* which will be reinvested in the community,’ stated Chief Haymond.’ ”

Emphasis added – sounds like someone’s been talking delegated federal self-government programs to Chief Haymond. Back in 1992 such language wasn’t in the picture, when chiefs had this to say, as posted on their website (<http://www.anishinabestation.ca>):

“WE, THE CHIEFS OF THE COMMUNITIES OF ABITIBIWinni, EAGLE VILLAGE, KITCISAKIK, KITIGAN ZIBI, LAC SIMON, LONG POINT AND WAHGOSHIG OF THE ALGONQUIN ANISHINABEG NATION HAVING DECLARED:

THAT Our People are the original people of this land having been placed here by the Creator;

THAT the Creator gave us laws that govern all our relationships for us to live in harmony with nature and mankind;

THAT the laws of the Creator defined our rights and responsibilities;

THAT the Creator gave us spiritual beliefs, our language, our culture and a place on Mother Earth which provides us with all our needs;

THAT we have maintained our freedom, our language and our traditions from time immemorial;

THAT we continue to exercise the rights and fulfil the responsibilities and obligations given to us by the Creator for the territory upon which we were placed;

THAT the Creator has given us the right to govern ourselves and the right of self-determination;

THAT the rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation; ...”

Continuing with the gas station grand opening remarks announced by Canada:

“ ‘The achievement of this project is excellent news for the economic development of the Eagle Village community and it proves that First Nations have their place in the economy as much as governments and the private sector,’ explained Regional Chief Ghislain Picard.

‘Projects such as Migizy Gas Station are productive for a community. I wish to congratulate the elected officials and businesspeople of Eagle Village-Kipawa, who have shown their leadership and their resolve in the startup of this business. For the Government of Quebec, this type of partnership is essential to create jobs and future opportunities for a community,’ declared Minister Benoît Pelletier.

‘Aboriginal entrepreneurship has developed at an accelerated rate. Moreover, it is estimated that in the next ten years, the Aboriginal workforce will grow at twice the rate of total Canadian labour force. The Eagle Village First Nation is a prime example that it is possible to attain two objectives with one initiative by having created jobs for its members and having developed a new business market that will generate significant spinoffs not only for the community but the entire region. Indian and Northern Affairs Canada is proud to be a partner in such a project as Migizy Gas,’ said Minister Scott.”

No doubt the Migizy Gas Station was something worked on long and hard by these people, numbering 686 as at December 2004 with 266 living locally, and it will likely provide them with conveniences. This is not intended to take away from that hard work or to dishonour it.

But let’s look at this announcement. “Generate significant spinoffs”? Minister Scott says, but I really question that. This is not an announcement about a major joint venture or resource revenue sharing.

This is – corner gas.

Let’s talk gas. And oil. And while we’re at it, diamonds, and trees, and fish. Let’s not stop there. How about air space, biomedicines? Indigenous peoples are owed countless due to the banditry that is being practiced by Canada and various corporate and business entities through Canada’s permissions and absence of the permissions of the Indigenous nations. Those of Eagle Village have been left to celebrate the success of having squeezed a few drops to build a gas station. Apart from the lucky twelve who will receive unskilled employment and the one skilled employment, this amounts to estimated “economic benefits” of \$335.28 per person per year for five years, or \$27.94 per month per person.

But then again, is this new money, or simply circulation of existing? Who are the customers of this gas station? What’s the market draw and potential? Canada says,

“The gas station is strategically located so as to ensure easy access to customers from the community as well as local customers and tourists, who are present in the region all year round.”

Is it now? The 266 residents of the Algonquin community of Eagle Village, which is located on the Shore of Kipawa Lake, live approximately 10 km north of the city of Témiskaming, Quebec. Témiskaming is located 500 kilometres north of Toronto, Ontario and is the site of The Bikers Reunion, held annually, this year June 30 - July 2, 2005. A successful cancer fundraiser, last year The Bikers Reunion saw a five-mile stretch of motorcycles arriving into town. But from the maps, it doesn't look like they would be traveling past the Migizy Gas Station. Indeed, the opening didn't make the local news in Témiskaming – maybe they already have enough gas stations. As for me reading about it on the West Coast, well, I doubt I'll be traveling there any time soon.

So who's really making the money here?

“The gas station will operate independently, it will however be bound by the terms of an agreement with the Crevier group for oil products supply. This agreement will enable the business to have access to the group's expertise, know-how and operational training for employees, in case of need.”

I see no cause for national celebration. This overblown, self-serving media effort comes across as pathetic. Is this really all that can be dished up to try to make Canada look like it is making things happen, like Canada promised it would?

Programs and economic development initiatives attempting to solve the “Indian problem” do not succeed in alleviating the serious standard of living gaps that exist, that the international community continues to point out to Canada are atrocious. The only results are short-term boosts of excitement, a few conversions from welfare to low-end pay, followed by money often wasted on building false expectations, and ultimately worsening conditions and relations. Then most tragically there are the increased feelings that that's as good as it gets, reinforcement that that is all an Indian deserves and can hope for. Those feelings have been shared with me confidentially on many occasions. Feeling no escape, youth increasingly choose suicide – by quick or slow (getting high) means. That they can control.

Even talented university students looking at education as a way to gain control cannot shake that feeling of no control and fear of never having control that sometimes comes through in their communications with me. The more they begin to understand the banditry and how domestic law is not stopping it but condoning it and setting out how to do it in a “more civilized” manner and thus encouraging it to increase, the worse the fear can become that the banditry won't stop until there is nothing left to take.

I'm not saying that gas stations are not needed. I'm just saying that they are not the answers to the problems facing Indigenous peoples, and they most certainly are not the foundations of self-government or representative of “their place in the economy.” Their place in the economy is as original stakeholders – owners, priority users. The kind of business they are open for has to do with their lands and resources and what is to be covered off with them before development or extraction. Those are the announcements Canada should be preparing for but works to prevent, contrary to Canada's obligations.

(And I am not talking about those limp impact-benefit agreements, which while sounding like they are going in the right direction end up being mere promises to try to create jobs or swing jobs towards locals who are usually not trained nor skilled for the work (just try enforcing one of those provisions in a court), and token payments, but no commitments for the training needed and no profit sharing. In so many industries employers are compelled by shortages of skilled workers to invest in training to develop their own workers. In some of the highest margin industries, there is little parallel commitment made to benefit the local Indigenous peoples where the industries are operating.)

When those inevitable results of failed programs materialize, the whole downward spiral swirls some more, with more program initiatives announced, and so on. Increasing expenditures can never meet the increasing needs and expanding inadequacy of services as numbers of those with increased needs increase.

All triggered by banditry: modern-day attempts to conquer, to destroy Indigenous Nations and turn their injured survivors of the carnage towards a *faux* haven painted with a whitewash of promised control and economic prosperity: Aboriginal Canadians, a domestic ethnic minority with “protection” under section 35 of the *Constitution Act, 1982* as construed and amended by the Supreme Court of Canada to become the rules to follow to lawfully justify not protecting.

“Let us first talk about the fundamental difference between thieves and bandits: While thieves use tricks to get what they want, bandits use force. The [Chinese] proverb ‘trick and force’ can best be illustrated by applying the famous Legalist philosopher Han Fei's famous aphorism: ‘The Confucianists (or scholars) use words (writing) to abuse the law while knights-errant use force to violate the law.’ ”

“As two [Chinese] proverbs go: ‘The successful ones become kings, the failed ones bandits’ and ‘The one who steals a hook becomes a thief and the one who steals a kingdom becomes a king.’ ”

(Wen Yiduo, *On Confucianism, Daoism, and Banditry*, abridged translation posted at <http://www.chineseliterature.com.cn>)

Now the core of the words “banditry” and “bandits” is “band.” As those familiar with Robin Hood and his band of merry men may realize, during early Anglo-Saxon England while engaging in the same activity, seven to thirty-five men were called a band, while thirty-six and above constituted an army.

“Band” is Germanic in origin, leading me to engage in some relevant history that should feel very familiar to many and offers many lessons.

Prior to the Germanic invasions, Celtic tribes inhabited Britain. They were united by common speech, customs, and religion. It is understood that each tribe was headed by a king and had classes of Druids (priests and priestesses), warrior nobles, and commoners. But lack of political unity made them vulnerable. Bickering among themselves and engaging in power struggles over political and territorial expansion set the stage for successful Roman invasion with the help of “client kings.”

It was Rome's custom to place a friendly king on the throne of any country on their borders that Rome did not yet wish to directly govern, called "client kings." Client kings ruled in name but the real power was in the hands of Rome's ministers. Roman client kings were normally proven men who could serve the Roman interest in some way.

The client kings and members of their families were brought to Rome as hostages, guests or exiles to receive an education and induction into Roman political ways. They adopted many aspects of Roman elite lifestyles and their positions and actions were dependent upon and prescribed by Rome.

An expedition by Julius Caesar in 55 BC brought the edge of the Roman Empire to southeast Britain. He called the people he found there "indigenous to the island" as he said they believed themselves to have "grown up out of the ground." Caesar did not conquer the area but set up client kings who began to see the advantages of being in Rome's favour – they developed a taste for olive oil and wine. The client kings promised to look after things on behalf of Rome.

Rome thus held tenuous control of Britain by maintaining client kings from the local tribes, and by encouraging the tribes to war among themselves. Rome kept them divided so the imperial army would remain the strongest force.

"... British rulers were really 'puppets' of Rome in all senses of the word. They are painted as people incapable of their own creative thoughts, actions and improvisations. These people are cast as incapable of being exactly the same astute and creative political operators in Rome, who as hostages they are supposed to have learnt from."

(D Hill, The British Museum, April 2004)

After Caesar left Britain, the client kings continued their allegiances, trade and links were strengthened, and sons were busy being educated in Roman ways.

Emperor Augustus thought of annexing Britain but didn't proceed. Emperor Caligula sailed to the south of Britain with an army, landed, picked up some seashells from the seashore, then returned home. When Emperor Claudius came to power, he was strategizing about a big military victory to cement his authority when the opportunity nicely presented itself. One of the client kings came to Rome asking for help to resolve some tribal squabbling. So Claudius obliged, and conducted a full-scale invasion, defeating the Celtic tribes in 43 AD. Claudius traveled to personally accept the surrenders of eleven southeastern kings, returning triumphantly to Rome and leaving Aulus Plautius as the first Governor of Britannia.

The Roman Empire thus comprised the whole known world, and was divided into provinces. The first order of business was always for the governor with his engineers, architects, builders and army, to build roads and cities to establish permanent presence. Rome also sent an estimated 60,000 soldiers, administrators and farmers, who brought their families, to settle in and govern England. Rebellious Celts were driven mostly north and west to Scotland, Ireland, and Wales.

But just as Rome had secured almost total conquest, Rome was caught by surprise by the outbreak of “Boudicca’s war” in East Anglia. It continued for two years beginning about AD 60 under Icenic Celtic Tribal Queen Boudicca (also Boadicea, Bunduica, Voadicia, Bonducca, Boudic(ce)a). The Icenic had their religious centre at Thetford (Norfolk, England). The site was accidentally located from the air by archaeologist Bob Carr in 1980. Excavations in 1981 revealed enclosures of ditches, banks, and about nine rows of closely spaced oak uprights, what has been described as “an artificial oak grove.” (See: Tony Gregory, “Excavations in Thetford, 1980-1982,” Fison Way, Vol.1, East Anglian Archaeology Report No.53 [Norfolk Museums Service 1991])

Queen Boudicca formed a pan-tribal alliance of Celtic warriors who very nearly successfully repelled the Roman colonizers. Boudicca’s war is known historically as one of the most significant insurrections against Rome during Europe’s classical era. Her name in the Brythonic language meant “victory” and she is honoured with a bronze statue located at Victoria Embankment, Westminster Bridge, London, England.

Britons flocked around Boudicca and her cause, which though triggered by personal revenge, was primarily a religious war. It was a clash of two powerful belief systems. When it came to the Judaism and Druidic religions, Rome’s policy of religious tolerance with conquered countries was not applied. The spiritual leaders were considered to have such strong influence and power that they could entice a revolt, so these religions were viewed as a threat.

Queen Boudicca was the wife of King Prasutagus, a Celtic client king of Britannia. Allowed to remain nominally independent as an ally of Rome, opinion supports that King Prasutagus was installed as a pro-Roman ruler following the defeat of an Icenic rebellion in 47 AD. In his Roman will, King Prasutagus named his two daughters as heirs to half his kingdom, and Emperor Nero to the other half, so as to pacify Rome and thereby protect his family.

Roman author, Tacitus, reported in the first century “that the Celts made no distinction between male and female rulers;” however, Roman men thought of women as possessions and the idea of women in public office preposterous. Roman law did not have to recognize a woman or two daughters as heirs. So immediately upon the death of King Prasutagus, the Roman procurator, the chief financial administrator of Britain, stormed the Icenic palace with a police force and claimed the whole of the Icenic kingdom for Rome.

The two pre-teen to teenage princess heirs were defiled and brutally raped, their screams heard by Queen Boudicca as she was stripped, tied to a wagon and viciously flogged in front of her entire tribe. This was legal under Roman law, since the Icenic were declared non-Romans. (This should bring to mind the Indian residential school scenario – the “lawfulness” of the actions taken there against non-British, Indigenous nationals.)

Pillaged and plundered, subjected to severe taxation, and Roman financiers suddenly calling in their loans, the shocked people of Icenic quickly supported the humiliated Boudicca’s efforts to gather weapons and warriors. Roman historian, Dio Cassius, wrote in 210 AD that Boudicca started the rebellion when she said:

"Listen to me. You know the difference between freedom and slavery. Before the Romans came, we were free. Now we are slaves. When the Romans invaded us they robbed us of our riches. Now they continue to rob us by making us pay taxes. Every year we work on our land – and for what? So that they can take away all that we earn. I would rather die in battle than have to pay taxes. But why do I mention death? Even death isn't free anymore. We even have to pay the Romans before we can bury our dead! They look down on us and trample us underfoot. All Romans care about is making money out of us."

With her daughters before her in a chariot, Boudicca went from tribe to tribe encouraging alliances. Tacitus, *Annals*, Book XIV, Chapter 35, written about 110 – 120 AD, describes her address:

“Boudicca, in a [chariot], with her two daughters before her, drove through the ranks. She harangued the different nations in their turn: ‘This,’ she said, ‘is not the first time that the Britons have been led to battle by a woman.’ But now she did not come to boast the pride of a long line of ancestry, nor even to recover her kingdom and the plundered wealth of her family. She took the field, like the meanest among them, to assert the cause of public liberty, and to seek revenge for her body seamed with ignominious stripes, and her two daughters infamously ravished. From the pride and arrogance of the Romans nothing is sacred; all are subject to violation; the old endure the scourge, and the virgins are deflowered. But the vindictive gods are now at hand. A Roman legion dared to face the warlike Britons: with their lives they paid for their rashness; those who survived the carnage of that day, lie poorly hid behind their entrenchments, meditating nothing but how to save themselves by an ignominious flight. From the din of preparation, and the shouts of the British army, the Romans, even now, shrink back with terror. What will be their case when the assault begins? Look round, and view your numbers. Behold the proud display of warlike spirits, and consider the motives for which we draw the avenging sword. On this spot we must either conquer, or die with glory. There is no alternative. Though a woman, my resolution is fixed: the men, if they please, may survive with infamy, and live in bondage.”

They took the Roman capitol Camulodunum (Colchester), and killed all the townspeople who had retreated to the temple of Claudius after two days of siege. They brutally took Londinium (London) and Verulamium (St Albans) and went to enormous lengths to destroy anything touched by the Romans. They leveled every house and building. There still remains beneath London a layer of scorched earth ten inches thick.

Tacitus accounted that the Roman women in London were rounded up, taken to a grove dedicated to the worship of the Celtic war goddess, Andraste, murdered, had one of their breasts cut off and stuffed and stitched into their mouths, and were impaled with large skewers length-wise. This was as revenge for the rapes and for the slaughter of Druids at Mona by Suetonius Paulinus, the governor of Britannia, earlier in 61 AD.

The Island of Mona (Anglesey), off the coast of northern Wales, was an important Druid religious centre and refugee sanctuary. Paulinus blamed the Druids for encouraging rebellion, including Boudicca, and destroyed every remnant of druidic influence he could find. It is said that the Druids were wiped out in Britain and only remained in Ireland and isolated parts of the British Isles.

The Romans in retreat, the tribes of Britain seemed on the verge of reclaiming their native land but Paulinus ultimately defeated them. In their confidence, they failed to appreciate the trap set for them – a carefully Roman-orchestrated, disciplined, close quarters' battle. Paulinus, who retreated to prepare the trap and wait, had largely enabled the earlier wins. Boudicca committed suicide with poison. In total, some 70,000 Romans and 80,000 Celts lost their lives in Boudicca's war.

Rome held the "barbarians of Germany" back until the third century AD when Roman soldiers were pulled back to fight civil war in Italy, leaving the Roman border open to attack. Britain thus gained "independence" from Rome in the year 410 AD as the Roman legions withdrew, leaving the country vulnerable. Germanic speaking people from the north began attacking the Britons. Some sought help from the Foedarati, Roman mercenaries of German origin, to defend northern parts of England. It is said that in 450 AD, a man named Hengest arrived on the shores of Britain with "3 keels" of warriors, an occasion called the "*adventus Saxonum*," "the coming of the Saxons." Instead of defending Britain, the Foedarati began conquering it in the south and east, driving the Britons to the north, west and southwest.

There were many different Germanic tribes migrating to England, most notable, the Angles, Saxons, Jutes, Frisians, Mercians, Kentish and Franks. During the sixth and seventh centuries they fought for land against the Britons and each other as they carved out kingdoms. By 600 AD, the Anglo-Saxon kingdoms in Britain included Kent, Essex, Sussex, East Anglia, Northumbria, Mercia, and Wessex, the last three becoming dominant.

By the end of the 7th century, though still separate tribal kingdoms, many called themselves "the nation of the Englisc" – or Angle-land, and their language, "Englisc." The Danish invasions began in the late 700s and by the mid-800s, the tribes realized that they had to work together. The Danish had overrun every Anglo-Saxon kingdom except Mercia and Wessex, which combined under King Alfred the Great (871-899 AD). The royal family of Wessex was thus recognized as the English royal family with the hereditary right to rule. Succession to the throne was not automatic though. The witanagamot (see below) choose the best successor from the members of the royal house. The Germanic tribes were considered fully unified and merged during the early 10th-century, ceasing to call themselves by their individual origins and using the term Anglo-Saxon or English.

Anglo-Saxon tribal society was based on the family, clan, and tribe, and very unlike Rome's city-based structure. They burned and destroyed many of the Roman-built cities and poems about the time speak of the cities becoming deserted.

There were two classes in society, "eorlas" (earls, thanes, nobles, king) and "ceorlas" (churls, thralls, freemen, and landed peasants) as well as the non-class, "wealas" (foreigners, slaves) – mostly Celtic Britons, from which the modern word Welsh is derived.

Among the eorlas, there were witan (wise men), who made up the witanagamot (council of ancients, council of the wise men). The composition of the Witan and the size of the assembly varied depending on the subject being discussed, such as law, defence or foreign policy, and where it was held. Meetings were large during religious events. The sceop (scop) was a poet-clan historian who passed on knowledge and taught lessons.

Sitting in a circle, they feasted and drank mead (an ale) at the mead-hall both as informal communal gatherings (gebeorscipe – informal sýmbel) and as formal ritual gatherings (sýmbel and high sýmbel), listened to songs and epic poems, slept there and exchanged gifts with their king. (“Sýmbel” is Old English, “sumbel” is Germanic; early Germanic tribes gathered around a fire to engage in sumbel.)

Foley, John Miles (1977) “*Beowulf* and the Psychohistory of Anglo-Saxon Culture,” *American Imago* 34 (2): 133-153 explains that the

“basic function of the traditional oral epic is the transmission of culturally useful information.”

Beowulf is an epic tale of a hero and his battles with three monsters:

“Taken as a whole, the story with its episodes and digressions does form a kind of eighth-century ‘Mirror for Magistrates’ . . . wherein those in authority might have seen pictured their obligations and responsibilities . . . and learned some useful lessons about current moral sanctions governing behavior in general, and heroic conduct in particular.”

(Garmonsway, G. N. (1965) “Anglo-Saxon Heroic Attitudes.” Pp. 139-146 in *Franciplegius: Medieval and Linguistic Studies in Honor of Francis Peabody Magoun, Jr* Jess B. Bessinger, Jr., and Robert P. Creed, Editors. New York: New York University Press)

Clemons, Peter (1995) *Interactions of Thought and Language in Old English Poetry*, Cambridge Studies in Anglo-Saxon England 12, Cambridge: Cambridge University Press notes that the purpose of Anglo-Saxon poetry was to teach

“society's collective wisdom about itself [and] its established perception of both the environment it needed to control and its human resources for doing so.”

Sýmbel is the sacred rite “to place one's self into the flow of Wyrd” (Bauchatz, Paul, *The Well and the Tree*, University of Massachusetts Press; Amherst, 1982):

“*sittan æt sýmble (sitia sumbli at ON)*
(We sit at sýmbel (now))

The holy ritual toasting and drinking from a communal vessel served to connect with “Wyrd,” honour gods and goddesses, ancestors, the community, and self, and involved oath-taking and expression in a holy forum.

The ealu bora is a critical position at the symbol where much business was conducted. This was a noble woman, often a queen, who pours the first drink of mead in order to make the sacred connection to “Wyrd.” It was believed that the feminine ancestral spirits are more attuned to “Wyrd,” which was also seen as feminine. The ealu bora used her abilities as a seeress to judge what was being said and provide encouragement and flattery to some to commit to do great deeds. She also advised her husband and others as the symbol continued. In this way her words ensured the best for her tribe. It was the elderly women who actually made many of the political decisions concerning the Germanic tribes. The ealu bora was also the peacemaker as no man dared offend her. She was a regal lady of protocol and wise in words. (See: Pollington, Steven, *The Mead-Hall: Feasting in Anglo-Saxon England*, Anglo-Saxon Books, Norfolk, 2003; Enright, M. J. , *Lady with a Mead Cup: Ritual, Prophecy, and Lordship in the European Warband*, Dublin, 1976; Wodening, Eric. “An Anglo-Saxon Symbol,” *Theod*, Watertown, NY, Waelburges 1995.)

“Wyrd” means “that-which-has-become” or roughly, fate and reflects an understanding of the power of the past to shape fate. Life is seen as a continuing process of change or formation into the past. It is described by the view that man’s being resembles a tree and aspects of the tree are shared with living kin, others are passed along to future kin, some are destroyed, and still others pass on to the higher realms in death. “Wyrd” is described as a web of life, flowing through everybody and everything, connecting through the great Mother.

The word “weird” derives from “wyrd.” The cover-copy of Tom Graves, *Positively Wyrd*, Gothic Image, Glastonbury, England, 1995 (ISBN 0-906362-27-X) explains:

“This is a personal development book with a difference - quite literally a weird one. ... the word ‘wyrd’ - or ‘weird’ - meant much the same as ‘fate’. Like fate, it describes the fabric of our lives: yet we always have the choice, there’s always a twist which changes each one into something we don’t expect. It’s those twists that give our wyrd its weirdness; yet the real weirdness is that these ‘messages from the wyrd’ are always there to help us. We can ignore them, and wait passively - fatalistically - for life to change: which it probably never will. We can fight against them, try to wrest control of our life from the Fates: only to discover that control itself is nothing more than a myth. Or we can learn to work with life’s weirdness - and use their help to weave the fabric of fate into a new form of our own choosing. That’s our choice: yet there's always that twist...”

Graves offers the following modern example of “Wyrd” in his book:

“I’d arranged to go on a long-weekend camping trip with a friend: we’d planned to go down the coast, but at the last minute we changed our minds, and went inland instead. Odd: both of us had the same disturbing dream in our tents that night, the same fear echoed... Weird, perhaps, but by now we'd become used to that.

Heading back to the city the following day, on a rough strip of road it seems for a moment like the steering has gone on the car: suddenly swaying from side to side, for no apparent cause. Definitely strange: but a few long seconds later it stops, so we stop worrying.

We're heading towards the city on the usual route; for no particular reason we change our minds, and decide to come in on the longer northern route. That's odd: I'd have thought we'd have been able to see the city lights from here. And the traffic lights are out too. Strange. Doesn't matter, though.

So we go home. Odd... everything here seems quiet, yet strangely breathless... phone doesn't work, either...

And it's not until an hour later that someone tells us what's happened. The date is October 17th, 1989; the city is San Francisco. The biggest earthquake here for decades. So that's what we'd felt on the road, then - well over a hundred miles away. But that's also what those dreams had been about; if we'd gone to the coast, as planned, we'd have been exactly at the epicentre when it struck; and with roads and bridges collapsed and debris everywhere else, the route home we'd casually chosen 'on the spur of the moment' had in fact been the only one possible. And yet we hadn't consciously known a thing."

Bill Bryson, *Notes From a Small Island*, Black Swan, 1996 (ISBN: 0552996009), "a delightfully irreverent jaunt around [England]" shares another modern example of what would be considered "Wyrd":

"Among the five hundred or so patients at the sanatorium was a remarkable idiot savant named Harry. Harry had the mind of a small, preoccupied child, but you could name any date, present or future, and he would instantly tell you what day of the week it was. We used to test him on a perpetual calendar and he was never wrong. You could ask him the date of the third Sunday of December 1935 or the second Wednesday of July 2017 and he would tell you faster than any computer could. Even more extraordinary, though it merely seemed tiresome at the time, was that several times a day he would approach members of the staff and ask them in a strange, bleating voice if the hospital was going to close in 1980. According to his copious medical notes, he had been obsessed with this question since his arrival as a young man in about 1950. The thing is, Holloway was a big, important institution, and there were never any plans to close it. Indeed there were none right up until the stormy night in early 1980 when Harry was put to bed in a state of uncharacteristic agitation - he had been asking his question with increasing persistence for several weeks - and a bolt of lightning struck a back gable, causing a devastating fire that swept through the attics and several of the wards, rendering the entire structure suddenly uninhabitable.

It would make an even better story if poor Harry had been strapped to his bed and perished in the blaze. Unfortunately for the purposes of exciting narrative all the patients were safely evacuated into the stormy night, though I like to imagine Harry with his lips contorted in a rapturous smile as he stood on the lawn, a blanket round his shoulders, his face lit up by the dancing flames, and watched the conflagration that he had so patiently awaited for thirty years."

It is said there are many examples of “Wyrd” in action that have changed the course of history. More recently than the above examples, there were many people sharing their “weird” stories of something that had happened that prevented them from getting on one of the airplanes that were used in the events of September 11, 2001 or from getting to work at one of the US World Trade Center’s two towers.

Anglo-Saxon tribal society was also based on a system of reciprocity called “*comitatus*.” The ealdorman received martial service and loyalty from his thanes, and the thanes received protection and rewards from the lord. The most important loyalty in Anglo-Saxon society was to the war band and its leader.

This is the origin in American domestic law of “*posse comitatus*,” the Latin literally translated to, “the power of the county.”

Black's Law Dictionary defines “*posse comitatus*” as,

“the power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases as to aid him in keeping the peace, in pursuing and arresting felons, etc.”

This was the law the Sheriff of Nottingham relied upon to deal with Robin Hood. Maurice Keen, *The Outlaws of Medieval Legend*, London, Routledge, 2000 (ISBN: 0-41523-900-1) at page 2 compares the legends of King Arthur and of Robin Hood:

“For Arthur and his knights the forest marked the boundary of an unknown world where the laws did not run and where wicked men and strange spirits found a refuge. But Robin Hood was an outlaw, a man whom society had placed outside the law’s protection: for him it was an asylum from the tyranny of evil lords and a corrupt law.”

Posse comitatus allowed the sheriff to recruit any person over the age of fifteen to aid in keeping the peace or with the pursuit of felons, with or without the sheriff’s presence. This is also much of the foundation for the concept of citizen’s arrest powers. It was soon shortened to “posse,” commonly heard in American western movies and TV shows.

There is also an American *Posse Comitatus Act*, Title 18, U.S. Code, Section 1385, which has been the centre of much debate. It reads in its entirety,

“Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”

The use of the military at Wounded Knee attracted considerable debate about the *Posse Comitatus Act*, as described by Seattle attorney, Lynne Wilson, “Police and military powers once statutorily divided are swiftly merging,” *CovertAction Quarterly*, Fall 2002:

“Prior to the ‘War on Drugs,’ military involvement in local law enforcement efforts was a relatively rare occurrence. The key exceptions were the use of military equipment and advisers during the large student demonstrations of the early 1970s and in the 1973 American Indian Movement occupation at Wounded Knee, South Dakota. Criminal litigation arising out of Wounded Knee did much to simultaneously clarify and confuse what military behavior does and does not constitute a violation of the *Posse Comitatus Act*. The litigation also illustrates how fluid the boundaries of the Act are.

During AIM's takeover of the Pine Ridge Reservation at Wounded Knee, Army officers and the South Dakota National Guard supplied local law enforcement officials with military equipment including ammunition, weapons, flares, and armored personnel carriers. Mechanics from both the Nebraska and the South Dakota National Guards repaired and maintained the personnel carriers.

The U.S. government charged four AIM defendants with obstructing justice in violation of 18 U.S.C. §231(a)(3), an offense requiring interference with any ‘law enforcement officer lawfully engaged in the lawful performance of his official duties.’ Each federal court assumed that the National Guards had been federalized and were thus subject to the Act.

Each of the four defendants argued that the government could not prove ‘lawful performance’ because civil reliance on military assistance at Wounded Knee violated the *Posse Comitatus Act*. Although the four federal courts looked at the same evidence, each came to a separate conclusion. The Banks court granted the motion for acquittal on the obstruction charges, stating that civil law enforcers had used the military ‘as a posse comitatus or otherwise.’ The Jaramillo court held that while the Act does not per se prohibit the furnishing of military equipment such as armored personnel carriers, advice rendered by military officers and the equipment maintenance performed by military personnel so ‘pervaded’ the activities of civilian personnel that there was a reasonable doubt as to whether law enforcement officers were lawfully engaged in the performance of their duties.

The Red Feather court agreed that ‘direct active use’ of military materiel violates the Act. But the Red Feather court went further to list what ‘active’ military roles are forbidden in civil law enforcement: arrests, seizing evidence, searching persons or buildings, investigating crimes, interviewing witnesses, pursuing escaped prisoners and searching for suspects. In addition, the Red Feather court held as acceptable certain ‘passive’ military roles that indirectly aid civil law enforcers, including the presence of military personnel giving advice or recommendations on tactics or logistics, delivering and maintaining military materiel, training civilian officials in the use and care of equipment and conducting aerial reconnaissance.

Significantly, the McArthur court, like the Red Feather and Jaramillo courts before it, concluded that the Act forbade neither the military's giving materiel or equipment to civil law enforcers, nor the lending of military advisers. However, although three of the four Wounded Knee courts came to this conclusion, none agreed on the standard to be applied to determine when the Act has been violated.

The disagreement among the Wounded Knee courts has created confusion about the Act's parameters. ...

On appeal, the federal Eighth Circuit Court of Appeals upheld the Wounded Knee convictions. In so doing, however, it merely agreed with the McArthur court's rationale that so-called 'passive' military involvement is not prohibited. It did little to clarify what military activities, especially in the context of a mass protest, cross the Act's boundaries."

The questionable limits contained in the *Posse Comitatus Act* on the involvement of U.S. armed forces in domestic law enforcement have been the subject of debate and controversy since its passage in 1878. The issues are again at the forefront as the result of the passage of the American *Homeland Security Act* of 2002 and other security measures now in place or planned in response to the events of September 11, 2001.

"Posse Comitatus" is also the name of white supremacists that Oklahoma City bomber Terry Nichols was said to have been affiliated with. Members of these loosely affiliated, small underground groups of white men say they believe that the American federal government and its agencies have grossly overstepped their bounds, committed atrocities and murder against, and consider certain "occupying forces" enemies of, "We the People." They

"... accept no higher authority above the level of the Sheriff in the county in which they reside...and ONLY then if the Sheriff is a son of YHVH/God and was duly elected by the people [of] his county and is upholding the Constitution of the United States against ALL enemies both foreign and domestic."

In Canada there are organizations allegedly espousing similar views as the Posse Comitatus: Detax Canada and Patriots On Guard. It also sounds like some Indigenous people may be attracted by hearing or reading words like "sovereignty" and "no tax" without appreciating the nature of these organizations. The Bethune Institute for Anti-fascist Studies says, "Individuals are lured into the movement through the promise of tax avoidance. A series of seminars, workshops, and manuals for home lessons, draws recruits deeper into a bizarre world of strange legal documents, mysterious conspiracies, anti-semitism, and ultimately, far-right extremism." If this is the case, and they mirror the views of the Posse Comitatus, for example, it is very hard to imagine a welcomed home for Indigenous peoples within such organizations or how the agendas and issues would be even remotely similar.

- War defined as banditry between societies. The successful ones become kings, the failed ones bandits.
- Anglo-Saxon tribal war band and its leader engage their counterparts in fights over land.
- A company of seven to thirty-five soldiers is a band, thirty-six and more are an army.
- A posse would be summoned up by a sheriff to deal with a marauding band.
- Treaties are made with nations, tribes and bands.

John Locke (1632 – 1704) was a British philosopher whose anti-authoritarian works plead with us to use reason to search after truth rather than simply accept the opinion of authorities. He emphasizes the importance of distinguishing the legitimate from the illegitimate actions of institutions and advocates natural law.

The following excerpts from his *Two Treatises of Government* (1680-1690), Book II: An Essay Concerning the True Original, Extent and End of Civil Government, demonstrate that the governments of Canada and the United States know perfectly well what the Indigenous peoples have been saying. Their feigning a different understanding than the Indigenous peoples is simply tactical. Many Elders who have spoken for years continue to feel that the exercise is to keep trying to explain or to explain better, some blaming themselves for not being “educated” and failing to get them to understand. That’s not the problem and those Elders have done a great job in preserving their nations, “educated” or not. In fact, a far better job than those “educated” of their people. Those governments do understand. They have engaged in illegitimate actions.

“BOOK II, CHAPTER 2
Of the State of Nature

§ 9. I doubt not but this will seem a very strange Doctrine to some Men; but before they condemn it, I desire them to resolve me by what Right any Prince or State can put to death or *punish an Alien* for any Crime he commits in their Country? It is certain their Laws, by virtue of any Sanction they receive from the promulgated Will of the Legislature, reach not a Stranger. They speak not to him, nor, if they did, is he bound to hearken to them. The Legislative Authority, by which they are in force over the subjects of that Commonwealth, hath no Power over him. Those who have the Supreme Power of making laws in *England, France, or Holland* are, to an *Indian*, but like the rest of the World - Men without Authority. And therefore, if by the Law of Nature every Man hath not a Power to punish Offences against it, as he soberly judges the Case to require, I see not how the Magistrates of any Community can *punish an Alien* of another Country, since, in reference to him, they can have no more Power than what every Man naturally may have over another.

§ 10. Besides the Crime which consists in violating the Laws, and varying from the right Rule of Reason, whereby a Man so far becomes degenerate, and declares himself to quit the Principles of Human Nature, and to be a noxious Creature, there is commonly *injury* done, and some Person or other, some other Man, receives damage by his Transgression, in which Case, he who hath received any damage, has besides the right of punishment common to him, with other Men, a particular Right to seek *Reparation* from him that hath done it. And any other Person who finds it just, may also joyn with him that is injur’d, and assist him in recovering from the Offender, so much as may make satisfaction for the harm he hath suffer’d.

§ 11. From these *two distinct rights*, the one of *Punishing the Crime for restraint*, and preventing the like Offence, which right of punishing is in everybody; the other of taking *reparation*, which belongs only to the injured party, comes it to pass that the Magistrate, who by being Magistrate, hath the common right of punishing put into his hands, can often, where the publick good demands not the execution of the Law, *remit* the punishment of Criminal Offences by his own Authority, but yet cannot *remit* the satisfaction due to any private Man, for the damage he has received. That he who hath suffered the damage has a Right to demand in his own name, and he alone can *remit*: The damnified Person has this Power of appropriating to himself, the Goods or Service of the Offender by *Right of Self-preservation*, as every Man has a Power to punish the Crime, to prevent its being committed again, by *the Right he has of Preserving all Mankind*, and doing all reasonable things he can in order to that end: And thus it is, that every Man in the State of Nature, has a Power to kill a Murderer, both to deter others from doing the like Injury, which no Reparation can compensate, by the Example of the punishment that attends it from everybody, and also *to secure* Men from the attempts of a Criminal, who having renounced Reason, the common Rule and Measure, God hath given to Mankind, hath, by the unjust Violence and Slaughter he hath committed upon one, declared War against all Mankind, and therefore may be destroyed as a *Lyon* or a *Tyger*, one of those wild Savage Beasts, with whom Men can have no Society nor Security: And upon this is grounded that great Law of Nature, *Who so sheddeth Mans Blood, by Man shall his Blood be shed*. And *Cain* was so fully convinced that every one had a Right to destroy such a Criminal, that, after the Murther of his Brother, he cries out, *Every one that findeth me, shall slay me*; so plain was it writ in the Hearts of all Mankind.”

This helps to explain why there has been so much effort to criminalize Indigenous peoples, especially since the time of Sir John A. MacDonald, the first prime minister of Canada. A current example is underway with the Mohawks of Kanasatake, and the siege at Gustafsen Lake during the summer of 1995 offers a prime example. If not first criminalized so as to relieve from the laws above described, it is far more difficult to issue a “green light” order (shoot to kill) as occurred during Gustafsen Lake. Look also at the example on March 8, 1991, when Chief Justice Alan McEachern of the British Columbia Supreme Court rendered his decision in the case of *Delgamuukw v. The Queen*. Chief Justice McEachern, quoted from Thomas Hobbes' *Leviathan*, Chapter XIII of the Natural Condition of Mankind as Concerning Their Felicity and Misery, in stating that pre-contact Indigenous life was “nasty, brutish and short” and explained the actions of Indigenous peoples as being akin to the actions of animals thus: “they more likely acted as they did because of survival instincts.” In 1743, William Samuel Johnson, who represented Connecticut against the Mohegan Indians before the English Privy Council, describes the Mohegans as “but little superior in point of Civilization, to the Beasts of the Field.” Americans reconciled their natural law foundations by attributing to Indigenous peoples the status of lawless, uncivilized “beasts” so as to allow for exemptions of application of law and “truths” they otherwise “knew to be true.”

“BOOK II, CHAPTER 2
Of the State of Nature

§ 14. ‘Tis often asked as a mighty Objection, *Where are*, or ever were, there any *Men in such a State of Nature?* To which it may suffice as an answer at present; That since all *Princes* and Rulers of *Independent* Governments all through the World, are in a State of Nature, ‘tis plain the World never was, nor never will be, without Numbers of Men in that State. I have named all Governors of *Independent* Communities, whether they are, or are not, in League with others: For ‘tis not every Compact that puts an end to the State of Nature between Men, but only this one of agreeing together mutually to enter into one Community, and make one Body Politick; other Promises and Compacts, Men may make one with another, and yet still be in the State of Nature. The Promises and Bargains for Truck, &c. between the two Men in the Desert Island, mentioned by *Garcilasso De la vega*, in his History of *Peru*, or between a *Swiss* and an *Indian*, in the Woods of *America*, are binding to them, though they are perfectly in a State of Nature, in reference to one another. For Truth, and keeping of Faith belongs to Men, as Men, and not as Members of Society.”

The Indigenous peoples did not agree to become one community and make one body politic. Canada is attempting to persuade the Indigenous peoples to “take their rightful place within Canada” and self-government policy intends to establish and implement delegated governance within the context of the constitution. In the United States experience, declarations about dependent domestic nations and federal tribal recognition legislation have served the same purpose. Bills are starting to surface in Canada that mirror the American tribal recognition strategy. Canada is also well underway with its “reconciliation of previous occupation with the assertion of sovereignty” strategy orchestrated through the Royal Commission on Aboriginal Peoples and the Supreme Court of Canada decision in *Delgamuukw*.

“BOOK II, CHAPTER 3
Of the State of War

§ 16. The State of War is a State of Enmity and Destruction; And therefore declaring by Word or Action, not a passionate and hasty, but sedate, settled Design, upon another Man's Life *puts him in a State of War* with him against whom he has declared such an Intention, and so has exposed his Life to the others Power to be taken away by him, or any one that joyns with him in his Defence, and espouses his Quarrel: it being reasonable and just I should have a Right to destroy that which threatens me with Destruction. For *by the Fundamental Law of Nature, Man being to be preserved*, as much as possible, when all cannot be preserv'd, the safety of the Innocent is to be preferred: And one may destroy a Man who makes War upon him, or has discovered an Enmity to his being, for the same Reason, that he may kill a *Wolf* or a *Lyon*; because such Men are not under the ties of the Common Law of Reason, have no other Rule, but that of Force and Violence, and so may be treated as Beasts of Prey, those dangerous and noxious Creatures, that will be sure to destroy him, whenever he falls into their Power.

§ 17. And hence it is, that he who attempts to get another Man into his Absolute Power, does thereby *put himself into a State of War* with him; It being to be understood as a Declaration of a Design upon his Life. For I have reason to conclude, that he who would get me into his Power without my consent, would use me as he pleased, when he had got me there, and destroy me too when he had a fancy to it: for nobody can desire *to have me in his Absolute Power*, unless it be to compel me by force to that, which is against the Right of my Freedom, i.e. make me a Slave. To be free from such force is the only security of my Preservation: and reason bids me look on him, as an Enemy to my Preservation, who would take away that *Freedom*, which is the Fence to it; so that he who makes an *attempt to enslave* me, thereby puts himself into a State of War with me. He that in the State of Nature *would take away the Freedom*, that belongs to any one in that State, must necessarily be supposed to have a design to take away everything else, that *Freedom* being the Foundation of all the rest: as he that in the State of Society, would take away the *Freedom* belonging to those of that Society or Common-wealth, must be supposed to design to take away from them everything else, and so be looked on as *in a State of War*.

§ 18. This makes it Lawful for a Man to *kill a Thief*, who has not in the least hurt him, nor declared any design upon his Life, any farther than by the use of Force, so to get him in his Power, as to take away his Money, or what he pleases, from him: because using force, where he has no Right to get me into his Power, let his pretence be what it will, I have no reason to suppose, that he, who would *take away my Liberty* would not when he had me in his Power, take away everything else. And therefore it is Lawful for me to treat him, as one who has put *himself into a State of War* with me, i.e. kill him if I can: for to that hazard does he justly expose himself, whoever introduces a State of War, and is *aggressor* in it.

§ 19. And here we have the plain *difference between the State of Nature, and the State of war*, which however some Men have confounded, are as far distant, as a State of Peace, Good Will, Mutual Assistance, and Preservation, and a State of Enmity, Malice, Violence, and Mutual Destruction are one from another. Men living together according to reason, without a common Superior on Earth, with Authority to judge between them, *is properly the state of Nature*. But force, or a declared design of force upon the Person of another, where there is no common Superior on Earth to appeal to for relief, *is the State of War*: And 'tis the want of such an appeal gives a Man the Right of War even against an *aggressor*, though he be in Society and a fellow Subject. Thus, a *Thief*, whom I cannot harm but by appeal to the Law, for having stolen all that I am worth, I may kill, when he sets on me to rob me, but of my Horse or Coat: because the Law, which was made for my Preservation, where it cannot interpose to secure my Life from present force, which if lost, is capable of no reparation, permits me my own Defence, and the Right of War, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common Judge, nor the decision of the Law, for remedy in a Case, where the mischief may be irreparable. *Want of a common Judge with Authority puts all Men in a State of Nature; Force without Right upon a Man's Person makes a State of War*, both where there is, and is not, a common Judge.

§ 20. But when the actual force is over, the *State of War* ceases between those that are in Society, and are equally on both sides Subjected to the fair determination of the Law; because then there lies open the remedy of appeal for the past injury, and to prevent future harm: but where no such appeal is, as in the State of Nature, for want of positive Laws, and Judges with Authority to appeal to, *the State of War once begun, continues*, with a right to the innocent Party, to destroy the other whenever he can, until the aggressor offers Peace, and desires reconciliation on such Terms, as may repair any wrongs he has already done, and secure the innocent for the future: nay where an appeal to the Law, and constituted Judges lies open, but the remedy is deny'd by a manifest perverting of Justice, and a barefaced wresting of the Laws, to protect or indemnifie the violence or injuries of some Men, or Party of Men, *there it is* hard to imagine any things but a *State of War*. For wherever violence is used, and injury done, though by hands appointed to administer Justice, it is still violence and injury, however colour'd with the Name, Pretences, or Forms of Law, the end whereof being to protect and redress the innocent, by an unbiased application of it, to all who are under it; wherever that is not *bona fide* done, War is made upon the Sufferers, who having no appeal on Earth to right them, they are left to the only remedy in such Cases, an appeal to Heaven.”

Being neither beasts nor criminals so as to exempt application of laws John Locke describes, the “barefaced wresting of law,” the injury done, and the banditry with Indian “bands” treated consistent with the traditional military connotation, confirm the status of relations with the Indigenous peoples is consistent with a state of war rather than with a state of peace.

“BOOK II, CHAPTER 5
Of Property

§ 26. God, who hath given the World to Men in common, hath also given them reason to make use of it to the best advantage of Life and convenience. The Earth, and all that is therein, is given to Men for the Support and Comfort of their being. And though all the Fruits it naturally produces, and Beasts it feeds, belong to Mankind in common, as they are produced by the spontaneous hand of Nature; and nobody has originally a Private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their natural state: yet being given for the use of Men, there must of necessity be a means *to appropriate* them some way or other before they can be of any use, or at all beneficial, to any particular Man. The Fruit or Venison which nourishes the wild *Indian*, who knows no Inclosure, and is still a Tenant in common, **must be his, and so his, i.e., a part of him**, that another can no longer have any right to it, before it can do him any good for the support of his Life.” [Emphasis added]

“Askie-tipachikawin” “Askiy pimatisowin, hehiyawaywin muskowsewin”

Locke goes on to describe how property is created through the application of labour to the land, the removal from the common of former waste lands. The application of leaving to the Indigenous peoples what is only wild and waste lands, the foundation of Canada's reconciliation strategy I explain at length in my paper, "Modern Day Colonialism – Canada's Continuing Attempts to Conquer Aboriginal Peoples," *International Journal on Minority and Group Rights*, Martinus Nijhoff Publishers, 2002, vol. 9, no. 2, pp. 103-141. It is also what has motivated the province of British Columbia's continuing actions since 2001 to attach value to as much land as possible in the shortest period of time, through legislative restructuring of Crown land and streamlining processes such as on-line mineral claiming. But treaties bind the Crown and prevent such things. They are agreements that contain the amount that is agreed to for survival of the Indigenous peoples, for example, about one square mile for each family of five, about four times the size of a typical homestead allotment, and the amount of the "overpluses" of the Indigenous peoples. The "overpluses" the Indigenous peoples enable the Crown through Her settlers to develop for mutual benefit through application of promising new technologies, which technologies are also to be taught and shared, require, according to Locke, compensation (and compensation in law must always be fair and reasonable, reflecting "market value"):

"BOOK II, CHAPTER 5
Of Property

§ 50. But, since Gold and Silver, being little useful to the Life of Man, in proportion to Food, Rayment, and Carriage, has its value only from the consent of Men - whereof Labour yet makes, in great part, *the measure*, it is plain, that the consent of Men have agreed to a disproportionate and unequal Possession of the Earth, they having by tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver, which may be hoarded up without injury to any one, there metals not spoiling or decaying in the hands of the possessor. This partage of things, in an inequality of private possessions, men have made practicable out of the bounds of Societie, and without compact, only by putting a value on gold and silver and tacitly agreeing in the use of Money. ..."

America was seen in that way – "overpluses" in the hands of the Indigenous peoples. The settlers could make the land more productive. There would be more produced by the settlers so as to create more available to share as required treaty – an application of the science of peace. "Share" is the central term of the treaties and it is repeated time and again by the Elders. In exchange for granting possession to the Crown annuities are to be paid reflective of the value of the fair share of the "overpluses." Those annuities must not only provide for the life that the "overpluses" provided to the Indigenous peoples since time immemorial, but also improve that life with conveniences, etc. – improve their quality of living (subjective measure) and standards of life (objective measure). That is the commitment made by international covenant with the Indigenous Nations. Instead, the annuities have been paid fixed at \$5.00 per year and programs and services have failed to make up the difference, causing their own problems in the process. Standards of living measurements for Indigenous peoples show significant decreases and increasing gaps when compared to those of Canadians. This amounts to banditry, a state of war.

The Indigenous peoples with treaties agreed to live side by side, to share. They did not agree to become one society. Accustomed to trade and trade items to facilitate trade, they were no foreigners to concepts of surplus and the science of peace. When the Crown's representations were of higher productivity it made good economic sense to do a deal, particularly when their starvation had been orchestrated to drive the point home. This is why it is not unusual to hear Indigenous peoples say that they are not opposed to development (and environmentalists sometimes lament an absence of desire to leave everything absolutely untouched). The issues are about what their share should be and development occurring consistent with the obligations to preserve the land for future survival of the people. In other words, the promised increased productivity is always limited by responsibilities to ensure there will be enough for tomorrow to live – an application of the laws of supply and demand.

A weakness in John Locke's expose of law is his assumptions about trade, surplus and currency in "America" before "discovery." Gold and silver may not have been the "trade items" of the Indigenous peoples ("currency" being the European terminology), but shells, medicines (such as cayenne pepper), copper, obsidian (a volcanic rock used for spearheads), oolichan grease, and horses, certainly were. During the fur trade, peltry carried in tightly bound bundles became a common "currency" or "trade item."

The choice of currency reflected what was of most value for the time, what could be most easily traded. John Locke did not know of such things nor could he be expected to, rather like can be appreciated considering the following (apart from any notion of Indigenous peoples being "bugs"):

"But to explain the bug to the bug — that is quite a different matter. The bug may not know himself perfectly, but he knows himself better than the naturalist can know him, at any rate."

Mark Twain, "What Paul Bourget Thinks Of Us" (1895)

Anything can serve as currency, including today's common paper currency. It could also be said that binary code is actually serving as our "digital" currency today. And beads also served as currency. Different colours were assigned different values, for example, blue assigned a very high value, not unlike the values assigned different gold and silver coins – exactly as John Locke describes in his paragraph 50 quoted above.

When Lewis and Clark's inventory of trade goods came dangerously near depletion they turned to the Indigenous peoples for help. Clark wrote in his journal that "we Sold our Canoes for a few Strands of beads." The next day they used them [the beads] to purchase "five dogs and some wood" from the Pish-quit-pahs. They acquired more currency [beads] later to ensure a means of purchasing what they would need later. Many entries in the journal record that far too often, "the natives demanded high prices."

The task of planning for the Lewis and Clark expedition included addressing questions of how many men were needed, how far they would travel for how long, and most importantly, how many trades would need to be made to ensure their safe passage through *terra incognita*, an "unknown and unexplored region."

Thomas Jefferson became president of the United States in 1801. At that time, the western boundary of the United States was the Mississippi River. Beyond was *terra incognita*. Two-thirds of US citizens lived within fifty miles of the Atlantic Ocean. After three previous unsuccessful efforts to mount an expedition, President Jefferson decided another attempt to cross the continent was warranted.

Captain Meriwether Lewis was a protégé of President Jefferson. Lewis was President Jefferson's personal secretary and he lived in the East Room of the White House. Lewis ate dinner with President Jefferson every night for two years, and helped plan the expedition.

President Jefferson appointed Lewis leader of the "Lewis and Clark expedition." Lewis journeyed with a small number of volunteer civilians and men from the US Army. They were called the "Corps of Discovery." They left in May 1804 and returned in September 1806, having traveled through 8,000 miles of *terra incognita* during the two years and four months of their expedition. They found most of the area previously unknown to them to be populated by Indigenous peoples, including in communities numbering larger in size than the populations of Washington, DC and other major US cities at the time.

Lewis had to employ the skills of a frontiersman, soldier, medic, naturalist, geographer, and journalist. Most important was Lewis' role as a diplomat. President Jefferson and Lewis placed great importance on "Indian relations" enabling a successful expedition. The most costly part of the expedition was for trade items, at over thirty (30%) percent of the total initial expenditures. Experience had taught that productive diplomacy and peaceful relations required dependency on the science of peace: economic trade. The exchange of items was known to be necessary at each meeting. It was well-understood by President Jefferson and his Corps of Discovery that trade was part of the protocol of "Indian diplomacy."

It was appreciated at the time that the Indigenous peoples controlled the trade in that they dictated demand. Suppliers merely responded to it. This posed great problems in planning for the expedition, as they needed to anticipate what the demand might be from those they had not yet met but wholly expected to meet. The government's Indian and military departments and Philadelphia merchants supplied Lewis with a wide variety of goods for trade during the spring of 1803.

The expedition's first encounter with Indigenous peoples occurred on August 3, 1804 north of present-day Omaha. Their meeting with the small delegation followed a standard protocol used throughout the journey. They presented peace medals, flags, and gifts. The men paraded magnets, compasses, telescopes, and Lewis's air gun. A speech was given encouraging peace and prosperity rather than war. They came exercising the science of peace that was practiced and recognized by the Indigenous peoples, and they promised trade in new technologies.

Lewis was welcomed on his return by President Jefferson. His men received extra money and land grants. They were seen as heroes and Lewis was especially popular in Washington, DC and Philadelphia. But sometime shortly after October 10, 1809, Lewis was dead at the home of John Grinder, about 72 miles from Nashville. There is much speculation about whether his death was by murder or suicide, with most supporting suicide.

Allow me add to the speculation.

Thomas Jefferson agreed with natural law principles and the concept of allodial title, and he engaged the writings of John Locke in his work, especially in the Declaration of Independence. Mentoring Lewis, he no doubt imparted his philosophies. But Thomas Jefferson had left the presidency and there was a new administration in Washington. President Jefferson had appointed Lewis Governor of the Louisiana Territory. Lewis developed a strong dislike for the politicians he had to deal with. He became distressed by the abuses with the fur trade and land titles that came to his attention. Vouchers that Lewis had signed for medicine for the Indigenous peoples were returned to him unpaid. So Lewis went deeply into debt paying for the bills personally. He was very upset and wrote firm letters to Washington. It is said that he was at times confined to bed “ill with worry,” and that Washington questioned his loyalty.

Now it would not be the first example in history of death coming to the perceived disloyal, nor perhaps the last, if Lewis was murdered. When I arrived in central British Columbia, Indigenous people were still talking about the mysterious death of a young researcher who had apparently come to words with a chief over some things he had discovered. The researcher is said to have quit on the spot but never made it to the West Coast where he was headed that same day. Then there was all the talk by some frightened Elders about a number of deaths – one alleging that because of his activism and challenges to a chief, that his son had been murdered, to send him a message. Certainly it was a shock for me to learn of the drug overdose death of a hereditary chief whom I had met and spoken to a number of times, a talented sculptor with a family who had told me about his past and I had last heard was going to run for chief.

Lewis kept putting off publication of his journals. Making his information available would hasten movement west. I speculate that Lewis had had a good taste of what lay in store for the Indigenous peoples whom he had met, lived and come to know, and he knew that his journals would contribute to this. On his ill-fated night, Mrs. Grinder reported that Lewis could be heard pacing and talking out loud, “like a lawyer.” Lewis had earlier explained to Mrs. Grinder that he would not need a bed to sleep in. He preferred to sleep on the floor with his bearskins and buffalo robe that traveled with him.

So what can we assess of Lewis’ mentor that was so different from the new administration? Thomas Jefferson was proficient in six languages. He had grown up “at the edge of the Virginia wilderness” and become acquainted with Indigenous peoples since an early age. He engaged in linguistic study of their languages through direct observation and interactions. He noted similarities and differences in more than forty tribal languages in Virginia. Unfortunately, the majority of his work was stolen in 1809.

Spending such time with the Indigenous peoples, and especially learning of their languages, enabled Thomas Jefferson to understand the Indigenous peoples and know them to be full members of “mankind” with laws and governance. Lewis would not only have benefited from Thomas Jefferson imparting his knowledge, but added to that knowledge through his expedition and own experience. Certainly it has been my time with Indigenous peoples, especially Elders, that has proven invaluable in my work.

Interestingly, it was a soon-to-be-deputy-minister of Indian Affairs who told me in my first few days on the job as in-house legal counsel to the federal Department of Indian Affairs, that it was essential for me to get out from behind my Vancouver, British Columbia desk, out onto the reserves, if I were to be of any use to them. Rumour had it that lawyers generally refused to do that. One woman allegedly went

so far as to tender a letter from her husband saying that it was too dangerous for a white woman to go on reserve, that she would likely get raped there, and he would not permit her to go. I never met anyone like that, but if she did exist, she had probably long moved on by then.

My first trip on reserve started with surviving a hair-raising bush plane flight that had difficulty maintaining altitude because, as it turns out, the pilot had forgotten to factor in the weight of the many metal voting boxes and file boxes we were carrying and the fact that all three passengers, myself included, were not small people. I will never forget the frightened eyes of those scattering deer turning to look, as they ran from the crazed people not far overhead, nor the sweat pouring from the young pilot who was filling in “for the old guy.” During the lunch break, an Indian Affairs officer who in hindsight was intent on breaking me in rather quickly, casually suggested I get some fresh air and take a walk down the path with him to a home he needed to visit, ostensibly on business.

My first stroll on reserve showed that the homes were in far worse shape than the band hall, which itself was none too swift. My burning eyes (from the hours of sitting in a non-ventilated, smoke-filled room) widened however when we entered the target home. I had never seen such things before. I was afraid to touch anything and would have run out immediately had I not my reputation to consider. My mother would be angered if the salt and peppershakers were placed in the wrong order back on the shelf, and with just the two of us in our home, there was plenty of room and place for everything. Clothing, which my mother had taken great care with, always looked store-bought fresh. Here as I stepped over the pile of clothes, I encountered walls with fists holes, a man whom I took to be in his eighties but was only in his fifties, his eyes never wavering from the grainy black and white TV set, and such foul language from a young man crashing about that I cringed (and I had worked with lawyers for some time). This was not the atmosphere I imagine welcomed Lewis.

We can gain more of Thomas Jefferson’s viewpoints from his writings to Indigenous peoples:

“We will give you a copy of the law, made by our great Council, for punishing our people, who may encroach on your lands, or injure you otherwise. Carry it with you to your homes, and preserve it, as the shield which we spread over you, to protect your land, your property and persons.”

“I have carefully attended to the figures represented on the skins, and to their explanation, and shall always keep them hanging on the walls in remembrance of you and your nation.”

“I have received the message in writing which you sent me through Captain Irvine, our confidential agent, placed near you for the purpose of communicating and transacting between us, whatever may be useful for both nations.”

“We have long heard of your nation as a numerous, peaceable, and friendly people; but this is the first visit we have had from its great men at the seat of our government. I welcome you here; am glad to take you by the hand, and to assure you, for your nation, that we are their friends. Born in the same land, we ought to live as brothers, doing to each other all the good we can, and not listening to wicked men, who may endeavor to make us enemies. By living in peace, we can help and prosper one another; by waging war, we can kill and destroy many on both sides; but those who survive will not be the happier for that.

Then, brothers, let it forever be peace and good neighborhood between us.”

“You will, therefore, find it necessary to establish laws for this. When a man has property, earned by his own labor, he will not like to see another come and take it from him because he happens to be stronger, or else to defend it by spilling blood. You will find it necessary then to appoint good men, as judges, to decide contests between man and man, according to reason and to the rules you shall establish. If you wish to be aided by our counsel and experience in these things we shall always be ready to assist you with our advice.”

“... if any of your neighbors injure you, our beloved men whom we place with you will endeavor to obtain justice for you and we will support them in it. If any of your bad people injure your neighbors, be ready to acknowledge it and to do them justice.”

“I therefore sent our beloved man, Captain Lewis, one of my own family, to go up the Missouri river to get acquainted with all the Indian nations in its neighborhood, to take them by the hand, deliver my talks to them, and to inform us in what way we could be useful to them. Your nation received him kindly, you have taken him by the hand and been friendly to him. ... He will now tell us where we should establish trading houses to be convenient to you all, and what we must send to them.”

And when the Indigenous Nations sent their ambassadors to inquire of Thomas Jefferson as to why he was not fully exercising the science of peace as the trade goods had been lacking, Thomas Jefferson did not deny what was owed but explained his current difficulties:

“I will tell you honestly, what indeed your own good sense will tell you, that a nation at war cannot buy so many goods as when in peace. We do not make so many things to send over the great waters to buy goods, as we made and shall make again in time of peace. When we buy those goods, the English take many of them, as they are coming to us over the great water. What we get in safe, are to be divided among many, because we have a great many soldiers, whom we must clothe. The remainder we send to our brothers the Indians, and in going, a great deal of it is stolen or lost. These are the plain reasons why you cannot get so much from us in war as in peace. But peace is not far off. The English cannot hold out long, because all the world is against them. When that takes place, brother, there will not be an Englishman left on this side the great water. What will those foolish nations then do, who have made us their enemies, sided with the English, and laughed at you for not being as wicked as themselves? They are clothed for a day, and will be naked forever after; while you, who have submitted to short inconvenience, will be well supplied through the rest of your lives. Their friends will be gone and their enemies left behind; but your friends will be here, and will make you strong against all your enemies. For the present you shall have a share of what little goods we can get. We will order some immediately up the Mississippi for you and for us. If they be little, you will submit to suffer a little as your brothers do for a short time. And when we shall have beaten our enemies and forced them to make peace, we will share more plentifully. ... You ask us to send schoolmasters to educate your son and the sons of your people. We desire above all things, brother, to instruct you in whatever we know ourselves. We wish to learn you all our arts and to make you wise and wealthy. As soon as there is peace we shall be able to

send you the best of schoolmasters; but while the war is raging, I am afraid it will not be practicable. It shall be done, however.”

Chinese leaders have been working diligently to meet their aim of restoring China as the suzerain of Asia: the Middle Kingdom. A suzerain is the sovereign over others, a nation that controls other nations in international affairs but allows them domestic sovereignty, or as the American courts have described, dependant domestic nations. China's strategy is not to conquer with force but to gain sufficient political and economic power that major Asian decisions must be with China's approval.

The ideographs (the signs or symbols used in Chinese writing systems that represent an idea or object) for the name of China, Chung Kuo, mean the Middle Kingdom. This originated in the *Chunqiu* (the “Spring and Autumn Annals”), which documents the reigns of twelve dukes of the state of Lu. It ends suddenly in 481 BC with the killing of a beast. Thereafter, the Warring States period starts (most say in 475 BC), a time of warlords annexing smaller states and consolidating rule.

As China proceeds steadfastly towards its goal, so do the United States and Canada. The United States seeks to be the suzerain of North America (though I should go further and say the Americas, but this serves for the present purposes), directly over the Indigenous peoples within its boundaries, and indirectly through its developing suzerainty or quasi-suzerainty over Canada, who in turn seeks a suzerainty over the Indigenous peoples within the boundaries of Canada.

But the legal relationship *de jure* (“in law” and “in principle”) between the United States and the Indigenous Nations, and between Canada and the Indigenous Nations, is nation-to-nation. The *de facto* (“in practice”) effort to attain a suzerainty, characterized in policy as a “government-to-government” relationship, can only trump the *de jure* if the Indigenous Nations consistently consent to and engage in the practice over a long enough period of time. But *de facto*, this has not occurred. The only exceptions have been of some individuals, such as *Indian Act* chiefs and councilors and lawyers purporting to accept the *de facto* (actually being painted as having requested it with their lawyers recommending it in the first place: “First Nations-driven initiatives”) through pleadings filed in domestic court cases, which cannot drown out the multitude of reaffirming declarations made to the contrary. Even where land claims have been concluded, it is highly questionable as to whether they will ultimately stand.

In addition to the continuous statements of Elders described earlier above, Steven Newcomb, “Rejecting domestic dependent nationhood,” *Indian Country Today*, March 29, 2004, offers another example documenting the rejection of the *de facto*:

“In the 1832 case *Worcester v. Georgia*, Chief Justice Marshall ... noted that at the time Europeans first arrived, America ‘was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world.’ ...

Joseph Story was an Associate Justice of the U.S. Supreme Court when the *Worcester* and *Johnson* rulings were handed down. In his book ‘Commentaries of the Constitution of the United States,’ published in 1833, Story said that ‘the Indian tribes, inhabiting this continent at the time of its discovery, ... [were] sovereigns and absolute proprietors of the soil.’

What's more, Story observed that the Indians ‘acknowledged no obedience, or allegiance, or subordination to any foreign sovereign whatsoever;’ ... In other words, the Indian nations were free and independent when they made treaties with the United States.

According to the Reserved Rights Doctrine, Indian nations retain all political powers and rights they have not specifically relinquished by treaty or other political agreement. ... Today, however, the United States would have us believe that there are no free and independent Indian nations existing within the geographical boundaries claimed by the United States, despite the existence of hundreds of treaties between the United State and free Indian nations from 1776 to 1871. Indeed, the entire field known as ‘federal Indian law’ or ‘U.S. Indian law’ is premised upon the notion that Indian ‘tribes’ are ‘domestic dependent nations. This presumption arises in large part because in 1831, in the case *Cherokee Nation v. Georgia*, the U.S. Supreme Court said that Indian nations may perhaps, be denominated domestic dependent nations. [The *obiter dicta* is “They may more correctly, perhaps, be denominated domestic dependent nations.”]

The field known as federal Indian law would have us believe that the free and independent political heritage of Indian nations simply vanished into thin air, so to speak, because the U.S. Supreme Court wrote three magic words on paper in 1831: ‘domestic dependent nations.’ However, this presumption does not stand up to scrutiny.”

Courts deal with problems of non-justiability by constraining the issues to defining for purposes of legislation or a constitutional act. Canadian courts have issued many such opinions regarding treaties that are all constrained by reference to “for purposes of the *Indian Act*.” The court in the *Worcester* case, for example, narrowly states the issue as being one of whether the Cherokee Nation is a “foreign state in the sense of the Constitution,” meaning, was it the intention of the architects to include “Indian Nations” within the reference “foreign state.” It can say nothing as to the true legal nature of the Indigenous Nations. The courts can only act as domestic courts. The court in *Worcestor* explains that it cannot be an international court:

“The Court has bestowed its best attention on this question and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the Constitution, and cannot maintain an action in the courts of the United States.

A serious additional objection exists to the jurisdiction of the Court. Is the matter of the bill the proper subject for judicial inquiry and decision? It seeks to restrain a state from the forcible exercise of legislative power over a neighboring people, asserting their independence; their right to which the state denies. On several of the matters alleged in the bill, for example on the laws making it criminal to exercise the usual powers of self-government in their own country by the Cherokee Nation, this Court cannot interpose, at least in the form in which those matters are presented.

That part of the bill which respects the land occupied by the Indians, and prays the aid of the Court to protect their possession, may be more doubtful. The mere question of right might perhaps be decided by this Court in a proper case with proper parties. But the Court

is asked to do more than decide on the title. The bill requires us to control the legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the Court may be well questioned. It savors too much of the exercise of political power to be within the proper province of the Judicial Department. But the opinion on the point respecting parties makes it unnecessary to decide this question.

If it be true that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.”

The American courts had to find some domestic way for governments to have their cake and eat it too. Treaties were entered into in accordance with the science of peace, necessary to enable a constitutional base for the United States. From this, use of land was permitted and estates could flow therefrom to American settlers. However, the United States wanted to be able to continue at war with those who did not accept the oppression dished out contrary to treaty and other unlawful conduct, such as for example, when

“the government has deemed it necessary to despatch a military force for their subjugation”

(*Marks v. United States*, 161 U.S. 297, 16 S.Ct. 476, 40 L.Ed. 706 (1896))

The United States could not be seen to have engaged in war for that is contrary to the treaties and would render them null. Thus there could be no formal declarations of war against the Indigenous peoples as that immediately terminates treaties and would undermine the foundations of American property and sovereignty (a sovereignty regarding land use that is allowed only as the result of permissions granted by the Indigenous peoples pursuant to treaty).

So they devised the strategy of using the term, “amity” in various legislation and danced around domestically defined degrees of war. It was the findings of “informal” or “imperfect” war that permitted the government to dodge having to pay out its citizens for destroyed property, yet it wasn’t “formal” or “perfect” war so as to terminate the treaties and threaten constitutional foundations.

The US Supreme Court decision *Marks v. United States* is illustrative:

“Their contention is, rather, that actual hostilities may exist without war between two nations; that war is a political status, and to be determined by the political department of the government, by matter of record, and never by oral testimony; that it is not pretended that there was ever any formal declaration of war by either the Bannock tribe of Indians, or the United States government; that, therefore, the political relations established by the treaty of 1868 continued during all these hostilities, and the tribe was ‘in amity with the United States’; and, further, that subject and dependent people, like the Bannock Indians, are not capable of making war with the United States. ... War, says Vattel, is at present published and declared by manifestoes. Such an official act operates from its date to legalize all hostile acts, in like manner as a treaty of peace operates from its date to annul

them. As war cannot lawfully be commenced on the part of the United States without an act of congress, such an act is, of course, a formal official notice to all the world, and equivalent to the most solemn declaration.’ 1 Kent, Comm. 55. And this from *People v. McLeod*, 1 Hill, 377, 407: ‘A state of peace and the continuance of treaties must be presumed by all the courts of justice till the contrary be shown, and this is presumption *juris et de jure* until the national power of the country in which such courts sit officially declares the contrary.’

Without questioning these declarations and decisions as applied to the relations between independent nations, we think they avail but little in the solution of the question here presented. That question is, what limitation did congress intend by the words ‘in amity with the United States.’ The word amity’ is not a technical term. It is a word of common use, and such words, when found in a statute, must be given their ordinary meaning, unless there be something in the context which compels a narrower or a different scope. Webster defines it ‘friendship, in a general sense, between individuals, societies, or nations; harmony; good understanding; as a treaty of amity and commerce.’ The last part of this definition shows that the phrase ‘in amity’ is not the equivalent ‘under treaty’. A treaty implies political relations. ‘Amity’ signifies friendship, actual peace.”

“The phrase ‘in amity with the United States’ is one of frequent use in the legislation of congress in reference to Indians. In the early act of May 19, 1796 (1 Stat. 469), it appears twice, the sixth section reading as follows:

‘That if any such citizen, or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing an Indian or Indians, belonging to any nation or tribe of Indians in amity with the United States, such offender, on being thereof convicted, shall suffer death.’

It is found again in the act of March 3, 1799 (1 Stat. 747), that of March 30, 1802 (2 Stat. 143), June 30, 1834 (4 Stat. 731), and elsewhere; appearing in the statutes, as stated by counsel, some 50 or 60 times.

The frequent use of this phrase in connection with the same subject-matter during all the legislative history of this country suggests, of course, a single and settled meaning. And as said by Nott, J., in *Love v. U. S.*, 29 Ct. Cl. 332, 340, ‘What did it mean in 1796, when the law declared it to be murder to kill an Indian of a tribe “in amity with the United States”?’ If that particular section had been in force during these hostilities, it would not seriously be contended that the killing of a hostile Bannock by one of the soldiers of our army, even if done within the limits of the Bannock reservation, would have been murder, on the ground that the Bannock tribe was still under treaty relations, and therefore in amity with the government.

Further, there are obvious reasons why congress did not use this phrase in any different sense than as theretofore used. At the time of the passage of the act, nearly every tribe and band of Indians within the territorial limits of the United States was under some treaty relations with the government. It is said by counsel that there appear in the statutes, prior

to the act of March 3, 1871 (16 Stat. 544, 566), declaring against further treaties, 666 treaties with Indian tribes. And it is a matter of history that all along our Western frontier there has been a succession of Indian wars, with great destruction of life and property, and yet seldom has there been a formal declaration of war on the part of either the government or the Indians. If the contention of the claimants was sustained, it would be practically tantamount to holding that by this language congress had, for the government, assumed responsibility for all depredations committed by Indians domiciled within the territorial limits of the United States, subsequently, at least, to the year 1865, and given to the court of claims jurisdiction to determine and finally adjudicate the amount thereof.”

“If this act requires the construction claimed, it is obvious to any one familiar with the history of the Indian, and even independently of what is said by counsel to be the record as to the multitude and amount of the claims presented, that the outcome would be, as to most if not all of these tribes, that every dollar of annuity, if not every dollar of fund, would be swept away in satisfaction of these claims. We do not think this legislation is to be thus construed, and are of the opinion that all that congress intended was that when, as a matter of fact, a tribe was in the relation of actual peace with the United States, and by some individual or individuals, without the consent or approval of the tribe, a depredation was committed upon the property of citizens of the United States, such depredation might be investigated, and the amount of the loss determined and adjudicated by the court of claims. This is in harmony with the language of many of the treaties between the United States and the Indians, and, among others, that of the treaty between the United States and the Bannock tribe, heretofore quoted, which reads: ‘If bad men among the Indians shall commit a wrong or depredation,’ etc.

In the light of this conclusion, it may be said that, when the petition filed in the court of claims alleges that a depredation was committed by an Indian or Indians belonging to a tribe in amity with the United States, it becomes the duty of that court to inquire as to the truth of that allegation, and its truth is not determined by the mere existence of a treaty between the United States and the tribe, or the fact that such treaty has never been formally abrogated by a declaration of war on the part of either, but that the inquiry is whether, as a matter of fact, the tribe was at the time, as a tribe, in a state of actual peace with the United States.”

The courts looked to the case of *Bas v. Tingy*, 4 Dall. 37, 4 Dall. 378, 1 L.Ed. 731, August Term, 1800 to justify the development of a domestic doctrine of “imperfect war” in the context of the Indigenous peoples:

“It may, I believe, be safely laid down, that every contention by force between two nations, in external matters, under the authority of their respective governments, is not only war, but public war. If it be declared in form, it is called solemn, and is of the perfect kind; because one whole nation is at war with another whole nation; and all the members of the nation declaring war, are authorised to commit hostilities against all the members of the other, in every place, and under every circumstance. In such a war all the members act under a general authority, and all the rights and consequences of war attach to their condition.

But hostilities may subsist between two nations more confined in its nature and extent; being limited as to places, persons, and things; and this is more properly termed imperfect war; because not solemn, and because those who are authorised to commit hostilities, act under special authority, and can go no farther than to the extent of their commission. Still, however, it is public war, because it is an external contention by force, between some of the members of the two nations, authorised by the legitimate powers.”

This doctrine has been applied since. “Imperfect war,” think the following incursions by American armed forces: Libya in 1986; Afghanistan/Sudan in 1998; Kosovo in 1999; Iraq in 2003.

The American doctrine of imperfect war has evolved to include repelling attacks and anticipatory self-defense, rescue and protective intervention, intervention to restore or install democracy, humanitarian intervention, and disaster relief and peace operations. It has spawned covert war and the war on terrorism.

The US Supreme Court had held that it is for Congress alone to authorize either an "imperfect" (limited) war or a "perfect" (general) war. (*Bas v. Tingy*):

“... let us see what was the situation of the United States in relation to France. In March 1799, congress had raised an army; stopped all intercourse with France; *dissolved our treaty*; built and equipt ships of war; and commissioned private armed ships; enjoining the former, and authorising the latter, to defend themselves against the armed ships of France, to attack them on the high seas, to subdue and take them as prize, and to re-capture armed vessels found in their possession.” [Emphasis added]

Look at the problem *Bas v. Tingy* poses in distinguishing the facts. The United States did not and could not dissolve any treaties with Indigenous peoples. So the cases went further, in *obiter dicta*, to attempt to explain how it is that the Indigenous peoples could be seen as not being of nations. The *obiter* was repeated and repeated so often that soon every lawyer and judge was thoroughly indoctrinated.

An example is the US Supreme Court decision in *Montoya v. United States*, 280 U.S. 261, 21 S.Ct. 358, 45 L.Ed. 521 (1901):

“This was a petition by the surviving partner of the firm of E. Montoya & Sons against the United States and the Mescalero Apache Indians for the value of certain live stock taken in March, 1880, by certain of these Indians, known as Victoria’s Band.”

“The first section of the act of March 3, 1891 (26 Stat. at L. 851, chap. 538), vests the court of claims with jurisdiction to inquire into and finally adjudicate: ‘First. All claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for.’ ”

“To sustain a claim under this section, it is incumbent upon the claimant to prove that the Indians taking or destroying the property belonged to a band, tribe, or nation in amity with

the United States. The object of the act is evidently to compensate settlers for depredations committed by individual marauders belonging to a body which is then at peace with the government. If the depredation be committed by an organized company of men constituting a band in itself, acting independently of any other band or tribe, and carrying on hostilities against the United States, such acts may amount to a war for the consequences of which the government is not responsible under this act, or upon general principles of law. *United States v. Pacific R. Co.* 120 U. S. 227, 234, 30 L. ed, 634, 636, 7 Sup. Ct. Rep. 490.”

“The North American Indians do not, and never have, constituted ‘nations’ as that word is used by writers upon international law, although in a great number of treaties they are designated as ‘nations’ as well as tribes.”

“The word ‘nation’ as ordinarily used presupposes or implies an independence of any other sovereign power more or less absolute, an organized government, recognized officials, a system of laws, definite boundaries, and the power to enter into negotiations with other nations. These characteristics the Indians have possessed only in a limited degree, and when used in connection with the Indians, especially in their original state, we must apply to the word ‘nation’ a definition which indicates little more than a large tribe or a group of affiliated tribes possessing a common government, language, or racial origin, and acting, for the time being, in concert. Owing to the natural infirmities of the Indian character, their fiery tempers, impatience of restraint, their mutual jealousies and animosities, their nomadic habits, and lack of mental training, they have as a rule shown a total want of that cohesive force necessary to the making up of a nation in the ordinary sense of the word. As they had no established laws, no recognized method of choosing their sovereigns by inheritance or election, no officers with defined powers, their governments in their original state were nothing more than a temporary submission to an intellectual or physical superior, who in some cases ruled with absolute authority, and, in others, was recognized only so long as he was able to dominate the tribe by the qualities which originally enabled him to secure their leadership. In short, the word ‘nation’ as applied to the uncivilized Indians is so much of a misnomer as to be little more than a compliment.”

“We are more concerned in this case with the meaning of the words ‘tribe’ and ‘band.’ By a ‘tribe’ we understand a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory; by a ‘band,’ a company of Indians not necessarily, though often, of the same race or tribe, but united under the same leadership in a common design. While a ‘band’ does not imply the separate racial origin characteristic of a tribe, of which it is usually an offshoot, it does imply a leadership and a concert of action. How large the company must be to constitute a ‘band’ within the meaning of the act it is unnecessary to decide. It may be doubtful whether it requires more than independence of action, continuity of existence, a common leadership, and concert of action.”

“While, as between the United States and other civilized nations, an act of Congress is necessary to a formal declaration of war, no such act is necessary to constitute a state of war with an Indian tribe. In his concurring opinion in *Bas v. Tingy*, 4 Dall. 37, 1 L. ed. 731, recognizing France as a public enemy, Mr. Justice Washington recognized war as of two kinds: ‘If it be declared in form, it is called solemn, and is one of the perfect kind; because one whole nation is at war with another whole nation, and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other, in every place and under every circumstance. In such a war all the members act under a general authority, and all the rights and consequences of war attach to their condition. But hostilities may subsist between two nations, more confined in its nature and extent, being limited as to places, persons, and things; and this is more properly termed imperfect war, because not solemn, and because those who are authorized to commit hostilities act under special authority, and can go no farther than to the extent of their commission. Still, however, it is public war, because it is an external contention by force between some of the members of the two nations, authorized by the legitimate powers.’ Indian wars are of the latter class. We recall no instance where Congress has made a formal declaration of war against an Indian nation or tribe; but the fact that Indians are engaged in acts of general hostility to settlers, especially if the government has deemed it necessary to despatch a military force for their subjugation, is sufficient to constitute a state of war. *Marks v. United States*, 161 U. S. 297, 40 L. ed. 706, 16 Sup. Ct. Rep. 476.”

Canada sidestepped the lack of justiciability of the issue and the *prima facie* proof in any event of the treaties by keeping issues firmly linked to domestic laws such as the *Indian Act*. Similar comments to those of the US courts regarding the nature of treaties were equally *obiter* serving to indoctrinate in Canada.

Lawyers and judges should be mindful that,

“The deepest sin against the human mind is to believe things without evidence.”

Thomas Henry [T. H.] Huxley, "Evolution and Ethics" (1893)

The Samson Cree Chief and Council and their lawyers are following along this mistaken path right now. Effort is underway to bind more than just chief and council through a referendum vote of the people in order for them to get their money in trust (approximately \$360 million) transferred quickly from Canada to a new trustee before the court renders its decisions. Newspapers reported on press releases about the involvement of the Cree Elders (of Treaty 6 area) in the trial. They attempt to create the appearance of the Elders’ endorsement of pleadings and arguments by the lawyers. But benchers of a Law Society have decided that a lawyer can only take instructions from a chief and council (*Indian Act* federal agency) in matters of a lawsuit brought for a band. So clearly, the lawyers cannot be held to be speaking as instructed by the Elders, only as instructed by chief and council. Furthermore, the Elders were never provided with any copies of draft pleadings or filed pleadings, and they never had any legal advice. And what Canada does not realize is that there is a record created as to what the Elders had to say about the impending court proceedings and what they say there, which I have read, is not what ended up contained in the pleadings. When the Elders came to the court they did so to simply tell the court of things they know. They were not asking the court to agree with them because such is not even

justiciable in the domestic courts and they do not need that done. They are not represented in that statement of claim and are not a party to the lawsuit because they are of Indigenous Nations. Specifically they warned on the record that they “can’t recognize us as municipalities – we are nations.” The language the lawyers used in the pleadings is not nation language.

The lawyers are also not using nation language in the two court cases that got underway January 17, 2005 in the Supreme Court of Canada, appeals from New Brunswick and Nova Scotia. It is reported that the lawyers told the court that “Natives in New Brunswick and Nova Scotia have a right to cut timber on Crown lands they once occupied.” (John Ward, “Natives claim right to log land,” (Canadian Press), The Halifax Herald Limited, Tuesday, January 18, 2005)

“The natives argue that treaties dating back almost 250 years give them an implicit right to cut logs on Crown lands. ... ‘The courts of appeal have rewritten the treaty and put into it a right which was not in the reasonable contemplation of the parties at the time,’ lawyer Mitchell Taylor argued on behalf of the federal government.”

Chief Reg Maloney, District Chief of the Union of Nova Scotia Indians, stands in the position that others have before him in dealing with the Canadian and American governments, and says again, consistent with the commitments made between the Indigenous peoples and Her Majesty to practice the science of peace, “natives simply want a share of their renewable resources.”

But that’s not what the lawyers are saying.

Another example of what is to be expected when lawyers proceed with a case using language that is not nation language and fail to appreciate what the treaties are (having been indoctrinated by *obiter*) and the interests they are dealing with is Gordon Benoit’s case: *Benoit v. Canada* [2003], 3 F.C. D-35. There were also lawyers intervening for certain Treaty 8 Tribal Councils and organizations said to represent “more than half of the Treaty 8 First Nations in Alberta.” The lawyers pleaded that the contents of a treaty commissioner’s report gave rise to the oral promise not to have to pay taxes and form part of Treaty 8.

The Federal Court of Appeal, leave to appeal to the Supreme Court of Canada denied, held that the written text of Treaty 8 is silent and does not contain a promise exempting from taxation as alleged in the pleadings. The court found that the trial judge had made an obvious error in finding of fact because the evidence presented at trial could not reasonably support the conclusions that such promise was made. The trial judge had failed to consider other documentary evidence that also did not refer to a tax exemption. With respect to the weight given to the oral evidence by the lower court judge, the Federal Court of Appeal held that it was ambiguous and inconclusive, and described it as sparse, doubtful and equivocal with respect to the alleged tax promise.

The Federal Court of Appeal correctly answered the question put to it by the lawyers. Apart from the justiciability factor, the court cannot supply what is missing in a treaty any more than it can in a statute or contract: *casus omissus* (Urbom, J in Consolidated Wounded Knee Cases; Defendants nos. CB 73-5019, et al, January 17, 1975).

Of course there was no promise contained in Treaty 8. There was no promise made by Her Majesty – there was no need for one and it would have been ludicrous for Her lawyers to have drafted one in.

The commissioner did assure the Indigenous peoples that they would not be made subject to taxation because that was and remains a statement of the law – advice, not promise. Now it is understandable that in conveying that conversation over time, particularly with language translation, that a Cree-speaking layperson might well express it in terms of a “promise” but it is up to the lawyers who are well paid to be knowledgeable to know the law. These lawyers did not.

These are *not* “peace treaties” of conquest whereby in the negotiation of terms of capitulation in war certain things are promised by the Crown who attains full and sole sovereignty, for example, to allow the conquered to keep their churches and language. These are treaties consistent with the science of peace exercised between nations. The only way that the Indigenous peoples could have been made subject to taxation is if the treaties contained a commitment *made by the Indigenous peoples* to pay tax. They do not.

Many commentators have tried to reassure that the impact of the *Benoit* decision is contained as only affecting those of Treaty 8. But it does not even affect them. The court was asked to find a promise granted in the treaty and to use that as the foundation for no taxes being payable. But the law operates notwithstanding. The fact remains that the Indigenous peoples are not subject to taxation, and this is not because of any “promise” collateral to a treaty, or some parliamentary discretion contained in any federal legislation such as the *Indian Act*. It is by virtue that there is a treaty and that they remain sovereign.

But of course there is the continuing matter of Canada’s banditry, which extends to unlawful taxation of Indigenous peoples, and the fact that domestic courts cannot be involved in matters essentially of diplomacy – the choice between a state of peace and a state of war.

Particularly problematic and prevalent in legal language found in court pleadings and agreements drafted by lawyers today are past tense references to the Indigenous peoples that are consistent with the remnant, domestic ethnic minorities model. This has become the foundation of the domestic doctrine of aboriginal and treaty rights under section 35 of the *Constitution Act, 1982* of which I have written extensively. The doctrine developed is a test for extinguishment and is instrumental in attempting to determine the date of completion of conquest as at the time of the *Constitution Act, 1982*, as being of sufficient duration of administration of the Indigenous peoples since the bare assertion of sovereignty by the Crown to achieve conquest.

The “First,” “Second,” and “Third World” model dating from the USA – Russia post WWI cold war era is considered outdated and not accurately reflective of geopolitical world realities, if ever it was. This model tried to simplify the world into three blocs: democratic-industrial countries within the sphere of American influence, the “West,” comprising the “First World,” communist-socialist states, the “East,” comprising the “Second World,” and all others not aligned with either, some three-quarters of the world's population, relegated to the “Third World.”

In 1974, Secwepemc Chief George Manuel (1921 - 1989) coined the addition: the “Fourth World,” in his now out of print book, *The Fourth World: an Indian Reality*. The “Fourth World” came to refer to cultural or ethnic minority groups living within or across state boundaries. Manuel described the Fourth World as the

“indigenous peoples descended from a country's aboriginal population and who today are completely or partly deprived of the right to their own territories and its riches.”

(Quoted in Burger, Julian, *The Gaia Atlas of First Peoples*, London: Gaia Books Ltd., 1990 and referenced in Dr. Richard Griggs, “The Meaning of ‘Nation’ and ‘State’ in the Fourth World,” University of Capetown, Center for World Indigenous Studies, 1992)

In recognizing that the “Fourth World” concept is not reflective of the Indigenous peoples whom have survived and are not mere remnant ethnic minorities, just as the concepts of “First,” “Second,” and “Third” worlds do not suffice in their relative applications, it must be appreciated that

“[George Manuel] began his life on February 21, 1921 in Shuswap [Secwepemc] in a time when the Canadian government had made it a crime for native people to practice their ancient religions, the customs of the Potlatch. By the time George was six years old, the Canadian government had also made it a crime for native people to organize and raise funds for political action to support aboriginal rights. Like so many Shuswap boys before him, George Manuel was sent by the government to a Residential School to ‘become a white man’ as he once told me. In his childhood, George contracted tuberculosis which forced him to live in a sanatorium [for ten years]. The attempts to distort his spirit and his body were always a source of shame, and so he never volunteered to talk about these things. He preferred to remember the desperate poverty his people were forced to endure ‘because of Canadian government and British Columbian government policies toward the Indian.’ ”

Rudolph C. Ryser, “Neither Left nor Right, we must find our own path as the Fourth World,” Center for World Indigenous Studies, 1995

In 1980, Chief Manuel also called upon the British and Canadian governments to recognize in the developing Canadian Constitution a “third level of government.” This led to the federal municipal model and to the efforts underway today described as “finding a rightful place within Canada” and language in federal delegated self-government program and agreements thereunder of “being within the context of the constitution.”

Making the email circuits lately is a discussion paper by Andrew Webster, “Fiscal Responsibility for Programmes and Services to Indians and the Forthcoming Premiers’ Conference on Aboriginal Issues,” dated January 19, 2005. His is yet another attempt at explaining constitutional problems that actually do not exist but are perceived to exist and be difficult to resolve. Great effort is made to assist by taking another try at jamming a square block into a round hole when the round block that does fit is sitting right at hand, only to be used. Even an infant moves on within a reasonable timeframe. Yet here Canadian Prime Minister Paul Martin prepares to sit where his predecessors Prime Ministers Trudeau, Mulroney, and Chrétien have sat before him, ready to give it a try. It can only produce the same, inevitable result.

Instead of troubling about there being no clear constitutional jurisdictional framework for who is to pay for “Aboriginal programs and services” with each of the federal government and the provincial governments pointing to the other trying to contort some part of the *Constitution Act, 1867* in the process, consider that none fit because they were never intended to.

The Indigenous peoples have that jurisdiction – they are sovereign. It is their responsibility to provide for their people – their own programs and services. If they had been conquered and no longer retained their sovereignty, then the *Constitution Act, 1867* would have reflected that, and it does not. And instead of being perverted into an instrument of conquest, the *Constitution Act, 1982* was to ensure that Canada always remembers that Her constitution is subject to the treaties and Her relationship with the Indigenous peoples – the permissions granted by them to the Crown. And if the governments were not engaging in banditry, but continuing to exercise the science of peace, then the Indigenous peoples would not continue to be deprived of the means with which to meet their obligations to their people. It's really that simple.

Ockham's Razor is a criterion for deciding among scientific theories or explanations: the simplest explanation of a phenomenon, the one that requires fewest leaps of logic, should always be chosen.

William of Ockham (Occam) (1285-1349) expressed this as “*pluralitas non est ponenda sine neccesitate*” (plurality should not be posited without necessity). He did not originally enunciate the principle but his name has become descriptive of it because of his frequent usage of the principle. He was an English philosopher and Franciscan monk considered to be the most influential philosopher of the 14th century. He was a very controversial and determined theologian.

Ockham was young when he joined the Franciscans. He studied traditional theological studies at Oxford. He received his bachelor's degree but not his master's because the theological faculty strongly opposed his opinions. His “radical beliefs” made him an enemy of the chancellor of Oxford, who brought Ockham's work to the attention of Pope John XII.

Ockham earned his master's degree in Paris and taught there between 1315 and 1320. In December 1323, his writings again came to the attention of Pope John XXII. In 1324, he was summoned to the papal court in Avignon (France), where the papacy was then located, to answer to the accusation of heresy. Ockham was deposed, excommunicated, and imprisoned there for more than four years. Two friars finally managed his escape on May 25, 1328 and they all left for Italy.

In 1328, Ockham became a principal adviser and literary defender for Emperor Louis IV of Bavaria in Munich, Bavaria (now Germany), who had also been excommunicated by Pope John XXII. Ockham wrote a series of treatises on papal power and civil sovereignty, attacking the pope for errors in his papal bulls and even calling him a heretic. The political ideas that he had advocated in Paris before being excommunicated had been developed and adapted to the times and were so influential in Paris that by 1339 the philosophical faculty felt compelled to issue a warning.

Ockham was cited again before the papal court. He refused as the court demanded of him to admit that Louis was a heretic and schismatic (schism from the Greek “schisma” for rent or division, in canon law means the rupture of ecclesiastical unity). On June 8, 1349, the pope offered to grant a petition for release from excommunication on lesser conditions. Some assert that Ockham signed this and was

absolved but there is no such documentary evidence. Jacobus de Marchia (OFM) (Order of Friars Minor) (1394-1476) says Ockham remained an excommunicated heretic when he died in 1349, believed of the plague prevalent in Europe at the time, in a convent in Munich, Bavaria.

As would occur to Galileo Galilei (1564-1642), Ockham was persecuted, imprisoned, and excommunicated while alive. But after death, Ockham rose to very high regard in the church. He is accorded *doctor invincibilis* from the Latin meaning “unconquerable doctor,” and *venerabilis inceptor*, meaning “worthy initiator.”

Galileo also died condemned of heresy. 350 years later on October 31, 1992, Pope John Paul II publicly admitted on behalf of the Catholic Church that the theological advisors in Galileo’s case had made errors. He did not however go so far as to admit that the Church had been wrong to convict Galileo on the charge of heresy for his holding that the Earth rotates around the Sun.

Jose Wudka, a physics professor, explains Ockham’s razor (September 24, 1998):

“When a new set of facts requires the creation of a new theory the process is far from the orderly picture often presented in books. Many hypotheses are proposed, studied, rejected. Researchers discuss their validity (sometimes quite heatedly) proposing experiments which will determine the validity of one or the other, exposing flaws in their least favorite ones, etc. Yet, even when the unfit hypotheses are discarded, several options may remain, in some cases making the exact same predictions, but having very different underlying assumptions. In order to choose among these possible theories a very useful tool is what is called Ockham's razor.

...

Suppose that you have two competing theories which describe the same system, if these theories have different predictions than it is a relatively simple matter to find which one is better: one does experiments with the required sensitivity and determines which one give the most accurate predictions. For example, in Copernicus’ theory of the solar system the planets move in circles around the sun, in Kepler’s theory they move in ellipses. By measuring carefully the path of the planets it was determined that they move on ellipses, and Copernicus’ theory was then replaced by Kepler’s.

But there are theories which have the very same predictions and it is here that the Razor is useful. Consider for example the following two theories aimed at describing the motions of the planets around the sun

* The planets move around the sun in ellipses because there is a force between any of them and the sun, which decreases as the square of the distance.

* The planets move around the sun in ellipses because there is a force between any of them and the sun, which decreases as the square of the distance. This force is generated by the will of some powerful aliens.

Since the force between the planets and the sun determines the motion of the former and both theories posit the same type of force, the predicted motion of the planets will be identical for both theories. The second theory, however, has additional baggage (the will of the aliens), which is unnecessary for the description of the system.

If one accepts the second theory solely on the basis that it predicts correctly the motion of the planets one has also accepted the existence of aliens whose will affect the behavior of things, despite the fact that the presence or absence of such beings is irrelevant to planetary motion (the only relevant item is the type of force). In this instance Ockham's Razor would unequivocally reject the second theory. By rejecting this type of additional irrelevant hypotheses guards against the use of solid scientific results (such as the prediction of planetary motion) to justify unrelated statements (such as the existence of the aliens), which may have dramatic consequences. In this case the consequence is that the way planets move, the reason we fall to the ground when we trip, etc. is due to some powerful alien intellect, that this intellect permeates our whole solar system, it is with us even now...and from here an infinite number of paranoid derivations.

For all we know the solar system is permeated by an alien intellect, but the motion of the planets, which can be explained by the simple idea that there is a force between them and the sun, provides no evidence of the aliens' presence nor proves their absence.”

So let's consider this in relation to Canada and the Indigenous peoples. Two choices, either,

1. Instead of engaging in war, Sovereign nations engaged in economics as the science of peace and entered into treaties, international covenants, to enable one sovereign party to exist on the lands of the other sovereign (Indigenous) parties, who retain underlying title and sovereignty (including self-government) and who must be compensated for the rights given to the other, collectively (resource royalties/transfer payments) and individually (annuities).

Or,

2. Instead of engaging in war, Sovereign nations engaged in economics as the science of peace and entered into treaties, international covenants, to enable one sovereign party to exist on the lands of the other sovereign (Indigenous) parties, who retain underlying title and sovereignty (including self-government) and who must be compensated for the rights given to the other, collectively (resource royalties/transfer payments) and individually (annuities),

but (take your pick of nonsense)

the Indigenous nations might become too powerful, be able to drive Canadians out and off their land because they didn't die out and might breach the treaties and might retaliate for their poor treatment, or their exercise of economic sovereignty might end up proving more effective and force Her Majesty's governments to adapt/conform, and/or upset the exchange of favours and the relationships that prevail in Canadian political/economic circles, and there is no certainty in this, at least for those currently in good favour,

so,

it is necessary to get rid of the treaties by getting rid of the Indigenous nations, banditry being the appropriate war strategy leading to a successful “kill them before they kill us” outcome but while also trying to ease the bloodshed somewhat in a most civilized manner, and create a lucrative industry in the process, by putting a “new relationship” in place through “reconciliation,” after all same is easily achieved by the law by our judges whom we appoint, for the law is nothing more than what judges actually do (US Supreme Court Justice, Oliver Wendell Holmes (1841-1935), *The Path of the Law*, Harvard Law Review, 1897):

“[Oliver Wendell Holmes’] devotion to Social Darwinism (Herbert Spencer’s *Social Statics* (1852)) led to a complete skepticism about natural law and rights. The question then is, what takes the place of natural law and natural rights? For Holmes, the initial answer was an objective custom. The moralizing and blameworthiness that went hand-in-hand with natural rights was shunted aside, and was replaced by community standards as exemplified by the Judge. But by 1897, when his famous Harvard Law Review essay *The Path of the Law* had been published, Holmes’ views had changed and had become even more stark. The disruptions in society, especially the labor-management conflicts of the early and mid-1890s, indicate that community standards don’t always exist, and Holmes must decide a number of labor injunction cases. His theory in *The Path of the Law* is to conclude that law is nothing more than what judges actually do.”

(Michael Ariens, US Constitutional Law Professor at St. Mary's University School of Law, San Antonio, Texas, 2002)

The practical application of these two choices is thus, either,

1. The *Constitution Act, 1867* places diplomatic responsibilities for the preservation of the treaty relationship in the interests of peace, order, and good government with the federal government. The Indigenous Nations are responsible for their nationals’ needs (sovereign self-government), which can be met from fair compensation collectively (resource royalties/transfer payments) and individually (annuities) that the federal government must ensure is made, and all is certain, attracting direct foreign investment.

Or,

2. There is a constitutional quagmire that despite decades of trying no one can wade through so as to know how to place firmly the responsibility for programs and services somewhere for Indigenous peoples, who suffer in deteriorating conditions and pose increasing societal burden and threat as their rising needs fall faster through widening holes, so destined-to-fail-and-compound-the-problem-but-feel-good-or-at-least-look-good economic development initiatives are tried and tried again, usually where there is the most potential to achieve some semblance of assimilation in the hopes of creating the illusion of certainty and thus attempting to attract desperately needed direct foreign investment, all the while trying to hide the ongoing banditry and state of war present in Canada.

The US Supreme Court of decision, *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) pondered why “the statesmen who framed the Constitution of the United States” might have omitted “to enumerate them [“Indian nations”] among the parties who might sue in the courts of the Union,” much like the situation for Canada wrestling with the *Constitution Act, 1867*. Ockham would have approved the answer: the constitutions of both the United States and Canada concerned their people, their government structures – not those of the Indigenous peoples. Those constitutional documents represent the limits of their sovereignty. The other applicable constitutional documents are the treaties, which deal with the relationship with the Indigenous nations. There was no intention at that time to step into the sovereign self-government of the Indigenous peoples and thereby engage in war.

Most people tend to think two-dimensionally. Using a piece of paper as the example, they assume that there can only be one piece of paper occupying a set space – that there must be a choice between the paper representing the United States or Canada, and the paper representing the Indigenous peoples. There is no problem with a two-dimensional view where there are two separate areas, one for each of the pieces of paper, especially if separated by an ocean. The problem develops when there is only one space available for occupation.

But in a three-dimensional model, there is also the “Z” axis, not just the “X” and “Y” axes. Fitting two pieces of paper into the three-dimensional model is simple. Now put that three-dimensional model into space, where there is no “up” or “down” and you eliminate any Earth-bound perception of higher being better, or the concept of hierarchy. Now the relationship is better understood.

In the three-dimensional model, those two pieces of paper that could only occupy a two-dimensional model if they were mashed up and remade into one piece of paper, which may end up flimsy and weak, frayed at the edges, can together become stronger without any need to reconstitute them. They work directly aligned with each other (“side-by-side”).

Perhaps another way that may help to better understand is to think about a two-story “duplex” house, where each floor has a full complement of living requirements – kitchen, bathrooms, bedrooms, etc. One family lives on each floor. They live close to each other and are considerate of each other, but they do not interfere in each other’s lives. Unless a cry for help is heard, in which case, the other family comes to assist. They remain good neighbours sharing the bounty of the garden and having to engage in diplomacy over what colour to paint the house or when to fix the roof.

The Constitution of the United States opens with,

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

The Indigenous peoples were not part of the “We.” They were and are of their own nations, not of the people of the United States. They were not represented in any way on July 4, 1776 when the representatives of the people of the thirteen colonies who called themselves the “thirteen united States of America” met in congress and declared independence from the rule of “the present King of Great

Britain [George III].” This was the revolutionary government of these people – not of the Indigenous peoples.

Likewise, the *Constitution Act, 1867* was an act of the Crown further delegating self-government and did not concern itself with the governance of the Indigenous peoples. Many like to say that the federal government has power over the Indigenous peoples because of section 91(24) of the *Constitution Act, 1867*. This is sloppy, loose language. This is what it says:

“91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, *in relation to* all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; ...

24. Indians, and Lands reserved for the Indians.”

The federal government has the power to make laws for peace, order, and good government of Canada, in relation to the Indigenous peoples. This *does not* mean power over them, or to make laws for them, or to make them into legal creatures of federal laws, or to delegate federal powers to them.

It means that the federal government is to ensure that the relationship established with the Indigenous peoples by treaty is preserved in the interest of peace, order and good government. This is essential constitutionally, for if Her Majesty's government breaks the treaties, then Her Majesty's constitutional foundation is disturbed. The breaking of treaty thus threatens the peace. The federal government must see to it that this does not happen. It must act to preserve the peace, order, and good government that exists because the Indigenous peoples provided permissions for Her Majesty to be present in their lands.

If there were truly some intention to govern the Indians, it can be certain that reference would have well exceeded the very few places the word “Indian” appears in the constitutional documents. (Only twice, in the same phrase in the case of Canada, quoted above, and not much more in the case of the United States.) You can also be assured that the intention was not there by looking to the actions of the American and Canadian governments and courts since, desperately trying to deal with the fact of continuing Indigenous sovereignty through attempts to have the Indigenous peoples walk away from it and consent to a “new relationship” or “make a place for them within the constitution.” If they were already there, none of this industry would exist. It's really extremely trite.

So it is well beyond a good time to take out Ockham's razor to the “but” and “so” above, which rank up there with the aliens. Even if the “but” and “so” exist, it doesn't change what is, so it is irrelevant and unnecessary to consider. Without the distraction of the “but” and “so,” it makes the choice of what to do next very clear, and simple.

And isn't it far simpler to calculate and plan for compensation for the “overpluses” in accordance with the science of peace collectively through resource royalties/transfer payments and individually through fair market rate annuities than the current Canadian system of some 32 departments delivering 240 separate programs at some unknown cost Canadian Treasury Board President Reg Alcock has yet to be able to determine, but says is significantly higher than the \$7 billion figure annual spent usually

quoted? I'll bet when he does the math, he'll agree with me that the simple approach might even save Canada some money. Don't forget that welfare payments are no longer necessary when proper annuities are being paid. It would render it pretty easy for Mr. Alcock to see what he is doing so as to make it simple for him to manage.

So, my message for the next Premiers' Conference on Aboriginal Issues (expected late 2005):

"I know that most men, including those at ease with problems of the greatest complexity, can seldom accept even the simplest and most obvious truth if it be such as would oblige them to admit the falsity of conclusions which they have delighted in explaining to colleagues, which they have proudly taught to others, and which they have woven, thread by thread, into the fabric of their lives."

(Leo Tolstoy, Russian mystic & novelist (1828 - 1910))

Be mindful that

"New opinions are always suspected, and usually opposed, without any other reason but because they are not already common."

(John Locke (1632 – 1704), *Essay Concerning Human Understanding*, 1690)

And that

"It is also of course difficult to renounce a cherished theory, the product of costly intellectual and emotional investment, and to accept the cost to ambition, reputation and pride of a humiliating retraction. As the economist J. K. Galbraith put it, 'faced with the choice between changing one's mind and proving that there is no need to do so, almost everyone gets busy with the proof.'"

(Walter Gratzer, *The Undergrowth of Science: Delusion, Self-Deception and Human Frailty* (2000))

Galileo in his 1616 Letter to the Grand Duchess Christina of Lorraine attacked the followers of Aristotle's theory in support of the Copernican theory, having to argue for a non-literal interpretation of the Bible in the process:

"I hold that the Sun is located at the centre of the revolutions of the heavenly orbs and does not change place, and that the Earth rotates on itself and moves around it. Moreover ... I confirm this view not only by refuting Ptolemy's and Aristotle's arguments, but also by producing many for the other side, especially some pertaining to physical effects whose causes perhaps cannot be determined in any other way, and other astronomical discoveries; these discoveries clearly confute the Ptolemaic system, and they agree admirably with this other position and confirm it."

In finding Copernicus to be correct in the Earth rotating the Sun as opposed to the reverse, Aristotle is no less appreciated for his contributions. Aristotle, *Ille Philosophus* (The Philosopher), or “the master of them that know,” had opposed some of Plato's teachings. Yet when Aristotle’s work in zoology was later proven to have errors, he was still accorded the author of “the grandest biological synthesis of the time.” When Copernicus’ theory of the solar system that the planets move in circles around the Sun was replaced by Kepler’s theory that they move in ellipses, proven by careful measuring of the path of the planets, Copernicus was likewise not disrespected. Nor is George Manuel.

So this shouldn’t be too hard. After all, this is not rocket science I am speaking of. I am simply pointing out some very obvious weak attempts based on perspectives held at earlier times that no longer have a place in our world, if they ever did:

“In questions of science, the authority of a thousand is not worth the humble reasoning of a single individual.”

(Galileo Galilei, in Arago's *Eulogy of Laplace* (1874))

The treaties are international treaties. The Indigenous peoples are indeed human, with laws and societies, comprising nations. They are not and have never been beasts of the field or savages so as to exempt them from the principles collected by John Locke. This is how it works and it’s high time we move on from the stagnated arena of thought regarding Indigenous peoples in North America. The pursuit of peace over that of war will bring us most close to that perfect world.

“Nothing tends so much to the corruption of science as to suffer it to stagnate.”

(Edmund Burke (1729-1797), *A Philosophical Enquiry into the Origin Of Our Ideas of the Sublime and Beautiful* (Second edition, 1759), from Part One, Sect. XIX: The Conclusion)

Otherwise Galileo warns,

“And who can doubt that it will lead to the worst disorders when minds created free by God are compelled to submit slavishly to an outside will? When we are told to deny our senses and subject them to the whim of others? When people devoid of whatsoever competence are made judges over experts and are granted authority to treat them as they please? These are the novelties which are apt to bring about the ruin of commonwealths and the subversion of the state.”

(Galileo Galilei, on the margin of his own copy of *Dialogue on the Great World Systems*, quoted in J R Newman, *The World of Mathematics* (New York 1956))

So put Ockham’s Razor to good use:

“Keep it simple, stupid.”

Or take a chapter from Charles Dickens. Specifically, Chapter 1, *Bleak House*, Dicken's complex novel of divergent and intertwining storylines of characters who meet by chance or fate, or should I say, due to "Wyrd." It's main theme is the absurdity of legal proceedings that have no purpose but to line the pockets of lawyers, the case of *Jardyce and Jarndyce*, two wards of the state, being the sad example that is eclipsed only by Canada's worn out scarecrow:

"The raw afternoon is rawest, and the dense fog is densest, and the muddy streets are muddiest near that leaden-headed old obstruction, appropriate ornament for the threshold of a leaden-headed old corporation, Temple Bar. And hard by Temple Bar, in Lincoln's Inn Hall, at the very heart of the fog, sits the Lord High Chancellor in his High Court of Chancery.

Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this High Court of Chancery, most pestilent of hoary sinners, holds this day in the sight of heaven and earth.

On such an afternoon, if ever, the Lord High Chancellor ought to be sitting here — as here he is — with a foggy glory round his head, softly fenced in with crimson cloth and curtains, addressed by a large advocate with great whiskers, a little voice, and an interminable brief, and outwardly directing his contemplation to the lantern in the roof, where he can see nothing but fog. On such an afternoon some score of members of the High Court of Chancery bar ought to be — as here they are — mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horse-hair warded heads against walls of words and making a pretence of equity with serious faces, as players might. On such an afternoon the various solicitors in the cause, some two or three of whom have inherited it from their fathers, who made a fortune by it, ought to be — as are they not? — ranged in a line, in a long matted well (but you might look in vain for truth at the bottom of it) between the registrar's red table and the silk gowns, with bills, cross-bills, answers, rejoinders, injunctions, affidavits, issues, references to masters, masters' reports, mountains of costly nonsense, piled before them. Well may the court be dim, with wasting candles here and there; well may the fog hang heavy in it, as if it would never get out; well may the stained-glass windows lose their colour and admit no light of day into the place; well may the uninitiated from the streets, who peep in through the glass panes in the door, be deterred from entrance by its owlish aspect and by the drawl, languidly echoing to the roof from the padded dais where the Lord High Chancellor looks into the lantern that has no light in it and where the attendant wigs are all stuck in a fog-bank! This is the Court of Chancery, which has its decaying houses and its blighted lands in every shire, which has its worn-out lunatic in every madhouse and its dead in every churchyard, which has its ruined suitor with his slipshod heels and threadbare dress borrowing and begging through the round of every man's acquaintance, which gives to monied might the means abundantly of wearying out the right, which so exhausts finances, patience, courage, hope, so overthrows the brain and breaks the heart, that there is not an honourable man among its practitioners who would not give — who does not often give — the warning, "Suffer any wrong that can be done you rather than come here!"

Who happen to be in the Lord Chancellor's court this murky afternoon besides the Lord Chancellor, the counsel in the cause, two or three counsel who are never in any cause, and the well of solicitors before mentioned? There is the registrar below the judge, in wig and gown; and there are two or three maces, or petty-bags, or privy-purses, or whatever they may be, in legal court suits. These are all yawning, for no crumb of amusement ever falls from JARNDYCE AND JARNDYCE (the cause in hand), which was squeezed dry years upon years ago. The short-hand writers, the reporters of the court, and the reporters of the newspapers invariably decamp with the rest of the regulars when Jarndyce and Jarndyce comes on. Their places are a blank. Standing on a seat at the side of the hall, the better to peer into the curtained sanctuary, is a little mad old woman in a squeezed bonnet, who is always in court, from its sitting to its rising, and always expecting some incomprehensible judgment to be given in her favour. Some say she really is, or was, a party to a suit, but no one knows for certain because no one cares. She carries some small litter in a reticule which she calls her documents, principally consisting of paper matches and dry lavender. A sallow prisoner has come up, in custody, for the half-dozen time to make a personal application "to purge himself of his contempt," which, being a solitary surviving executor who has fallen into a state of conglomeration about accounts of which it is not pretended that he had ever any knowledge, he is not at all likely ever to do. In the meantime his prospects in life are ended. Another ruined suitor, who periodically appears from Shropshire, and breaks out into efforts to address the Chancellor at the close of the day's business and who can by no means be made to understand that the Chancellor is legally ignorant of his existence after making it desolate for a quarter of a century, plants himself in a good place and keeps an eye on the judge, ready to call out "My Lord!" in a voice of sonorous complaint on the instant of his rising. A few lawyers' clerks and others who know this suitor by sight linger on the chance of his furnishing some fun and enlivening the dismal weather a little.

Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means. The parties to it understand it least, but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the earth perhaps since old Tom Jarndyce in despair blew his brains out at a coffee-house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the court, perennially hopeless.

Jarndyce and Jarndyce has passed into a joke. That is the only good that has ever come of it. It has been death to many, but it is a joke in the profession. Every master in Chancery has had a reference out of it. Every Chancellor was "in it," for somebody or other, when he

was counsel at the bar. Good things have been said about it by blue-nosed, bulbous-shoed old benchers in select port-wine committee after dinner in hall. Articled clerks have been in the habit of fleshing their legal wit upon it. The last Lord Chancellor handled it neatly, when, correcting Mr Blowers, the eminent silk gown who said that such a thing might happen when the sky rained potatoes, he observed, “or when we get through Jarndyce and Jarndyce, Mr Blowers” — a pleasantry that particularly tickled the maces, bags, and purses.

How many people out of the suit Jarndyce and Jarndyce has stretched forth its unwholesome hand to spoil and corrupt would be a very wide question. From the master upon whose impaling files reams of dusty warrants in Jarndyce and Jarndyce have grimly writhed into many shapes, down to the copying clerk in the Six Clerks’ Office who has copied his tens of thousands of Chancery folio-pages under that eternal heading, no man’s nature has been made better by it. In trickery, evasion, procrastination, spoliation, botheration, under false pretences of all sorts, there are influences that can never come to good. The very solicitors’ boys who have kept the wretched suitors at bay, by protesting time out of mind that Mr Chizzle, Mizzle, or otherwise was particularly engaged and had appointments until dinner, may have got an extra moral twist and shuffle into themselves out of Jarndyce and Jarndyce. The receiver in the cause has acquired a goodly sum of money by it but has acquired too a distrust of his own mother and a contempt for his own kind. Chizzle, Mizzle, and otherwise have lapsed into a habit of vaguely promising themselves that they will look into that outstanding little matter and see what can be done for Drizzle — who was not well used — when Jarndyce and Jarndyce shall be got out of the office. Shirking and sharking, in all their many varieties have been sown broadcast by the ill-fated cause; and even those who have contemplated its history from the outer-most circle of such evil have been insensibly tempted into a loose way of letting bad things alone to take their own bad course, and a loose belief that if the world go wrong it was in some off-hand manner never meant to go right.”

As the old Chinese saying goes, "an observer can make the best judgment."

On January 18, 2005, Canadian Prime Minister Paul Martin was defending same-sex marriage legislation after a meeting with Indian Prime Minister Manmohan Singh. He said,

“I would point out that we are a country of ethnic and religious minorities, and the purpose of the Charter of Rights is to protect minorities, to protect them against the oppression of the majority.”

Yes, Mr. Prime Minister, and the country depends on maintaining the commitment to the science of peace made with the Indigenous peoples, who are not domestic ethnic minorities whom you like to call, “Aboriginal Canadians.”

On January 25, 2005 in Fredericton, New Brunswick the some 300-strong, winter caucus of the Liberal Party was underway planning for the coming session of Parliament. It was reported that Canadian Prime Minister Paul Martin announced 2005 as the year he will bring “the historic partnership with native people into its ‘20th-century form.’ ... ‘When a people want to control their own destiny, what they are saying is that there is nothing that can stop them, and the government of Canada is here to help them.’ ”

Mr. Prime Minister that “20th-century form” you speak of as its shape has been planned so far with partial implementation attempted, should come complete with the prophetic cry of a Billy Sole:

“We're all gonna die.”

(Twentieth Century Fox Film Corporation’s 1987 movie, *Predator*; Billy Sole, a rather stereotype mystical native mercenary character played by actor Sonny Landham.)

“ARNOLD SCHWARZENEGGER stars as Major Dutch Schaefer in this action-packed adventure story of fighting men pitted against an unseen enemy, a force more powerful than their fiercest weapons. ... once in the jungle, they encounter an enemy unimaginably more deadly than any on Earth ... Stalked by the unseen foe and stripped of his weaponry, Schaefer must draw on his inner resources of instinct and intelligence as he faces his greatest challenge - staying alive.” (Twentieth Century Fox Home Entertainment LLC)

Allow me, Mr. Prime Minister, to be able to call you “Right Honourable.” Don’t make me look further into resuscitating head of state constitutional powers.

I sincerely hope that should I reach an old age and find myself pondering my past that I do not feel any kinship with Galileo Galilei, who wrote:

“I wish, my dear Kepler, that we could have a good laugh together at the extraordinary stupidity of the mob. What do you think of the foremost philosophers of this University? In spite of my oft-repeated efforts and invitations, they have refused, with the obstinacy of a glutted adder, to look at the planets or Moon or my telescope [through which Galileo first spied the moons of Jupiter in January 1610].”

(Opera, *Florence Giovanni Gaetano Tartini e Santi Franchi*, 1718 (augmented collected edition of the works of Galileo Galilei first collected ed. 1656))

If my writings over the years have suggested continuing malice on the part of Canadian governments and judges, lawyers, and advisors, perhaps I should consider heeding Hanlon’s razor:

“Never attribute to malice that which can be adequately explained by stupidity.”

(A particular favorite of computer geeks who daily must deal with problem environments created by well intentioned but short-sighted people.)

Finally, I encourage serious consideration of the spirit and intent of the words of Thomas Jefferson delivered in Washington, DC on December 30, 1806 to the “Wolf and People of the Mandan Nation”:

“If ever lying people or bad spirits should raise up clouds between us, call to mind what I have said, and what you have seen yourselves. Be sure there are some lying spirits between us; let us come together as friends and explain to each other what is misrepresented or misunderstood, the clouds will fly away like morning fog, and the sun of friendship appear and shine forever bright and clear between us.”

And that is all I have to say.