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An Ethic of Mutual Respect
The Covenant Chain and
Aboriginal-Crown Relations



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Preface and Acknowledgments

Is it possible for culturally divergent peoples, Aboriginal and western European, to have a mutually recognized, respectful relationship? This became a central question in my attempt to understand the struggle between the Chippewas of Nawash-Saugeen, who occupy the shores of the Bruce Peninsula on Georgian Bay, and the province of Ontario over Aboriginal fishing and treaty rights. Following the province's defeat in the courts – owing, in part, to the court's recognition of treaty rights and an imperial proclamation of 1847 by Queen Victoria – it continued to assert jurisdictional control over the management of recreational fisheries.¹ Management practices such as stocking Pacific salmon conflicted with the community's commitment to protect indigenous (and commercial) species, especially lake trout and white fish. The Nawash view this commitment as part and parcel of treaty and Aboriginal rights. I am grateful to the Chippewas of Nawash for explaining and allowing me to witness their conflicts with the Crown, at both the provincial and federal levels, and for allowing me to participate in discussions of these rights. The experience not only widened my appreciation of issues concerning justice and crosscultural understanding, it also deepened my understanding of the value of examining these issues from a philosophical or ethical perspective.

Will Kymlicka's conceptualization of multiculturalism and liberal democratic principles formed the initial framework for this study, but interactions with friends and colleagues eventually led me to seek an alternative framework.² "We are not just one cultural group among others!" I was told. "Aboriginal rights are not just about being protected against arbitrary discrimination. They are rights by virtue of our being here first." Even more radically, they argued, "There is no word in our language for *right*; we have responsibilities toward the land and one another." Despite Kymlicka's efforts to address at least some of these concerns (e.g., to maintain a distinction between Aboriginal and other minority rights), I found myself looking to Aboriginal peoples' historical treaty relationship with the Crown for clues

to explain their dissatisfaction with the liberal framework. I was told *medicine* was a word I needed to understand, because it was more central to Aboriginal conceptions of treaties and justice than was *right*. The tension between individual and collective rights added to the confusion. These complexities played a part in my examination of what it means to respect a people. Respect, I learned, involves understanding a people's way of framing concern: in other words, their worldview and related systems of values, normative commitments, and knowledge acquisition.

Some believe it is impossible to develop true respect since it involves overcoming fundamental cultural barriers, including differing ontologies, as anthropologists John Clammer, Sylvie Poirier, and Eric Schwimmer argue. Traditional Aboriginal perspectives were shaped by such fundamentally different metaphysical, epistemological, and axiological assumptions that it is either impossible or extremely difficult for non-Aboriginal people to understand Aboriginal peoples' normative positions or viewpoints.³ Indeed, many Aboriginal people have told me that they view and experience the world differently when they switch from their own language to English. If two peoples do not share the same conceptions and perceptions of time, place, existence, knowledge, and language, then developing a moral framework of mutual respect and understanding may well be impossible. All we can do is find the political and legal means to negotiate compromises, approximations of mutual respect.

Yet a mutual demonstration of respect continues to be important among Aboriginal people. Elders (old people) have consistently used terms such as *mmaadenmowin* (respect, in Anishnaabemowin, the Ojibway language) to explain what they view as the central problem of intercultural relations. Since respect (respect for the law, respect for individual autonomy, respect for cultural differences, and so on) is, in essence, a moral expectation, it became a key point of reference for my analysis of the differences between cultural perspectives. Darlene Johnston (Anishnaabe), my colleague and a legal scholar, often told me that, if I was to understand what I was seeking to understand, I would need to go back to the beginning. "Back to the beginning," I found out, meant examining the relationship from its point of inception. Because of her, I began the historical research on which this book is based. I want to thank Patricia Kennedy of Library and Archives Canada for helping me along this path. She quickly grasped what I was seeking to do and not only helped train me in the use of the archive's referencing system but also planted seeds that would grow into the methodology I used to identify ethical factors in the historical record. Patricia noted how important it was to examine records from various perspectives (including the financial) and pointed out a number of primary and secondary sources that stimulated new ideas about how I could approach the data. I also wish to thank Valerie-Ann Lutz at the American Philosophical Society Library, Philadelphia, for

similar reasons. After listening patiently to me as I explained what I was trying to do, she brought me material I would never have imagined examining and showed me how I might use the finding aids to greater effect.

I also wish to extend my gratitude to Eric Johnston, who on more than one occasion said to me, "We need to go back to the wampum." Although I had little understanding of wampum when he made these comments, I knew wampum was important, not only to the Anishnaabek but also to the Haudenosaunee (Iroquois). I was already somewhat familiar with the Six Nations wampum reclamation or repatriation efforts in southern Ontario. Eric's statement helped give my archival research focus and, as it turned out, a surprise. I initially conducted a keyword search to extract whatever ethical significance I could from the way the historical record described wampum. I expected to find only fragments of data pertaining to wampum, but I instead found a rich set of descriptions of wampum use. Wampum were described not only as cultural artifacts but as intercultural legal and political devices as well. This latter aspect of wampum use is central to my interpretation of the Covenant Chain as an intercultural ethic.

The writings of Olive Dickason and Bruce Trigger also prepared me to revise my assumptions about Aboriginal peoples and North American history; however, it was not until I actually read the records of the Department of Indian Affairs that I was faced with the full significance of what taking a revisionist historical perspective implied.⁴ The experience forced me to shift both my perspective and method because they were based on an assumption – that Aboriginal peoples were victimized by irresistible colonial forces – that conflicted so much with what I was reading that it was impossible to make sense of the material.

I am also grateful to those who have asked me to contribute to analysis of the problem of crosscultural understanding and mutual respect. I wish to thank CIDA/Environment Canada for allowing me to help critique initial drafts of *Guidelines for Environmental Assessments and Traditional Knowledge*.⁵ I also wish to acknowledge the work of scholars in related fields who have influenced my view of how successful intercultural relations can be formed. For example, Nancy Turner, an ethnobotanist at the University of Victoria, has worked with the Nuu-chah-nulth on Vancouver Island to foster a shift away from demands for finality and closure to bring about a more mutually respectful relationship. Her work brings Western scientific descriptions of the flora and fauna of the Carmanah Valley together with Nuu-chah-nulth knowledge to provide a mutually informed database. It attempts to create a crosscultural dialogue in the interest of finding common ground in the arena of natural resource management.⁶

In 2001, Aboriginal people and academics came together to discuss the question of Aboriginal rights at "Aboriginal Voices and Aboriginal Rights," a conference held in Winnipeg on 22-25 June. Elders, who were asked to

respond to the academics' talks, often gave their responses in Anishnaabemowin (the language of the Anishnaabek), in part to drive home the point that the terms of reference used in discussing Aboriginal rights were not entirely in keeping with Aboriginal peoples' perspectives and practices. Each day of the conference began with a pipe and smudge ceremony, the Anishnaabek's way of clearing the mind and heart to speak honest and true words. The conference took place at the beginning of my archival research, and it was not long before I was reading about the same practices in historical records. Even some modern academics' impatience with these ceremonies was reflected in the record, which helped me identify divergent attitudes among Europeans and their Aboriginal interlocutors. I continue to benefit from discussions with Sandra Tomsons and Lorraine Brundige (now Mayer), the conference organizers, on these matters.

I am especially thankful to Aboriginal friends and colleagues who have helped me to understand their side of the story. The people to whom I owe thanks are too numerous to list, so I name only those who intentionally taught me about Aboriginal ways or informed the research for this book. They are, in an arbitrary order, as follows: Winona Arriaga, Ross Waukey, Ralph Akiwenzie, John Borrows, Butch Elliot, Paul Jones, Rick Hill, Amos Key, Frank Calder, Raymond Skye, Mary Druke-Becker, Linda Bull, Maria Campbell, Paul Chartrand, Taiaiake Alfred, Lorraine Mayer, and Sandra Tomsons. Others who have indirectly, but not unintentionally, instructed me are Joyce Johnston, Isabelle Millette, Elijah Harper (sitting around a campfire), Alex Akiwenzie, and Keith Conn.

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There are many people who prodded, helped, and corrected me as I researched and wrote this book. But I especially wish to thank Paul Jones, who inspired me more than I can describe and exposed me to many cultural practices and community issues over the years. The motivation to keep struggling with the issues I address here and elsewhere would have diminished greatly were it not for him. I also wish to thank Amos Key of the

Woodland Cultural Centre on the Six Nations Reserve in Brantford, Ontario, who opened the centre's archives to me. It was there that I met Raymond Skye, whose work on cultural reclamation and the wampum tradition helped me get a handle on wampum protocol. Any mistakes or misrepresentations are, of course, the result of my own shortcomings.

A Note on Terminology

In an attempt to maintain as much clarity as possible, I use *Haudenosaunee* (Iroquois) interchangeably with *Five Nations* and *Six Nations*. Until the early 1700s, the Iroquois Confederacy included the Mohawk (Kanien'kehaka), Oneida, Onondaga, Cayuga, and Seneca. The Tuscarora later (at some point between 1713 and 1724) joined as the sixth nation. Although there is at least one reference to the Seven Nations (which included these Six Nations and the Waganhaas, associated mostly with the Ottawa) in 1723, the term *Seven Nations* is reserved for a more northern confederacy. Various spellings and their referents are indicated in the text. When referring to Iroquoian-speaking people (e.g., Huron, Erie, Cherokee, and Susquehanna), the term *Iroquoian-speaking* or *Iroquoian* is used. The term *Iroquois* is restricted to the Five or Six Nations, and it refers in particular to how the French identified them. *Algonquian-speaking* or *Algonquian* is likewise used to refer to those peoples whose language had an Algonquian root. *Algonquin* or *Algonkin* refers to a nation that resided near the Ottawa River. Algonquians include those who consider themselves Anishnaabek (Ojibwa, Chippewa, Ottawa, Mississauga, Potawatomi), Abenaki, Miq'maq, Penobscot, Wampanoag, Delaware (Lenni Lenape), Shawnee, Miami (Twightwees), and Cree, among others. It also includes those whom the British referred to as "Waganhaas" or "Waganhase." References to this nation are most closely connected to the Ottawa, Mississauga, and perhaps the Fox.

The names *Haudenosaunee* and *Anishnaabek* are never used in historical records, which makes using the term *Anishnaabek* difficult. Today, the term refers to the confederacy among Ottawa, Chippewa (Ojibwa), and Potawatomi, although some people suggest it refers to all Algonquian-speaking people. In 1764, however, the three-nation confederacy was referred to as the Three Fires Confederacy. Prior to that year, the British seemingly used the term *Waganhaes* or *Waganhaas* to refer to this confederacy, although it was also used to refer to a variety of Algonquian people, as noted above.

Moreover, it is not clear that these terms referred to distinct peoples or nations. For the sake of clarity, I restrict use of the term *Anishnaabek* to the Three Fires Confederacy and refer to other Algonquian-speaking peoples by using other terms or names for confederacies (e.g., Illinois Confederacy, Eastern Confederacy, or Abenaki Confederacy).

The terms *Indian*, *Aboriginal*, and *First Nation*, although often treated as synonyms, have distinctive meanings, and the meaning of each term has evolved over time. In the United States, *Indian* is used in the way Canadian scholars today use *Aboriginal people*, albeit with some qualifications. In Canada, *Aboriginal* refers to people who identify as First Nations, Metis, and Inuit. This work focuses exclusively on First Nations, although I avoid using this term, since it is not historically appropriate. In the seventeenth and eighteenth centuries, the British used *Indian*. *Reservation* is used in connection to the United States, whereas *reserve* is used in connection to Canada. When I refer to the period before the unification of parliaments (1707), I use the term *English*; after that date, I use *British* and *English* for the most part interchangeably.

My decision not to use formal titles is not intended to offend anyone or to demonstrate disrespect for any nation, society, or group. Certain groups, for instance, refer to William Johnson as “Sir William” to recognize his baronetcy. I refer to him as Johnson or William Johnson not only for convenience but also to avoid recognizing his title while not doing so for others, such as Aboriginal *sachems* (paramount chiefs). Sachems had Aboriginal names and titles that were not used in the historical records, except on rare occasions. I do, however, use titles such as “governor” or “general” to indicate the political or military significance of the person. It is clear that Aboriginal peoples recognized the importance of certain positions and responded accordingly. Likewise, I indicate when the Aboriginal people being discussed had sachem status. Sachems represented their communities but did not have the same authority as their English and French counterparts.

Introduction

This book aims to inform current debates about the nature of mutual respect in intercultural relationships by showing that there was once a mutually recognized, respectful relationship between the British Crown and the Aboriginal peoples of North America. This ethic of respect, captured in what was known as the Covenant Chain – the treaty relationship that evolved between the English Crown (and to some extent the Dutch) and the Aboriginal nations with whom it formed alliances in the seventeenth and eighteenth centuries – derived moral force from the way in which it was grounded in human community, a sense of tradition, and other conditions that typically remain hidden when we analyze moral life (see Chapter 1 for a more complete description of this early treaty relationship). If we were to recognize the relevance of the Covenant Chain's ethic today, thinking about Aboriginal rights would shift away from an intense focus on legal and policy instruments toward a consideration of alternative foundations more attuned to those hidden aspects of human relationships. This book has three connected but distinct aims: (1) to demonstrate that there was in fact an ethic that operated in the historical relationship between the Crown and Aboriginal peoples; (2) to identify the core elements of this ethic and then thematize them to demonstrate coherence (that is, to show that this ethic was not merely a cobbled together set of moral sensibilities); and (3) to show that the ethic is neither historically nor culturally bound (that is, it has the potential to be universalized).

To examine the relationship between the Crown and Aboriginal peoples through an ethical lens – especially in light of the existence of Indian-hating colonists, Indian killers, assimilation programs, and genocidal practices – seems pointless, if not outright insulting, to some audiences. European colonists, some have argued, only demonstrated respect for Aboriginal peoples when prudence overcame otherwise persistent assumptions and feelings of superiority. Only when faced with Aboriginal peoples' military prowess did Europeans show respect – a fear-based, calculated respect. Some

Aboriginal people express incredulity at the suggestion that Europeans ever demonstrated anything but contempt for them; the historical record of massacres, warfare, broken treaties, and dispossession that followed contact makes the search for an ethic of mutual respect seem utterly futile. To those who have struggled to have Aboriginal people and their concerns recognized by the dominant society through a long and combative series of court challenges, the search for an ethic of mutual respect could appear as an affront. Indeed, some insist that only the instrument of law has any chance of making a difference for Aboriginal people and that the idea of a mutually recognized respectful relationship is an empty concept.

This book, as a result, adopts an incremental approach by examining the process by which normative elements emerged in the Covenant Chain relationship. This relationship, in turn, reveals the existence and operation of ethical sensibilities, values, and principles. The forces that shaped these norms, moreover, were not reducible or limited to economic, military, and other nonmoral values; rather, moral sensibilities and norms came to govern the relationship as it evolved.¹ By understanding the conditions from which such an intercultural ethic emerged, and by recognizing that similar conditions could exist today, it is possible to develop a more formal theoretical framework to shape the relationship between the Crown and Aboriginal people today.

Before explaining my approach, I must first explain what students of this historical relationship may view as a serious omission. Since the Iroquois were central to the Covenant Chain, many would argue that an analysis of the Two Row Wampum (Guswentah) should be a major focus of this book. Robert Williams Jr., a legal scholar, and many Aboriginal people argue that the existence of Guswentah supports the thesis that the “West had to listen seriously to indigenous tribal visions of how different peoples might live together in relationships of trust, solidarity and respect.”² I found, however, no references to Guswentah in the historical records for this period. This does not mean that Guswentah did not exist or was ineffective. The wampum described might, in fact, have been Guswentah. But my approach is to analyze the evidence found in the historical written record.

On Perspective and Historiography

A critique of historiography is useful, because it helps to identify the underlying assumptions that have shaped descriptions of Aboriginal people by historians and others. In the eighteenth and nineteenth centuries, historians were influenced by thinkers such as Jean-Jacques Rousseau who helped shape the idea of Aboriginal people as noble (or ignoble) savages, which, in turn, fostered the attitude that Aboriginal people had no voice, because their cultures were grounded in primitive worldviews. These concepts obviated the need to regard Aboriginal people as moral agents in their own right. As

revisionist scholars argue, these ideas enjoy little evidentiary support from the historical record.³ Yet they became effective devices for justifying assimilation practices in North America, a phenomenon illustrated amply in the person of Duncan Campbell Scott, a Canadian poet and deputy superintendent of Indian affairs from 1913 to 1932.⁴ In explaining the emergence of this attitude, anthropologists and ethnohistorians Wilcomb Washburn and Bruce Trigger describe how Aboriginal people increasingly became politically marginalized, how representations of their perspective were ignored, and how the so-called Indian personality was constructed to justify this behaviour. Assumptions about the Indian's lack of civility supported the view that Aboriginal cultures could not be respected, at least not in any moral sense. Attributions of savagery justified the exclusion of Aboriginal people from political and legal arenas, and from the moral community as well. This marginalization helped entrench attitudes about European cultural superiority and an unwillingness to reflect critically on Aboriginal people and their cultures.⁵ This construction and marginalization, in turn, helped deflect concerns about encroachments on Aboriginal land and assimilation practices by enabling the proponents of such practices to deny that considerations of justice had any relevance to those who were being displaced and marginalized.

Washburn and Trigger explain how it is that we continue to live with the legacy of these conceptions and practices and how we continue to harbour some of the prejudices according to which they were formulated. In the twentieth century, much North American popular culture sought to re-establish respect for Aboriginal people by reinstating the idea of the Noble Savage (as exemplified by Archie Belaney, otherwise known as Grey Owl, Ernest Thompson Seton, and elements of the North American counter-culture and environmental movements). And it is not entirely clear that our formal institutions are free of such ideas.⁶ The question remains, how deeply has dichotomous and misrepresentative thinking become entrenched in our institutional and moral frameworks? Furthermore, how deeply has this kind of thinking affected our understanding of the relationship between Aboriginal people and the Crown?

By contrasting these misrepresentations and false assumptions with the historical context of the relationship between the Crown and Aboriginal peoples, as represented in the records pertinent to the Covenant Chain relationship, and by attending to the complexities of the relationship, I attempt to bring into relief the moral factors that shaped the relationship. This approach clears the ground of preconceived expectations of what an ethical approach to the relationship should look like. A critique of the work of Francis Parkman, a central nineteenth-century historian, illustrates how I attempt to avoid importing false assumptions into my reading of the historical record. Many records of the colonial period on which revisionists and I draw were

collected by Edmund O'Callaghan and published between 1853 and 1887. Parkman, who is probably best known for *The Oregon Trail: Sketches of Prairie and Rocky Mountain Life* and his descriptions of North American Indians, wrote during the same period. He had acquired volumes of records from Europe for his research and had access to the O'Callaghan records. Parkman did not utilize these sources to analyze Aboriginal people's contribution to history, however; his focus was almost entirely on what we today call anthropologically interesting information.⁷ He characterized Aboriginal people as uncivilized savages.⁸ Typically, Parkman focused on wars, trade, religion, and anthropological and sociological curiosities. He even described the ceremonial and decorative use of wampum within the communities (Huron especially).⁹ But there is no account, at least in Samuel Morison's edition of his work, of how wampum was used in the treaty relationship. The overall focus of his account is periodic encounters between the British and French and Aboriginal people, who are treated as worthy of little more than a footnote in a larger political and economic history. That Parkman makes nothing of the many dialogical elements of council meetings is noteworthy in light of just how numerous they are in the records.

Washburn and Trigger note how Parkman and other historians of the time must have read the record from the standpoint of ideological commitment. But there seems to be more involved because, when the records are examined in detail, the question still remains, how could these historians, even if they were ideologues, pass over so much evidence without even attempting to explain it away? The answer becomes clearer if we consider how the dominant narrative served various purposes, from supporting doctrines such as Manifest Destiny in the United States to justifying assimilation policies in Canada. Acknowledging Aboriginal people as agents, negotiators, and the like would have threatened the Crown's economic and political ambitions by rendering them vulnerable to reflective social forces.

Washburn and Trigger also explain how moral agency was denied to Aboriginal people.¹⁰ Bernard Sheehan and Francis Jennings, historians who wrote during the 1960s and 1970s, adopted a determinist stance when interpreting history.¹¹ James Axtell, a central historian on Indian-European relations, explains that these historians viewed history as a "process in which personality was submerged in the sweep of inexorable, inevitable, and impersonal social and cultural forces. Focusing on the individual, both as a historical actor and as a moral one, was unnecessary, if not improper."¹² Washburn and Trigger advance this explanation when they describe the controversy over whether Aboriginal people actually contributed to the making of North American history.¹³ They discuss the thesis of inevitability, whether Aboriginal people's conquest was, as the dominant narrative would have it, a product of their semi-civilized state.¹⁴ They explain how anthropology, as it developed in the nineteenth century, came to be shaped in part

by Social Darwinism, a deterministic evolutionary framework.¹⁵ At a time when Aboriginal populations were experiencing massive declines, Social Darwinism helped shape the belief that the extinction of Aboriginal cultures was inevitable. This “scientifically” supported simplification of both the “Indian personality” and Indian-Crown relations lent deterministic ideologies coherence and plausibility, engendering a systemic resistance to reading the historical record in all of its complexity by the twentieth century. It would have taken courage for historians of the day to read the record against this tide.

I use this skeptical, deterministic rendering of history as a foil against which to formulate observations concerning the record. My approach is not simply to replace this deterministic framework with one based on the assumption that Aboriginal people were full moral agents, as we would assume today. Rather than imposing an alternative frame of reference, I reframe the moral context in which the Covenant Chain evolved in light of the ways in which ethical factors appear in the historical record. Chapters 1 and 2 counter traditional biases and point out what the record says or implies about moral factors. They disclose the complexity of the Covenant Chain relationship and how that complexity evolved. I use the term *evolution* to describe the process, even though it is commonly used to refer to a deterministic process – the advancement of society from a primitive to a more civilized state, a process fuelled by the competition for survival (in which the fittest survive). Georges Sioui, a Wendat-Huron historian and philosopher, views this term as particularly ruinous for Aboriginal people, because it suggests that the undermining of Aboriginal cultures and systems has been the inevitable outcome of progress.¹⁶ The term is suitable for my purposes, however, because the process of developing an intercultural ethic, as reflected in the Covenant Chain, involved adaptive responses to conditions that compelled them to behave and think in new ways. In addition, the normative conditions that came to affect the relationship emerged in the course of adaptation. These conditions did not, in other words, exist prior to the adaptive response. My use of *evolution*, then, is premised on the idea of adaptation to conditions over which adaptees have little initial control (or even awareness) and on the idea of emergent properties. However, my definition of the term also allows for human agency.

To answer the question, how did the moral economy operate? I pay close attention to speech and interactive patterns as they appear in historical documents. For example, the historical record includes references to the presentation of wampum belts or strings that wipe tears from eyes and purify hearts, often with little or no explanation. Such presentations are described in such a way that they appear to be nothing more than punctuation marks, not materially significant to the discourse. For someone intent on mining textual records for information on political or military events or data on the

finances of the day, much of this detail appears gratuitous and irrelevant. But to follow the record from the early 1600s to the mid-1700s is to observe clerks becoming increasingly attentive to the presence of belts and their details. They begin transcribing speeches and noting details, such as the presentation of “a belt” or “a belt with seven rows.” These details disappear from the record after the War of 1812, when Aboriginal military and economic force declined. The difference between eras suggests that speech and interactive patterns can serve as indicators of how the moral economy operated. Noting these differences establishes a comparative context that highlights what in the relationship came to be ignored, suppressed, and indeed lost.

What was going on during meetings in the seventeenth and eighteenth centuries when wampum formed the basis for speech and interactions, and how did wampum acquire intercultural significance, which was lost after the demise of the Covenant Chain? One possible way to approach these questions is to observe how wampum presentations and the language in which they were couched became integral to business meetings. By doing so, the significance of peculiar phenomena come to light and demand interpretation. Responding to this demand, in turn, discloses the complexity of how these meetings were conducted. Unravelling this complexity by using presupposition analysis shows that even business meetings cannot be described in accordance with the dominant nineteenth- and twentieth-century historiography. Since I do not use upstreaming techniques – that is, I do not interpret the past in terms of current meanings and practices – however, I have had to find an alternative way to determine what, exactly, wampum use presupposed.¹⁷

The writings of Umeek (Richard Atleo) – academic, author, and hereditary chief of the Nuu-chah-nulth – offer a path forward. Umeek explains that the Nuu-chah-nulth have a high-context language: “Each Nuu-chah-nulth word may be associated with a world, or cultural and historical context, that is commonly understood.”¹⁸ When a word is used or a reference is made, say, in an origin story, the audience automatically draws a number of associations, possibly inferentially. That is, the word and its context have a logical relation, not merely an associative one. The Covenant Chain’s communicative devices, I argue, must have presupposed a high-context language, since the treaty protocols incorporated origin stories, ceremonial practices, and most importantly, wampum protocol. Once the British became familiar with Aboriginal protocol and practices, they adopted origin stories and associated means of communication as elements in a shared high-context language, and wampum was central to the communicative framework of the Covenant Chain (Chapters 1-3).

Adopting the notion of a high-context language into the explanatory framework, then, becomes an instrument to draw out the complexity of the

relationship from the text alone. Gilbert Ryle and Clifford Geertz's notion of rich description helps describe this instrument.¹⁹ Geertz's work on cultural interpretation is an attempt to take into account the complexities of real world situations while trying to capture (conceptualize) cultural practices as clearly and precisely as possible (a simplification process). The tension between acknowledging complexity and needing to simplify leads Geertz to use the term *rich descriptor* to satisfy this double-edged demand: "Our double task is to uncover the conceptual structures that inform our subjects' acts, the 'said' of discourse, and to construct a system of analysis in whose terms what is generic to those structures, what belongs to them because they are what they are, will stand out against the other determinants of human behavior."²⁰ Geertz draws on Ryle's seminal work on the distinction between the twitching of an eye (a thin description) and winking (a thick description). Twitching is involuntary (it may be the result of a physiological condition), whereas winking is a voluntary act of communication, however phenomenologically indistinguishable it may be from twitching.²¹ Being able to distinguish between a wink and a twitch is critical, because interpreting someone's twitch as a wink can be disastrous to personal and professional relationships.

To continue the analogy, to know what a Beethoven quartet is, one must understand what music is, what significance music has for a society, what distinguishes a Beethoven from a Mozart score, and so on. Individual noises made by instruments, however identical to the notes in the quartet, would not count as a Beethoven quartet without this interpretive background. When we use a thick descriptor, then, we assume a social, interpretive context of shared meanings that cannot be reduced to a set of behaviours, or even to an idea (as if meaning resides exclusively in individual minds). We assume a set of intangible factors. The relationship between the score, an understanding what music is, and what significance music has for a society is not based solely on accidental (associative) connections but rather on the conceptual (logical) connections between these intangible factors. To understand the difference, one must also understand the social meaning and context of the acts, both of which are intangible. In cases where rich descriptors are used for purposes of communication, we can conclude that the people who use them appropriately presuppose a rich array of supporting and contributing intangible factors. When these presuppositions are identified and analyzed, they must be framed in such a way so as not to ignore or diminish the importance of these intangibles.

Geertz argues that we can never completely recover or capture the context, since what we are attempting to do when we try to capture the context in language is capture its meaning – not its nature.²² The event itself was, or is, a dynamic flow of events, whereas the attempt to capture its meaning in a description is an attempt to transform the event into something fixed. The

description, however rich, never completely matches the event. On the one hand, we use concepts to thematize what we are trying to understand; by doing so, we attempt to fix meaning so that our concepts are clear and unambiguous. On the other hand, our concepts become increasingly vague as we become more familiar with the context. Although we know to what these concepts refer, we also know that their significance will not be fully or even adequately understood by those with whom we wish to communicate, if they are not familiar with the context. Similarly, an explanatory scheme that depends on the presupposition of an operation of intangibles will suffer from an inability to fully articulate what is operative in the situation to be explained. Accordingly, to frame the Covenant Chain's ethic of respect, I attempt to familiarize the reader with its context by moving from a description of the general historical context (Chapter 1) to the treaty relationship (Chapter 2) and then to a discussion of how individuals operated and related to one another (Chapter 3). Establishing context in this way forms a background against which an explanation of how and why various moral elements of the moral economy, including the intangible ones, emerges.

Since the concept of moral agency is central to my argument, it is important to provide some indication of how it works. Geertz's conceptions of culture and the role of intangibles help explain how moral agency is conceived, even if it is not fully explicable. *Culture*, to Geertz, refers to the webs of significance that human beings spin. Although analysis of these webs does not belong to experimental science, it does belong to an "interpretive search of meaning."²³ Furthermore, since interpretation – the communicative effect of rich descriptors – brings about and directs actions, the meaning these actions communicate is causally relevant. If a person does not understand or cannot interpret what a wink means, that wink will not produce the intended response. Hence, meaning, interpretation, and modes of understanding must be figured into the causal explanation of events; in particular, they must be factored into the explanation of how moral agents, acting in accordance with the moral economy, affect historical outcomes. In Chapters 1 through 3, I describe the historical relationship between the Crown and Aboriginal peoples with an eye to disclosing how approaches to communication developed and how the meaning of those communications pointed to the intangible forces that operated in the moral economy.

A Historical-Philosophical Approach

Since this book is written from a philosophical perspective and with contemporary debates in mind, ethicists may well criticize my approach on a number of fronts, the apparent leap from descriptive to prescriptive ethics, for instance. Some may view appealing to a description of an actual ethic

as a basis for how we ought to practise ethics as fallacious. Some may also argue that the job of description is better left to sociologists, not philosophers. In either case, the analysis of a historical ethic can have no prescriptive force. According to this view, the move from Chapter 3 (description) to Chapter 4 (prescription) is illegitimate, as is the claim that my re-examination of the Covenant Chain is relevant to contemporary discussions of Aboriginal rights. For various reasons, which will become more apparent in Chapter 4, I must assume that the dichotomy between descriptive and prescriptive ethics is given too much weight in moral theory. Since this and other thorny philosophical problems (e.g., agent causality) are beyond the scope of this study, I utilize the work of thinkers such as Jürgen Habermas throughout this book and Charles Taylor in Chapter 4 to frame ethics in such a way as to make the connection between description and prescription and the conceptualizing of moral agency at least intelligible. A full defence of the ethic remains for another time.

In response to those skeptics and determinists who deny that ethics can have explanatory significance because moral principles, beliefs, and so on have no causal force and cannot, therefore, shape historical outcomes, I must again point to a possible defence strategy rather than provide the defence itself. This defence strategy would begin by appealing to thinkers such as Donald Davidson and John Searle to establish the possibility of agent causality.²⁴ It would then proceed to reframe the concept of causality and, in turn, agency in light of how complexity affects fundamental metaphysical assumptions. A full articulation of the resulting ethical theory would not only support my approach, it would also prove more philosophically satisfying than most theories that have dominated Western thought. For the skeptic, how the ethic is shaped throughout this book can be viewed as an indication of how a full articulation would proceed.

The Peculiarity of the Records of Indian Affairs

In 1928, American historian Lawrence C. Wroth made the following comment about the richness of colonial government records in his classic essay “The Indian Treaty as Literature”:

I am not ... concerned here with the self-interest of both sides that the Treaties reveal but with their importance as a neglected literary type that arose without conscious artistic design from the conflict of two distinct civilizations on the same soil – a type in which one reads the passion, the greed, and the love of life of hard-living men brought into close relationship without parallel conditions in the history of either race to guide its conduct. In it are displayed certain raw emotions: on the part of the Indians the fear of extinction, the desire to keep what the hand holds, the love of life, of

ease and security. Seething in the same pot with these were the white man's passion to acquire and till the land, to build, to fill the left hand with more and more of the stuff that the right hand has grasped. All this is in the Indian Treaties, and in dramatic form. I wish that some teacher of history had poured for me this strong wine instead of the tea from Boston harbor with which the genuine thirst of my youth was insufficiently slaked, or that some teacher of literature had given me to read these vivid, picturesque records instead of saying that the colonial period had nothing to show of literary production except dull sermons, political tracts, prosy essays, and poems of invincible mediocrity.²⁵

Ethnologist William Fenton, who began studying the Iroquois in the 1930s, joined Wroth in paving the way for a new and more probing reading of colonial records by paying close attention to their peculiar forms of expression. He noted that the American treaty record constituted a literary form in itself.²⁶ On a collection of thirteen important treaties published by Benjamin Franklin, he remarked, "Here was a new form of literature that was native American, as straightforward as a play, replete with homegrown metaphors, and with a certain style that found immediate appeal."²⁷ More recently, legal scholars Robert Williams Jr., Paul Williams, and Mark Walters, among others, have also paid attention to the peculiarities of government records to shed new light on the nature of treaties.²⁸ Michael Pomedli, a philosopher and long-time student of issues concerning Aboriginal people, goes so far as to say that these records indicate that the treaty partners went beyond acting out their mercenary interests and entered into human fellowship.²⁹ Robert Williams Jr. sees them as entry points to reinterpret the dominant American historical narrative.³⁰ Despite being written in European languages for purposes set by European agencies, treaties, Pomedli observes, have an "overarching format and context not of European fashioning."³¹

Reading more like a narrative than a set of codifications, the early treaty record captures the puzzlement the British experienced in their interactions with Aboriginal peoples. Compared to traveller accounts, which were designed to either titillate European readers or use Indianness for purposes of cultural self-critique, early treaty records are matter-of-fact. Descriptions of interactions with sachems and warriors, of Aboriginal ceremonial behaviour and wampum protocol are similar to the notes of new university students who write down everything they hear because they cannot yet discern what is important. It is at times obvious that clerks struggled to describe what they saw and heard. That editing took place is undeniable – explanatory marginal notes are sometimes inserted in preliminary and even final drafts of reports. But on the whole, from about the 1670s to the 1770s, and to a lesser extent up to and including the War of 1812, the narrative character of the records conveys a tone of what today would be called anthropological

curiosity. Clerks attempted to capture as much as might be significant to interpreting Aboriginal people's behaviours and speeches. The documents include evidence of codified laws, but they also include abundant and seemingly superfluous descriptions of people wiping away tears, presenting belts of varying numbers of rows, and burying hatchets in underground pits. What early historians dismissed as extraneous details were, in fact, part of official documentation read by superiors, including the Lords of Trade in London. These extraneous elements were read with philological care.

The dominant view is that the documents pertaining to the Covenant Chain were principally records of treaties designed to enable all parties to look after their own interests and pursue their own goals.³² This description fails to answer a number of philological or philosophical questions. What did it mean when two distinct peoples used wampum to wipe away each other's tears, when they made their hearts pure and their throats clear in order to speak true words? What did it mean when the treaty agreement was contained in belts? Why did clerks not simply use shorthand to capture the legal significance of this behaviour? Engaging with the primary documents as they present themselves – rather than simply mining them for evidence to support a predetermined theory – reveals a world of intercultural and dialogical relations that stands in contrast to that presented in mainstream historical narratives, a world that reflects a robust moral economy.

Certain warnings about dealing with European historical documents require attention. Peter Nabakov, an anthropologist and ethnologist, for instance, argues that western European and Aboriginal ideas of history diverge markedly, even though, in certain contexts, they are compatible. Nabakov addresses concepts as fundamental to the meaning of history as time, world-view, and memory to illustrate the problems associated with the idea of history itself and, more importantly, with dismissing Aboriginal understandings of it.³³ A truly crosscultural account would include evidence from both historical traditions.

The problems associated with trying to develop such a comparative cross-cultural approach are insurmountable, however, because western Europeans and Aboriginal peoples had radically different backgrounds in the period under consideration. There are numerous examples to support this view. When General W.H. Harrison of the US army invited Tecumseh to sit on a chair in 1810, the Shawnee leader rejected the offer and responded, "the sun is my father and the earth is my mother; she gives me nourishment and I repose upon her bosom."³⁴ Something as simple as an invitation to sit on a chair can reveal cultural incompatibilities. Historian Georges Sioui argues that the Aboriginal perspective commits Aboriginal people to respect the land and its order, as established by the Great Mystery.³⁵ In my book *Thinking Ecologically*, I describe the differences between the two cultures in relation to metaphysical, epistemological, and axiological shifts that occurred

throughout Western history. From Plato through to the Enlightenment, the idea that human rational agents were separate from and superior to other beings became entrenched. Western Europeans came to believe that they gave other beings value by “mixing their labour with them” or by taking an interest in them. In this worldview, the nonhuman world, for all intents and purposes, was valueless until human agents took an active interest in it. The stark contrast between Aboriginal and European meta-ethical beliefs became a rationale for demonizing Aboriginal cosmologies and ethical orientations, their fundamental cultural commitments. Indeed, many environmentalists appeal to the same contrast between cultures to advance their critique of Western culture and to advocate for a radically different set of cultural beliefs and norms.³⁶

These and observations by John Clammer, Sylvie Poirier, and Eric Schwimmer (see the Preface) leave little hope that a comparative analysis of culturally defined moral frameworks would yield a mutually recognized ethic. The best we could hope for is the discovery of common principles or values that operated, or were used to negotiate compromises, in certain contexts. We could not be sure that the interface between the two ethics could be universalized; that is, we could not guarantee that these two cultures would not interpret these principles or values differently in a different context, producing different actions. Using Nabakov’s method, whatever commonality we could discover would be accidental and heavily context dependent. In Chapters 2 and 3, I in fact show that the initial commonalities that brought the British and their Aboriginal allies together masked underlying differences that threatened to pull them apart. These differences ran deep, to the point where they prevented the two sides from agreeing on what constitutes justice or even what it meant to be reasonable.

My approach is to begin by describing the actual relationship that enabled the Crown and Aboriginal people to cooperate, argue, and communicate effectively over a long period of time. I then analyze the conditions that made this common ground possible, acceptable, and highly valued on both sides. The descriptions of the relationship yield patterns of interaction in which both parties engaged in debates about justice, lawfulness, truth, worthiness, and the like; both sides made certain that their perspectives were represented and that articulations of a common ground were consistent with their cultural beliefs and values. This common ground was not established through a comparative analysis of each other’s culture but was developed, perhaps paradoxically, through conflict and dealing with misunderstandings.

Even though I rely on British records, written by the British for British purposes, the peculiarity of these records and my method of reading and analyzing them make it impossible to deny the presence of Aboriginal voices.

British agents and clerks took Aboriginal speech patterns and ways of communicating seriously and wrote about them in ways that had to be acceptable to their Aboriginal interlocutors. Because the British wanted to maintain military and trade alliances, especially against the French, the records they kept of councils and treaties had to be reliable as proof of agreements and interactions. More importantly, to be effective, their system of record keeping had to be compatible with that of their Aboriginal allies. That the British replaced the peculiar genre of the early colonial record with a more typical bureaucratic form after the War of 1812, when the Aboriginal allies' military strength was all but destroyed, indicates that the Crown would have abandoned this form of record taking earlier, if it had been possible to do so.

Many scholars, including some of the Aboriginal scholars already mentioned, believe the historical record can provide an acceptable, though indirect, representation of the Aboriginal voice. It is not that they, or I, think that the record alone is sufficient to represent Aboriginal perspectives. But the manner in which Aboriginal voices come through offers a valuable and unique way of incorporating their point of view into the historical narrative. The practices characteristic of the Covenant Chain relationship were principally of Aboriginal origin and both the British and the French adopted them as their diplomatic framework.³⁷ Record keeping was, therefore, a concerted attempt to convey what Aboriginal people said and how they said it. The voices that come through are certainly not defined purely in accordance with British sensibilities and frames of reference. The Covenant Chain was a culturally hybrid institution, and its language and records were hybrid constructions. Aboriginal practices and protocols informed council meetings, and Aboriginal metaphors and linguistic devices often dominated the pages of council meeting records, even when clerks did not fully understand their meaning. Finally, the record indicates whether Aboriginal people were dissatisfied or satisfied with the British record keepers. It is possible, then, to determine the conditions that led to mutual satisfaction. Doing so, in turn, allows for an analysis of the conditions that enabled the Aboriginal voice to be adequately represented.

Indeed, the records tell of the forces that led the British to try to keep an adequately representative record of events and alliances. Peter Wraxall, secretary to William Johnson, who was superintendent of Indian affairs in the north, noted that Aboriginal people demanded that their voice be properly represented. In July 1724, a scribe noted that the Indians were often influenced in their speech by members of the Commission for Indian Affairs at Albany, whom Wraxall took to be a group of scoundrels and immoral profiteers.³⁸ Moreover, he cast doubt on the translations of some Indian speeches by noting that some translators were of suspicious character, men who could barely pass competency tests.³⁹ At times, clerks were even instructed by

Aboriginal speakers to listen well and write down exactly what was said. That clerks recorded these instructions reinforces the claim that significant forces were at play to ensure adequate representation of Aboriginal voices. Examining the differences between the records kept by competent versus incompetent agents can, as a result, help sort the records that adequately represent Aboriginal voices and those that do not. The voice that emerges, when the focus is on the more competent agents, seems like raw data because of an apparent lack of filtering devices.

Even if a complete Aboriginal record of events existed, either in oral or visual form, this indirect way of identifying and representing Aboriginal voices would still be useful and, in a certain way, vital. For instance, Aboriginal record keepers might not have described crucial parts of a process or event because they took them for granted, their communicative skills might have been limited by translation difficulties, or they might have been prevented from recording something for strategic reasons. British clerks recorded what was necessary, or seemed necessary, to avoid failures in communication, which could result in dissolution of the treaty relationship. As a result, they would not take much for granted until they were confident that they could. They were not constrained by cultural censoring forces and likely recorded details that culturally constrained recorders might have been more hesitant to record. The utilitarian motive of British agents, I argue, made more information about the nature of the communicative context evident than might otherwise have been the case.

Differences between the two cultures that led to conflicts over treaty interpretation likewise reveal a common ground that would remain hidden if analysis of the Covenant Chain were based on a comparative approach. As John Borrows, an Anishnaabe legal scholar, demonstrates in his examination of the *Delgamuukw* (1997) case, certain factors become evident when conflicts arise. They arose in *Delgamuukw* because Aboriginal oral history and practices were denied recognition and legitimacy.⁴⁰ In 1991, Chief Justice MacEachern of the BC Supreme Court denied Gitskan and Wet'suwet'en claims to title on the grounds that Aboriginal rights depend on the good will of the sovereign and could be extinguished unilaterally. They had nothing to do with oral tradition. The decision made it clear that colonial attitudes toward Aboriginal peoples' oral traditions were being propagated by the courts. Borrows, however, argues that Aboriginal people should see something positive in this attitude. Just as Canada's much-reviled Indian Act had protected Aboriginal people from Prime Minister Trudeau's attempt to make them full citizens of Canada (thereby losing their distinctness) in the 1970s,⁴¹ MacEachern's assertion that the courts had a mandate to protect lawfulness, and his assumption that his assertion was universally and self-evidently legitimate, could be viewed as the result of comparing European and Aboriginal legal traditions and finding no common understanding. But if

we examine the conflict itself, Borrows argues, a different perspective on the decision is possible.

In the aftermath of the conflict, Aboriginal people more clearly realized that without recourse to oral tradition, no treaty discourse could be conducted in a way that would enable First Nations to speak from their perspectives. Understanding the implications, Aboriginal people asked, who gave the courts, or the Crown for that matter, the right to assert sovereignty unilaterally? Who gave the Crown the right to unilaterally extinguish another people's rights and declare them to be without law? Increasing numbers of non-Aboriginal people subsequently began to see the arbitrariness of the court's assumptions and assertions, creating a context in which the search for a mutually acceptable common ground is now widely accepted. The Supreme Court of Canada eventually did recognize oral tradition as a legitimate body of evidence, setting the stage for discussions about the Crown-Aboriginal relationship at deeper levels.⁴²

Just as the BC Crown denied the legitimacy of Aboriginal perspectives in *Delgamuukw* and asserted its own legitimacy, so too did the governor of New York in 1730. But the Crown, more quickly than in the *Delgamuukw* case, had to acknowledge the legitimacy of Aboriginal systems of law because its Aboriginal allies could and did challenge the governor's assertions, setting the stage for both parties to recognize a deeper level of mutual understanding. What Borrows's argument and the discussion of seventeenth- and eighteenth-century record keeping tell us is that what can appear to be irresolvable conflicts and misunderstandings can also reveal underlying beliefs, assumptions, and even truths when both sides are prepared to continue in a critical dialogue that takes them beyond their pre-established cultural beliefs.

Cautions and Opportunities

Since my analysis depends, in a peculiar sense, on the reliability of the historical record, some comment on unreliable texts is in order. Early records from Albany (1677-1722) are sketchy, at best. They were either lost or destroyed and no longer exist in their original form. Peter Wraxall, however, possessed a version, while Robert Livingston, clerk of Albany, held another.⁴³ An index of these earliest records has also survived. It summarizes the early records, but in some cases the records appear to be complete replications.⁴⁴

We know that these records were familiar to the British Board of Trade. Wraxall, for instance, transcribed his version to convince the board that Colonel William Johnson should replace the Board of Commissioners (Commission for Indian Affairs) as sole superintendent of Indian Affairs in 1755.⁴⁵ Wraxall's somewhat politicized transcriptions are fairly reliable, since they agree with the index, the Livingston records, and the records of other colonies. These records, however, sometimes contain conflicting accounts

of events. A case in point involves Edward Cornbury, the governor of New York, and his inability to attend a meeting with the Five Nations sachems in 1707. He had to reschedule a planned meeting for July for 12 September. The meeting, in the end, did not take place until 29 September. In Wraxall's account, the sachems immediately and gladly accepted the governor's judgment on how best to deal with the affairs they were to discuss. In the index, however, the sachems adjourned for a day to discuss the matter among themselves. They then agreed to let the government take care of the matter.

Historian Francis Jennings exposes more serious inconsistencies that can be explained only if it is assumed that a great deal of unrecorded backroom politics took place. For instance, according to one set of records, Tanaghrisson and Scarouady, chiefs of the Six Nations and Mingos (former Seneca and Cayuga who settled in Ohio), respectively, both refused to allow the British to build forts in the Ohio Valley. According to other records, the chiefs allowed such forts and settlements to be built. To explain this discrepancy, Jennings attempts to reconstruct the negotiation process and speculates that it must have included backroom ("in the woods") dealings.⁴⁶ The reconstruction helped to determine which account was closer to the truth, because it brought to light angry retorts by Delaware and Shawnee, who were also present at the negotiations. Their complaints suggest they were left out of a critical decision-making event, Jennings argues.

Rather than focusing on records of discrete events to reconstruct the historical narrative, I deal with factual inconsistencies by focusing on patterns of behaviour and speech. I also use disputes over claims of fact to achieve my purposes. For example, in a series of meetings with the Board of Commissioners at Albany between October 1729 and April 1730, the Oneida accused the Virginia Indians of attacking them and taking prisoners. They asked the governor of New York, James Montgomerie, to write to the governor of Virginia to ask the Virginia Indians to return the prisoners. They accused the Virginia Indians of treachery. They had, the Oneida accused, offered a treaty of peace and then attacked the Oneida when their guard was down. After a delay of several months and two letters from Montgomerie to Governor William Gooch, the commission received word from Montgomerie that Gooch had replied. Gooch had expressed incredulity at the Oneida's claim. The Indians who remained in Virginia, he claimed, were too few in number and too fragmented to muster the numbers the Oneida claimed had attacked them. Gooch countered that it was the Catawbas of the Carolinas (some four hundred miles away) who had taken the prisoners, but only after the Oneida had attacked one of their defenceless villages. The Oneida ignored Gooch's alternative version of events, as did the commissioners at Albany.⁴⁷ In these records, the historical relationship between the Crown and Aboriginal peoples unfolds as a drama, in which claim and counterclaim,

accusation and counteraccusation, much like in Jennings's case, make it difficult to rely on the record to discern matters of fact. But they do expose moral indignation and the extent to which both sides were subject to the moral economy and their willingness to exploit it.

Disputes over treaty obligations offer significant clues to sort out fact from fiction with respect to the moral economy. During the Seven Years' War (1756-63), for instance, William Johnson was under great pressure from his commander-in-chief, John Campbell, 4th Earl of Loudoun, to rally the Iroquois to take up the hatchet against the French. The western Iroquois (the five nations west of the Mohawk) stalled and admitted they feared reprisal from the Mississauga, who had driven them out of Ontario in the late seventeenth century. Johnson pressed the western Iroquois by accusing them of allowing the Covenant Chain to rust and of endangering the relationship completely (allowing it to be "absolutely broke between us"). The Onondaga replied that there were times when they and the Seneca had been being attacked by the French "while you English sat still and smoked your pipes."⁴⁸ These accusations, claims, and counterclaims reveal much about how treaty negotiations took place. Lord Montcalm, commander of the French forces during the war, for instance, argued that he had been helpless to prevent his Indian allies from taking English scalps following victories at Oswego and Fort William Henry. In his response to the demand for capitulation from the English commanders, Loudoun and Daniel Webb, he defended himself against their accusations of dishonour by proclaiming that he had risked his own life trying to prevent the massacre, telling his Aboriginal allies, "Since you are rebellious Children who break the promise you have given your Father and who [do] not listen to his voice, kill him [Montcalm] first."⁴⁹ The English did not buy into his explanation, and the truth is not known. But this controversy, like the others, shows how disputes over what actually happened can express how certain moral values came into play. Inconsistencies and uncertainties in the record actually aid in the task of disclosing the existence of a moral economy.

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