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**THE POLITICAL CONSTITUTION OF INDIGENOUS LAND STRUGGLES:  
A CASE STUDY OF THE ABORIGINAL 'RIGHTS' TRICKSTER**

by

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A thesis submitted to the  
Faculty of Graduate Studies and Research  
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## **Abstract**

Heading into the 21<sup>st</sup> Century one of the enduring challenges facing Indigenous Peoples is access to and control of land, critical to Indigenous cultural revitalization and preservation initiatives. Efforts to resolve Indigenous land struggles generally occur within domestic spheres of conflict resolution, thereby placing primacy on the spatial sovereignty of nation-states. Using as a case study a recent land conflict between Wabanaki Peoples and the Province of New Brunswick and placing it within the cultural production of landscapes, this thesis disrupts the national (Canadian) narrative by problematizing the domestic strategy of Aboriginal 'rights' discourse. By moving beyond the material process and physical primacy of land, this thesis explores the ways in which Aboriginal 'rights' discourse instigates contestations over the meanings of landscapes, shapes cultural politics and symbolic practices, which in turn give rise to and indelibly adjudicate the outcome of territorial disputes. Within this context, the case study reveals that rather than securing Wabanaki Peoples a more self-determined existence, the Aboriginal 'rights' trickster drains Aboriginal communities of their collective power by enveloping them further into the spatial imagery of the nation-state.

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## **Chapter One**

### **Re-conceptualizing Indigenous land struggles: An introductory framework**

I begin this thesis by introducing and sharing a story of one Wabanaki family. [G]kisedtanamoogk<sup>1</sup> is a member of the Wampanoag located in what many consider the ‘Eastern United States’. Seventeen years ago, he and a Miigemag woman named Miigam’agan from Esgenoopetitj, which is located in ‘Eastern Canada’, were married through customary ceremony (Atlantic Policy Congress, 1996). Both Miigam’agan and gksidetanamoogk’s Nations belong to the Confederacy of Wabanaki Nations which consists of Eastern Indigenous Peoples<sup>2</sup> of Algonquin-speaking Nations of the Great Turtle Island, otherwise known as ‘North America’<sup>3</sup> (see Appendix D).

In following the inherent and continuing responsibilities and obligations to uphold and carry on the integrity of Wabanaki traditions and customs (gkisedtanamoogk, 1996a), Miigam’agan and gkisedtanamoogk founded their family on a Wabanaki way of life. In so doing, they participate equally in and uphold the principle of the longhouse which recognizes the significance and centrality of female-life:

The centre of the longhouse is female-life, womankind. When you look at the land we find our teachers, culture, spirituality, government... It has all come from a loving

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<sup>1</sup>gkisedtanamoogk uses the small case when referring to himself in honour of creation, recognizing that he is part of the life force rather than assuming he is someone worth standing apart from creation. As he explains, “whatever out-standing contributions, talents and gifts we as individuals have in my culture, we understand that we are expected to use these for the Well-Being of the Peoples as a matter of fact in implementing our normal responsibilities” (gkisedtanamoogk, personal communication, April 1999).

<sup>2</sup>Throughout this thesis I capitalize the ‘I’ and ‘P’ and use the plural form ‘peoples’ to denote nationhood and sovereignty of peoples. The same holds true for Aboriginal Peoples and Wabanaki Peoples. I use Indigenous Peoples and Aboriginal Peoples interchangeably, and use Wabanaki Peoples when I refer to Indigenous Peoples belonging to the Confederacy of Wabanaki Nations.

<sup>3</sup>Information taken from the *Wap’qtotimoinoag/Oetjgoapenageog* (Wabanaki Nations, Cultural Resource Centre) information pamphlet, n.d.



relationship with Mother earth. The first creation was a female entity, woman is the longhouse (gkisedtanamoogk, 1996b).

In keeping with this principle, Miigam'agan and gkisedtanamoogk situated their family in her community, Esgenoopetitj, where they also birthed and are now raising their three children.

On February 2, 1996 while attempting to return home to his family after visiting kin and friends in the 'United States', gkisedtanamoogk was stopped at the border (Centreville and Woodstock) and denied passage home by Canadian Immigration officials. Pursuant to the Immigration Act, gkisedtanamoogk was denied entry into 'Canada' for the following reasons: he is not a 'Canadian' citizen; he is not a permanent resident of 'Canada'; and he did not possess a 'Canadian' visa (gkisedtanamoogk, 1996a). What ensued as a result was a lengthy separation between him and his family, during which time they solicited legal services to assist in resolving this issue.

While gkisedtanamoogk is currently back in Esgenoopetitj, his residency status has not yet been resolved, partly due to the fact that he refuses to 'solve' the issue by applying for 'Canadian' citizenship. When speaking with him this past February, gkisedtanamoogk articulated that the easy 'citizenship road' was not a resolution at all, and that his determination to pursue this matter and uphold his original position was based as much on a need to uphold the integrity of Wabanaki territory and sovereignty as it was on his responsibility to ensure that other Wabanaki Peoples would never have to endure the same struggle he and his family have been going through. Their position from the very beginning has been that they are not now, never have been nor ever will be 'Canadian' or 'United States' citizens precisely because they are by birth Wabanaki, and actively and willingly belong to the Confederacy of Wabanaki Nations:

We cannot and will not recognize any boundaries or adhere to any laws placed throughout and upon Wabanaki homelands that are not properly agreed to by the Wabanaki... [B]eing Wabanaki, living and traveling freely through my Wabanaki homelands, maintaining my Wabanaki heritage and exercising my right to remain Wabanaki, by conscientious choice, violates no law (gkisedtanamoogk, 1996a).

In consideration of the above experience, the purpose of this thesis is to engage in a counter-hegemonic discourse(s) which seeks to “decolonize the map” (Huggan, 1995). Part of this thesis accompanies the footsteps of those who walk along paths in landscapes defined according to narratives that are contrary to those national and international pedagogies<sup>4</sup> with which we are most familiar. Inherent in Miigam’agan and gkisedtanamoogk’s story is the struggle over geography, the space and place of territorial integrity and sovereign jurisdiction.

Disputes that arise from and over geography, however, are not solely a Wabanaki concern. One of the enduring challenges facing Indigenous Peoples everywhere is access to and control of land (Gedicks, 1994; Bodley, 1982) which underscore any and all ‘developmental’ activities geared towards future sustainability and cultural survival. More often than not, the roots of land struggles are grounded in colonial situations where processes such as colonial state formation spurred land acquisition resulting in Indigenous land alienation. The appropriation of lands and resources for the development of colonial economies created sets of relations between Indigenous Nations and colonial states often characterized by dependency, marginalizing Indigenous peoples and their ways of life, politically, economically and socially (Amin, 1976; Royal Commission on Aboriginal Peoples (RCAP), 1996c). According to Winona LaDuke (1992, p.55), “the resulting loss of wealth (related to the loss of control over traditional territories) has created a situation where most indigenous

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<sup>4</sup>Following Matthew Sparke (1998), I am using the term pedagogy outside of its normative definition, invoking instead a framework that embodies a particular narrative, concepts, ideology and signifying practices. My usage of pedagogy therefore corresponds with the definition and usage of discourse.

communities are forced to live in circumstances of material poverty... subjected to an array of socio-economic and health problems which are a direct consequence of poverty”.

While economic marginalization is often held to be a main outcome of land dispossession, others argue that its impact has been more widely distributed, involving such social dislocation as: family violence, suicide, high rates of incarcerations, and substance abuse which point to an underlying crisis of individual and collective identities (Jackson, 1988; Monture-Angus, 1995, Brown, 1996; Thorpe, 1996). As the Osnaburgh/Windigo Tribal Justice Review Committee noted in their report to the Royal Commission on Aboriginal Peoples:

Displacement from land which provides both physical and spiritual sustenance, Native communities are hopelessly vulnerable to the disintegrative pressure from the dominant culture. Native existence is deprived of its coherence and distinctiveness (quoted in RCAP, 1996a, p.49).

Part and parcel of that coherence and distinctiveness is being able to exercise self-determination and sovereignty freely as had been the practice since time immemorial (Brascoupé, 1992), and in turn being able to define themselves in accordance to their own world views.

From this vantage point, Indigenous struggles over land are not merely driven by a desire for freedom to manage their own economies, but freedom to be Mi’kmaq<sup>5</sup>, Welastekwiyik<sup>6</sup> or Wabanaki and to be able to carry out the responsibilities that come with those identities (Trudell, 1997; Monture-Angus, 1997; gkisedtanamoogk, 1996a). As John Mohawk (1993, p.621) argues, “culture

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<sup>5</sup>According to John Stark (1988, p.20) the term ‘Micmac’ originally derived from their first encounter with Europeans where these strangers to their land were greeted by saying *Nikmaq* meaning ‘kin friends’. This term was adopted by the Europeans to refer to these people that greeted them and over time changed in punctuation to ‘Micmac’. The more common spelling today is ‘Mi’kmaq’.

<sup>6</sup>This term refers to ‘Maliseet’ peoples. According to Andrea Bear Nicholas (1994, p.224) the term Welastekwiyik - also spelled Woo-lus’-te-goo-gue-wi’-ik or Waloostookwiyik - means ‘people of the beautiful (St. John) river’. As there has not yet been any standardization of spelling, I have adopted a more recent spelling used by Andrea Bear Nicholas.

and economy are inseparable... In the absence of culture there can be no economy. In the absence of economy, there is no culture". Hence, struggles over land are also intimately enjoined to political, economic and cultural security. "The bond between Indigenous peoples and their homelands is spiritual, economic and ancestral... [and they] believe that when their land is taken away, so is the spirit that gives them life" (Seufert-Barr, 1993, p.48). The World Council of Indigenous Peoples clearly reiterated this theme in a 1984 newsletter entitled, "An Indian Without Land is a Dead Indian".

Despite mounting evidence pointing to the need to address issues over land, Indigenous Peoples have achieved only incremental progress in waging this ongoing struggle (Seufert-Barr, 1993). Even with the tremendous achievement of being invited to 'break through' the United Nations door in 1977, the past 22 years have turned many Indigenous Peoples' hopes of justice into frustration and disillusionment. For instance, Ingrid Washinawatok (1997, p.21) notes that while Indigenous Peoples have made great strides in "moving the United Nations to recognize that indigenous peoples exist, it is becoming clear that the structure of the United Nations is not made to dispense justice... Member-states continue to refuse to acknowledge any basic rights to Indigenous peoples".

Nowhere has that become more evident than in state opposition to the plural form of 'Indigenous Peoples', understood to support arguments in favour of the right to self-determination as recognized in international law (Brascoupé, 1992; Marantz, 1996). Indigenous Peoples, however, are also holding their ground on this issue for "it goes without saying that once the issue of self-determination is resolved, then that relating to 'indigenous peoples' falls into place on its own and ceases to be an issue of contention" (Marantz, 1996, p.24).

Canada is among United Nations member states which refuse to adopt the plural form of

Indigenous Peoples, despite its own usage of 'Aboriginal peoples' within the Canadian constitution. B. Denis Marantz (1996, p.25) articulates that "Canada will not promote the acceptance of standards and principles beyond what it is prepared to recognize in its own legal system". Recognized 'internationally' as a champion of human rights, when Canada is asked to respond to inquiries on its 'Aboriginal record', the Canadian government reiterates its fiduciary relationship with First Nations serviced with various examples of procedures taken to uphold and respect Aboriginal Peoples inherent rights (Marantz, 1996).

While 'internationally' it appears as though "land claims have gathered a particular momentum" (Seufert-Barr, 1993, p.48), Canada's 'national' front displays a different picture. In spite of evidence indicating the need to address Aboriginal land claims in order to 'resolve' First Nations 'conditions' holistically, the Canadian government continues to dance around this issue, approaching it through a process of 'abjection' - expelling, casting out or away (McClintock, 1995). Anne McClintock's (1995, p.72) argument is that under "imperialism certain groups are expelled and obliged to inhabit the impossible edges of modernity: the slum; the ghetto; the garret...", to which I would add 'Indian' reserves. Michelle Fine (1994, p.72) refers to this as racism, "a structure of discourse and representation that tried to expel the other symbolically - blot it out, put it over there in the Third World, at the margin". And while the "abject is everything that the subject seeks to expunge in order to become social [national]; it is also a symptom of the failure of this ambition...[because] abjection traces the silhouette of society on the unsteady edges of the self" (McClintock, 1995, p.70). Abjection shadowed the formation of the Canadian state as it now shadows its national existence, for despite all efforts to the contrary the so called 'Indian problem' continues to haunt provincial and federal political corridors.

It is precisely because 'land ghosts' continue to haunt these national corridors that Canada has been engaging in what I would call the 'land dance', referring not to total expulsion of Aboriginal land claims but rather a minimal, nationalist dabble in its depths. This dabbling has been mostly legal, for there does now exist a rich body of legal precedents known as Aboriginal 'rights' law which attempts to delineate or define Aboriginal 'rights' and 'title' to the land. However, this legal tinkering seems to have been a process of taking one step forward and one to three steps back, saying something but not really saying anything at all. On the other hand, political strategies, be they federal or provincial, tend to either ignore land claims, challenge them in the courts, or governments may even take political 'leaps of faith' by engaging in some type of consultation with Aboriginal communities, organizations or individuals. Mostly, however, the struggle over land has played itself out in colonial courtrooms across the country, where more recent results appear to be ever so slightly fanning the spark of hope alive in Aboriginal Nations (Mandell Pinder, 1997).

Herein lies a major contradiction. Indigenous Peoples are resorting to the very legal tools that have not only let them down in the past (Seufert-Barr, 1993) but that are also the source of their current land dilemma. Kate Manzo (1996, p.230) makes the argument that "South Africans do not necessarily see themselves in terms of 'development' even though they participate in its rituals". A similar understanding can be applied to Aboriginal Peoples, who do not necessarily see themselves as 'Canadian' even though they enjoin (some of) its rituals, one of which is Aboriginal 'rights' discourse. The difficulty with this ambivalent position, however, lies in the fact that through 'ritual' engagement Aboriginal identities became "fashioned out of the clay of negotiations and the mud of compromises" (Manzo, 1996, p.230) that speak to being 'Canadian' precisely because the elements of subversion continue to be framed within a national (Canadian) narrative.

For example, Matthew Sparke (1998) argues in respect to the *Delgamuukw* case that the Wet'suwet'en and Gitksan translated their knowledge and territorial jurisdiction claims into terms of reference readily understood within the dominant (colonial) discourse. By transcribing oral histories into cartographic maps, by singing and describing ceremonial songs and performances within the 'Canadian' court, the Wet'suwet'en and Gitksan subverted not only the colonial setting in which they were inscribed but also the very pedagogy of the Canadian nation-state, and in turn disrupted its spatial sovereignty. It is this performative agency or strategies of subversion which emerge in milieu of psychological and political tension over meaning and being that Homi Bhabba celebrates. "It [strategy of subversion] is made of negotiation that seeks not to unveil the fullness of man[sic], but to manipulate his[sic] representation. It is a form of power that is exercised at the very limits of identity and authority, in the mocking spirit of mask and image" (Bhabba, 1994b, p.121).

Such celebrations of agency, however, "would seem to miss or at least downplay, political obstacles to resistance... ignor[ing] real political problems with a performative theory of agency through supplementation...[celebration of agency] fails to provide a way of distinguishing between performances enabled to force displacements and those that are thwarted" (Sparke, 1998, p.479-80). In respect to the *Delgamuukw* ruling, political thwarting is exactly what happened. Post-*Delgamuukw* political action and response include the federal government placing a two year moratorium on the Supreme Court ruling in order to examine the 'implications' of this judgement vis-à-vis Crown/First Nations relations (Obomsawin, 1999). The federal government has not, however, placed a parallel moratorium on current treaty negotiations (some in fact argue that negotiations have accelerated) which are grounded in the 1986 Federal Claims Policy, a policy which in light of *Delgamuukw* is now inconsistent or contrary to law (Mandell Pinder, 1999). Moreover, the post-

*Delgamuukw* era has also seen a wide number of analyses on this judgment bringing an understanding that, while this ruling was a significant ‘victory’ for Aboriginal Peoples, most notably in comparison to Aboriginal ‘rights’ law prior to *Delgamuukw*, it failed to subvert the “power relations perpetuating nation-state pedagogy and policing” (Sparke, 1998, p.489). Indeed, by operating on an assumption that Aboriginal Nations are a part of the body politic of Canada, the Supreme Court orchestrated Aboriginal counter-hegemonic narratives of nationhood, territorial jurisdiction and sovereignty into a “nation-state effect” (Sparke, 1998).

To critically analyze tactics of subversion or counter-hegemonic discourses is not to underwrite or ‘do away’ with Indigenous agency and subjectivity, for one can certainly not deny that Aboriginal narratives profoundly inform both cultural politics and community activism (Manzo, 1996). Rather, it recognizes that counter-hegemonic discourses are “situated within a wider context of discursive relations” (Manzo, 1996, p.252). To this end, it is not just a recognition of limitations or ‘policed displacements’ (Sparke, 1998) but also an understanding that the deployment of ‘dubious’ tactics, such as Aboriginal ‘rights’ discourse, as a means to turn the system against itself or “to challenge the whole bloody game” (Wet’suwet’en Chief Satsan quoted in Sparke, 1998, p.471), has ambivalent repercussions. Certainly there is a degree of ‘success’ in making oneself fit into a framing discourse that has sought to erase one’s very existence. However, Patricia Monture-Angus (1995, p.141) notes with respect to Canadian law:

I have to twist and turn my understandings of the words to make my experience fit. This feels very much like one of the ways I experience discrimination - some one else does the defining, presuming I fit. I am left with the contortions.

Too often in the celebration of Indigenous agency and strategies of subversion these ‘contortions’ become obscured. And it is not only the psychological contortions that may result in



employing a 'dubious ally' (Sparke, 1998) such as colonial 'rights' law, but also the political contortions it extrudes within First Nations and their relations with state authorities. It needs to be remembered that counter-hegemonic narratives performed through 'localized' actions, such as those engaged in by the Wet'suwet'en and Gitksan in court, Kanien'kehá:ka people at Oka, and Aboriginal occupation at Gustafesen Lake to name but a few, "strike at the very heart of state power" (Watts, 1997). And that these counter-hegemonic narratives are successful in challenging spatial sovereignty and subsequently national pedagogy is evident in the various politically 'contorted' responses they elicit from state agencies: eclipsing Canadian law, massive military and RCMP deployment, massive amounts of money injection into reserve economies or political organizations (KG, Interview, March 1999; Adams, 1995), are but a few. "These movements stood, in other words, as the antipodes of state legitimacy. They were irreducibly products of and struggles over geography" (Watts, 1997, p.37).

It is with these understandings in mind that I broach the topic of the political constitution of Indigenous land struggles. My original 'global wandering' for a thesis topic provided me with an understanding that dominant definitions of 'international' or 'development' are not only situated within a specific spatial view of and pedagogy about landscapes, but that they also speak in a language which either fails adequately to reflect Indigenous identities or denies those identities all together<sup>7</sup>. With respect to Aboriginal Peoples, the voices we hear describing this landscape tend to be more 'familiar' and 'common place'. They may speak about the origins of Aboriginal

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<sup>7</sup> I am reminded here of a public presentation entitled 'Identity, Academia and Aboriginal Women' given by Patricia Monture-Angus (January 15, 1997) at St. Thomas University in which she stated, "when you speak about justice, self-government, Mohawk, what are you doing to my identity? You are speaking in a language that can't express who I am".

'internationalization', tracing its historical antecedents back to first contact with European imperial powers (Jhappan, 1992). Perhaps they speak to a more recent broadening and intensification of the 'international front' of Aboriginal affairs (Ponting, 1990) citing examples such as the World Council of Indigenous Peoples; participation in United Nations forums; visitations to London to engage the Queen and/or British parliament; and appealing to the European community as was done during the 'Oka crisis'. But, the narrative acted out within this landscape is one which implicitly installs Europe as the "theoretical subject of all histories" (Chakrabarty, 1992) where Aboriginal histories are placed in a position of subalternity. This process works not only to silence Aboriginal histories and undermine Aboriginal sovereignty and claims to territorial jurisdiction, but also proves expedient within a colonial context<sup>8</sup>. If one follows the landscaped paths of this narrative, which upholds European 'discovery' of the 'new world' as well as all subsequent landscaping that flowed from this 'discovery', then it becomes unproblematic to refer to Aboriginal Nations as 'sub-national' entities, perhaps to the same extent that earlier explorers and colonists classified Indigenous peoples as 'sub-human' or 'savages'. Indeed, current 'international affairs', 'international relations' formulations, in theory and practice, privilege and re-articulate the "hegemonic theatre of nation-state pedagogy" (Sparke, 1998).

I specifically elected to focus my research on a 'domestic' land conflict to first and foremost place the issue of land front and centre in 'development' debates. As Andrea Bear Nicholas (1993a, p.41) clearly articulates, "the main prerequisite for the revitalization of a culture so based in land as ours, is land... Only with enough land can we become economically self-sufficient and only then will

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<sup>8</sup>Marrianna Torgovnick (1990) argues that "to see *primitives*' history as beginning with us means that we need[ed] to regard them in terms that suit[ed] us". See Gone Primitive: Savage Intellectuals, Modern Lives, Chicago: University of Chicago Press, p.187.

real self-government, and our survival as a people, be possible”.

Secondly, in choosing a research topic generally considered to be ‘domestic’, I am able to problematize and disrupt the comfortable convenience of domestic and foreign, national and international type dichotomies, and draw attention to the relativity of hegemonic modalities of space and place. Sankaran Krishna (1994, p.514) argues that despite efforts to present the world of territorial sovereign nation-states as”... a timeless essence , this world order is historically contingent, violently produced and contested”. According to Edward Said (1993, p.225):

Imperialism is an act of geographical violence through which virtually every space in the world is explored, charted, and finally brought under control. For the native, the history of colonial servitude is inaugurated by the loss of the locality to the outsider; its geographical identity must therefore be searched for and somehow restored.

Restoration of geographical identity extrapolates an understanding that what the map cuts up, stories cut across (De Certeau, 1988), stories which challenge and destabilize national pedagogies and often operate counter to nation-state domestication.

However, the politically charged and predatory ‘absolute space’ of the nation-state or the spatial imagery of national practice cannot function in the face of undomesticable others. As Ghassan Hage (1996, p.484) explains:

Every [national] governmental act has a residual act of extermination in it; it is only to the extent that its capacity to form a counternational will has been eradicated that national otherness can be domesticated... Or more precisely, every act of domestication and valorisation is also an act of eradication of the other as an independent will.

Ironically enough, it is the very processes of national domestication that both historically and currently give rise to Aboriginal counter-hegemonic narratives and performances of resistance. Discursive venues of agency, however, are increasingly leading Aboriginal Peoples into appropriating

the ‘dubious ally’ of Aboriginal ‘rights’ discourse in order to decolonize the grip of Canadian geography. This process is reminiscent of a remark made by Michel Foucault (1980a, p.107-8), “when today one wants to object in some way to the disciplines and all the effects of power and knowledge that are linked to them, what is it that one does, concretely, in real life... if not precisely appeal to this canon of right?”. And yet, as Andrea Bear Nicholas (1995) explains, “rights had to be introduced where they have been taken, and only in those places where they have been taken. This goes back to colonialism because prior to colonialism there were no need of rights. The idea of rights is not a gift, it’s simply a sense to get us back to where we were”.

This thesis focuses on problematizing Aboriginal ‘rights’. It aims to question the narratives and knowledge that substantiate Aboriginal ‘rights’ discourse, to expose the methods of subjugation and relations of domination that it instigates through the very act of appropriation. I do not dispute that Aboriginal Peoples’ co-optation of Aboriginal ‘rights’ discourse may result in subverting their colonial surroundings and/or disrupting nation-state pedagogy. Romanticization of such subversive tactics, however, tends to ignore context and power relations and “...can in turn efface the larger set of spatial effects around which the avowed coherency of the nation-state is secured” (Sparke, 1998, p.490). It needs to be remembered that Aboriginal ‘rights’ are a ‘genuinely’ Canadian creation, and as such are part and parcel of the national pedagogy. I therefore question how successful a strategy of appropriating Aboriginal ‘rights’ discourse can be in displacing processes of domestication, which include counteracting the social dislocation colonialism has effected on and in Aboriginal communities.

For this reason, this thesis engages in a critical analysis that extends beyond the structural boundaries of the courtroom and the legal parameters of Aboriginal ‘rights’ law. Using as a case

study a land conflict currently taking place between Wabanaki Peoples and the New Brunswick government, I focus on the process of the conflict itself as it plays itself out simultaneously in provincial courtrooms and within Mi'kmaq and Welastekwiyik communities. According to Philip Bourgois (1993, p.58) such an approach enables one to “locate parameters of ethnicity in the actual process of confrontation including all levels simultaneously - ideological and economic - rather than solely on material reality”. After all, as Edward Said (1993, p.8) argues, “neither imperialism nor colonialism are a simple act of accumulation and acquisition. Both are supported and impelled by impressive ideological formations”. These ideological foundations, including that of ‘rights’, are inscribed in Aboriginal Peoples’ consciousness and therefore contribute to shaping their political mobilization (Bourgois, 1993). By moving beyond ‘material’ processes, I am able to explore the ways in which Aboriginal ‘rights’ discourse instigates contestations over the meaning of landscapes, shapes cultural politics and symbolic practices, which in turn give rise to and indelibly adjudicates the outcomes of territorial struggles. What this thesis is ultimately examining, therefore, is the underlying way in which power works in a colonial context.

### **The Case study**

I will be referring to the land struggle case study throughout this thesis in terms of reference as constructed by and through the public domain. Hence it has come to be known as the ‘logging dispute’ or ‘logging issue’.<sup>9</sup> My entry point into the land struggle taking place between Wabanaki

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<sup>9</sup>I place these terms in quotation marks to indicate that the popular construction of this land struggle and the way in which it has become internalized and familiar to people in both the colonizer and colonized ‘camps’ is in fact under contest and up for grabs (Butler, 1992). Judith Butler (1992, p.19) articulates that the effects of quotation marks is to “denaturalize the terms, to designate these signs as sites of political debates”. This understanding of quotation mark usage is applied throughout this thesis to every word placed in quotation marks, indicating that I am initiating contests over meanings and questioning traditional deployment of those terms (Butler, 1992).

Peoples and the New Brunswick government begins on May 4, 1995. On this day, two Mi'kmaq and two Welastekwiyik men - Thomas Peter Paul, Daryll Gray, Nick Paul, and Tim Paul respectively, removed three bird's eye maple logs from 'Crown' lands located near the Arseneau Road in Gloucester County, New Brunswick (Hrabluk, 1998a; Arseneault, 1995). One of the four men, Thomas Peter Paul, was subsequently charged by a provincial forest service officer with 'illegal' harvesting under Section 67(2) of the provincial *Crown Lands and Forest Act*, S.N.B. 1980, C-38.1. The removal of the three logs was deemed 'illegal' as Thomas Peter Paul had not obtained prior authorization from either the Minister of Natural Resources and Energy or the licensee of those lands, Stone Container (Canada) Limited (Arseneault, 1995, p. 19/1-10)<sup>10</sup>. It was noted by the defense, Thomas Peter Paul, in his trial testimony that the removal of the bird's eye maples was for the purpose of sale - a sale that could yield anywhere between one to three thousand dollars (Arseneault, 1995, 19/10; 22/10-15). Thomas Peter Paul's defense rested on the legal argument that the harvesting of those logs was in fact legal according to a number of peace and friendship treaties negotiated between the Wabanaki and the British. In other words, he was making the argument based on an Aboriginal 'right' to access resources on lands deemed by many Wabanaki Peoples to be 'Indian' lands, a recognition that they argue is implicit in those historical treaties.

It is imperative to place this seemingly small counter-narrative in context. According to Ramesh Chaitoo and Michael Hart (1998, p.12), "Canada is the world's largest exporter of forest products, accounting for approximately 19 percent of the total value of world exports". Both historically and at present, forested lands play an integral part in the Canadian economy. In 1997 the

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<sup>10</sup>The / between, for instance, p.19/10 indicates both page and line numbers in court transcripts. Hence the 19 refers to the page and the 10 refers to the line on the page where this information is found.

forestry sector accounted for \$38.9 billion in exports, involving 3,500 companies and providing 280,000 jobs (Chaitoo and Hart, 1998). This broader economic portrait is equally relevant to the province of New Brunswick. As Graeme Wynn (1981) demonstrates in his book *Timber Colony: A historical geography of nineteenth century New Brunswick*, forested lands played an integral, if not crucial role in the colonial timber trade, contributing to both the colonial development of New Brunswick and the industrial expansion in Britain. Today the forestry sector in New Brunswick continues to be a vital part of the provincial landscape. Classified as the biggest industry in the province, forestry is worth \$3 billion annually in sales and employs about 27,000 people (Morris, 1998). Within the geographical boundaries of New Brunswick, approximately 40 percent or 11 million acres of land is 'publicly owned', which in turn is divided into tracts and leased out for 25 years to eight different forest companies (Hrabluk and Poitras, 1998).

Given the significance of forested lands to the economic security of the province, it is not surprising that a seemingly small act of hegemonic 'defiance' escalated into a major conflict, particularly when both the Provincial Court in 1995 and the Court of Queen's Bench in 1997 ruled that Mi'kmaq and Welastekwiyik Peoples in the province were legally able to access resources on 'Crown' lands by virtue of their Aboriginal 'rights' to those lands. What ensues as a result of these rulings is a politically charged and 'violent' struggle over geography based upon competing claims of 'rights' to land, claims that are indelibly inscribed in hegemonic and counter-hegemonic narratives of sovereignty and territorial jurisdiction.

### **Thesis structure**

The remainder of this thesis is divided into four chapters. Using the overarching framework

of analysis as outlined previously, my objectives in the following chapters are: to situate the ‘logging struggle’ in the “cultural production of landscapes” (Moore, 1996) drawing attention to the centrality of contradictory narratives on space and place within this conflict; to construct the regime of ‘truths’ upon which Aboriginal ‘rights’ law depends, and the ways in which the ambivalent functioning of Aboriginal ‘rights’ discourse serves to police counter-hegemonic spatial displacement; and to explore how multi-layered social interfaces with, diverse interpretations of, and differential responses to cultural symbols simultaneously mobilize and polarize Wabanaki communities in their articulation and exercise of ‘rights’. The combination of these chapters, therefore, provide a visual presentation through which to map the journey of the Aboriginal ‘rights’ trickster<sup>11</sup>.

The remainder of this chapter as well as Chapter Two present the methodological and theoretical elements that shape the presentation, understanding, analysis and conclusion of this thesis. Expanding upon the methodological discussion at the end of this chapter, Chapter Two prepares the theoretical stage of analysis that will be applied in the process of exploring and critically analyzing the dynamic performance of the Aboriginal ‘rights’ trickster throughout the ‘logging struggle’. In this chapter I draw from the diverse fields of postcolonialism and discourse analysis in order to develop the theoretical framework for analysis.

The first part of Chapter Three constructs the regime of ‘truth’ of Aboriginal ‘rights’ discourse by focusing on what the various provincial courts in New Brunswick said in the Thomas Peter Paul case. This chapter explores the ways in which the underlying assumptions on which

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<sup>11</sup>The character of the ‘trickster’ in Algonquin oral narratives is a shape-changer, a deceiver, who speaks to the people about how to travel into knowing the unknown. Through its transformative capacities, the trickster draws attention to the fact that nothing is as it seems, such that some of the trickster’s tricks, rather than helping to empower people may actually function as a ‘dangerous alliance’ that strips people of power. Power in this context refers to tapping into the life force of creation in processes of self-actualization. I invoke these understandings when I use the Aboriginal ‘rights’ trickster, and will expand upon this further in the conclusion to this thesis.



Aboriginal 'rights' law is grounded frame the counter-hegemonic narratives Aboriginal Peoples bring to colonial courts into a nation-state effect. Building upon this analysis, Chapter Four moves the location of focus from the courtroom to Mi'kmaq and Welastekwiik communities in New Brunswick in an understanding that Aboriginal 'rights' discourse simultaneously plays itself out within and outside those communities. First, I explore the context in which Aboriginal 'rights' discourse is appropriated, and then proceeds to follow the trickster's journey through the confrontational processes of the 'logging struggle'. Particular attention is paid to the ways in which Aboriginal 'rights' discourse uses cultural symbols that on the one hand are harnessed as a medium through which to present a collective claim, while on the other hand serving to enhance individual claims as a result of those same symbols being internally contested and contingent. Chapter Five draws together various themes and findings uncovered through this research and reflects on the implications.

### **Reflections on research methodology, principles and practice**

At the end of his article on Aboriginal epistemology, Willie Ermine (1995, p.111) concludes with a story he heard Aboriginal educator Cecil King share at the 88<sup>th</sup> Annual Meeting of the American Anthropological Association in 1989. It is a dream story where all the people in the world are gathered in a place that is very cold. A whisper was heard that alerted people to the fact that in the middle of a group of Indigenous Peoples a fire had been found. It was a very small flame and the circle of Indigenous Peoples around it were trying desperately to protect and build the fragile flame into a fire that could warm all humankind. The notification of this fire, however, sent people stampeding towards the flame in a desperate attempt to warm themselves, claiming that it was the Indigenous Peoples' responsibility to share the flame. Worried that the flame would be smothered,

the Indigenous Peoples banded tighter around the flame arguing that they would share the flame with everyone, as was their responsibility, as soon as the flame was nurtured into a strong glowing fire that could warm all of humanity.

One of the stark ironies in this story is the process of swarming the flame, a process with which Indigenous Peoples are all too familiar through missionaries, colonists, anthropologists, social science researchers, new-age movements, environmentalists, and corporations (Johnston, 1996; Brascoupé, 1997; Benjamin, 1997; Liloqula, 1996; Te Pareake Mead, 1996). Intrinsic to some of these stampedes is a colonial adherence to the fatal impact thesis which holds that anything left in the hands of the ‘primitive’ will dissipate into thin air like the ‘primitives’ themselves (Thomas, 1994). At other times, swarming has been driven by what Jack Forbes (1992, p.34) calls the *wétiko* (Cree for cannibal) disease defined as the “raw and greedy consumption for profit”, or ‘good Samaritans’ mesmerized by the notion of ‘helping’ those who supposedly cannot ‘help’ themselves (Gronemeyer, 1995). Engaging in research for/on/with Indigenous Peoples, one cannot escape the imprints of those who have come before, nor can one consciously participate in such an endeavour without asking the question, ‘Am I a swarmer too?’.

This is not to suggest, with respect to social science research, that all processes of data gathering on Indigenous Peoples have been exploitive, unethical, and unaccountable. Nor is it meant to suggest that some research has not been useful to Indigenous Nations. I am also not suggesting that Indigenous Peoples have been passive recipients in these stampedes, for more often than not they have resisted, co-opted and capitalized upon such processes<sup>12</sup>.

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<sup>12</sup>For instance, anthropological ‘poking’ and ‘prodding’ has become a longstanding joke amongst Aboriginal Peoples, particularly in relation to the ‘pranks’ they pulled on anthropologists. Lorne Simon (1994, p.44) brings this out beautifully in *Stones and Switches*: “One time some white guy came around here and wrote a

However, the dangers of social scientists today engaging in what is more commonly referred to as academic colonialism remains very real. Stephanie Gilbert (1995, p.148) defines this process as follows:

The researcher collects data on certain issues and leaves the community, often never to return... This knowledge then becomes the property of the researcher who becomes an 'expert' on that issue. The Aboriginal people who live that knowledge may not even get a mention or a higher degree to show for the knowledge they freely imparted.

This is not, however, the only way in which academic colonialism may function, as it can also work along more subtle axes. The very selection of a research topic may reinforce the notion that the source of the problem lies with the 'other'. Patricia Monture-Angus (1995, p.21) speaks to this in her comment:

When are those of you who inflict racism, who appropriate pain, who speak with no knowledge when you ought to know to listen and accept, going to take hard looks at yourself instead of at me. How can you continue to look to me to carry what is your responsibility?

Michelle Fine (1994, p.73) similarly highlights this concern when she argues that the imperial tendency of scholarship "...is evident in terms of whose lives get displayed and whose lives get protected by social science... Put another way... why don't we study whiteness?". According to bell hooks (1992, p.339) much of the critical work engaged in by postcolonial theorists continues to speak to the "fascination with the way white minds, particularly the colonial imperialist traveler, perceives blackness and very little expressed interest in representations of whiteness". Through student discussions on racism, hooks found that this absence of recognitions of whiteness invests a sense of

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stories], but the old timers pulled his leg! Instead of telling him all the Glúskeb stories they told him fairy tales with Indians in them, just to see if he would write them down and call them legends! Nisgam! And he did too... Ho! We're always pulling peoples' legs - and looking pretty serious when we are at it too!".

‘whiteness as mystery’, which in turn facilitates the construction of ‘other’:

In these classroom discussions there have been heated debates among students when white students respond with disbelief, shock and rage, as they listen to black students talk about whiteness, when they are compelled to hear observations, stereotypes, etc. that are offered as ‘data’ gleaned from close scrutiny and study (hooks, 1992, p.339).<sup>13</sup>

The ‘othering’ inherent in academic colonialism can also proceed through the appropriation of Indigenous Peoples’ voices and experiences, and their subsequent translation within a theoretical framework. Translation in this sense includes selecting which Indigenous voices are to be highlighted and generalized, whose experiences and what parts of those experiences are going to be retold in the academic text. It includes decisions on what is ‘valuable’ knowledge worth theorizing and what is not, or it may emphasize that which is spoken over other subtleties in communication. The researcher as editor frequently gains complete control over the information provided by Indigenous informants, the manner in which it is to be interpreted and the context in which it is to be presented. In this sense, social science research exemplifies “disciplinary knowledge which signifies the power of naming and the contests over meaning of definition of self and other” (Mohanty, 1991, p.31). As Fine (1994, p.74) suggests, “when we construct our texts in or on their words, we decide how to nuance our relations with/for/despite those who have been deemed Others”.

How to engage in research that is ethically sound, accountable and responsive to Indigenous

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<sup>13</sup>I can recall very similar experiences and debates from Native Studies courses I took during my undergraduate degree. In most of these classes Aboriginal students made up the majority of the student body, which I believe enabled a more frank and open discussion about their own experiences of racism and colonization. One time in particular a ‘white’ student approached me after a Native Studies class, frustrated and angry with the language and charges made against ‘white society’ by Aboriginal students. This ‘white’ student had originally signed up for this Native Studies class because her thesis topic was exploring the dynamic roles of Aboriginal music in cultural resistant processes, and she had hoped that the combination of the course material and Aboriginal students sharing their own experiences in class would enhance her own thinking on the thesis topic. At this point, however, she wanted to drop the course because she felt that the numerous in-class discussions on racism and colonialism as experienced by Aboriginal students, and their expressed anger with ‘white’ society, was not in anyway contributing to her education.

Peoples is an overwhelming and often ambivalent concern. Much of my own ambivalence hinges around whether or not I ought to be pursuing such research, questioning the colonial nature of my very commitment to engage in research on/with/for Aboriginal Peoples. It is out of concerns such as these that a growing body of literature in the areas of feminist methodologies, participatory action research and postcolonial criticism is now actively “working the hyphens” (Fine, 1994), writing against the grain of “discursive colonization” (Mohanty, 1991) in an effort to weave critical and contextual struggle(s) back into research and texts. Central to these types of social justice projects are themes of positionality or the “politics of location” (hooks, 1990) and self-other subjectivity, themes which “mark a space of analysis in which motives and consciousness, politics and stances of informants and researchers/writers are rendered contradictory, [and] problematic...” (Fine , 1994, p.75).

For instance, the theme of positionality highlights the understanding that social science researchers are not outside of their subject matter but rather deeply inscribed throughout. Marjorie Mbilinyi (1992, p.35) argues that “one’s personal location is reflected through decisions and outcomes influenced by and arising from theoretical frameworks, ideological underpinnings, personal identity and the material social location of research”. Unlike more ‘traditional’ scientific processes which are/were mesmerized by the notion of neutral, value-free objective research and knowledge, emergent alternative approaches are “eroding the fixedness of categories, [such that] we and they enter and play with the blurred boundaries that proliferate” (Fine, 1994, p.72). As a result, feminist methodologies and participatory researchers anchor their research in personal location vis-à-vis the research project and the broader discursive context in which the research and researcher are situated. My own positionality in this research endeavour is premised upon my status as a *wabey* - white

person (Pritchard, 1997, p.133) who belongs to the 'colonizer culture'. I am therefore implicated in a history of violence, dispossession, and genocide perpetrated against First Nations Peoples.

While my 'outsider' status colours every aspect of my research, the politics of my location go beyond being 'white', 'woman', or 'colonizer'. Social science researchers conscious of positionality argue that all knowledge is shaped by the perceptions of the knower, which vary according to identities that are shaped by and through experiences and societal positions (Huntington, 1998). In recognizing the co-existence of multiple identities, researchers are able to participate in subverting social conditions by positioning ourselves as "no longer transparent, but as classed, gendered, raced, and sexual subjects who construct our own locations, narrate these locations, and negotiate our stances with domination" (Fine, 1994, p.76). The production of analysis in this sense prompts questions about the roles of 'outsiders' in research projects. Donna Haraway points out that "there is no way to 'be' simultaneously in all, or wholly in any, of the privileged or subjugated positions structured by class, gender, race, nation" (quoted in Sylvester, 1995, p.948). This understanding challenges the notion of 'like studying like' while at the same time highlighting the significance of 'internal' subversion by those researchers deemed to exist within the 'colonizer culture', drawing attention to the ambivalence of colonial processes. In other words, social science researchers can formulate alliances based upon 'conscious partiality' - recognizing common aspects of multiple identities while still respecting and acknowledging differences (Mies, 1991) - which in turn has the potential to diversify the knowledge tools available for social justice projects.

However, being conscious of one's positionality has a minimal effect if that understanding fails to be incorporated into processes of data collection and presentation. It is in this sphere that the theme of self-other subjectivity becomes so important as subjective consciousness translates into what

I call 'positionality performance'. Inherent in subjectivity, therefore, is the relationship between researchers and 'researched', often characterized as being akin to that relationship between oppressed and oppressor as the balance of power generally accrues to the researcher. It is within the context of establishing more equitable relations that participatory action research (PAR) is emerging as a significant methodological approach. For many researchers, PAR is seen as a mechanism through which "...to reduce the distinction between the researcher and the researched by incorporating them in a collaborative effort of knowledge creation" (Sarri and Sarri, 1992, p.267). Grounded in notions of empowerment, local knowledge and Indigenous control, PAR "seeks to set in motion processes of social change by the populations themselves as they perceive their own reality" (Rahnema, 1995, p.129). My understanding of the essence of PAR lies in its ability to *pass over the stick*<sup>14</sup> providing the space(s) for a multiplicity of voices and experiences to come forward and be heard.

The 'politics of representation' was for me the critical link for adopting to engage in primary data collection. Media presentation of the 'logging dispute', government responses to the struggle, and Aboriginal individuals at the forefront of the struggle, all seemed to be "trafficking in generalizations" (Abu-Lughod, 1993). From my discussions with various Wabanaki Peoples, I was aware that a number of experiences and perspectives were not being heard, and that the talking stick had ceased moving at least within the context of resolution. My primary research, therefore, engaged in methods of data collection emphasizing context-specificity and difference.

Field research in New Brunswick took place in May and November of 1998, and

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<sup>14</sup>I have learned this phrase from Madeleine Dion Stout, a professor at Carleton University. This phrase refers to a process followed in Aboriginal talking circles where a talking stick, stone, feather, is used to signify who is able to speak at any given time. When you are holding the object in your hand in the circle, you are the only one allowed to speak until that time that you pass the object on to the person beside you. At all times in the circle you are to respect the person who has the talking stick in their hands.

February/March 1999. Being familiar with the research environment<sup>15</sup>, the first two trips served as preparatory visits during which time I gathered documentary data on the 'logging issue' - newspaper articles, court documents, various Aboriginal groups' meeting notes - and gained a sense of the dynamics at play through discussions with Mi'kmaq and Welastekwiyik friends, professors and activists. Andrea Bear Nicholas, the Chair of Natives Studies and professor at St. Thomas University provided me with full access to all her resources, as well as assisting me in developing an overall framework through which to present the data I was gathering. She also served as an important link to First Nations communities by suggesting and providing the names of various individuals to contact in respect to the 'logging issue'.

Through these two initial trips in May and November of 1998, I was able more clearly to define the nature and objective of primary data gathering, and to examine which PAR tool would best suit the data gathering process. I elected to use the research instrument of personal interviews which I believed would enable me to draw attention to the multiplicity of perspectives within Wabanaki communities by focusing on voices that seemingly had not been voiced or listened to during this ongoing struggle, including women, elders, youth and off-reserve.

To ensure a flexible interview structure, leading questions, provided to all participants in a research letter prior to interviews (Appendix A), were open and general: How was this issue first brought to your attention? How do you see this issue in relation to Aboriginal self-determination struggles? How has this 'logging issue' impacted your community and your own life? Mi'kmaq and

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<sup>15</sup>Living in New Brunswick for most of my life as well as studying at St. Thomas University familiarized me with the 'politics' surrounding forestry, First Nations 'politics', and Wabanaki-white relations and histories. It also made available to me a network of Aboriginal friends, acquaintances and professors developed during my university years.



Welastekwiyik individuals who agreed to participate in my research project decided for themselves where those interviews would be held.

All of the interviews conducted took place during my last field trip to New Brunswick in February/March of 1999. Through a network of Aboriginal friends and acquaintances, I secured interviews with six Wabanaki individuals. All interviews, through participants' preference, were conducted in sets of two, lasting between one to three hours, and were tape-recorded with their permission. Interview notes were transcribed within days of the interview and sent back to the participants for their perusal, providing them with an opportunity to review the notes and to which they could make any deletions, changes or add new information. To ensure anonymity and confidentiality all interview tapes were destroyed after transcribing, the interview notes are stored on a diskette kept in a locked container in my home, and all participants' initials within this thesis are scrambled. I must note however, that this process causes me some discomfort. All participants commented that there was no problem in using their names in my thesis. And while I very much wanted to accommodate individual ownership over the information, I felt equally uncomfortable with including peoples names without participants having an opportunity to see or comment on the context in which their voices were being framed. Ideally, and if I were to repeat the process, I would have liked to been able to return the research to the participants prior to submitting my thesis. Unfortunately the time restraints within which I am working did not enable me to engage this more participatory approach to research. It therefore leaves me to question, as Heather Farrow (1995) and Barbara Shaw (1995) do, how 'participatory' and flexible research can be when working within the structure of an M.A. program. Given that participatory research is a dynamic process requiring commitment and flexibility, "should graduate students even attempt to undertake this kind of

research in the context of a thesis?" (Shaw, 1995, p.31).

Reflecting back on the entirety of the research process there are a number of conclusions and difficulties that I would like to explore. First, the subjective experience of the research process is linked to the relationship between researcher and research participants, where power relations, vulnerability and friendship are played out (Hovorka, 1997). It cannot be denied that the research process itself generates a power structure which favours the researcher over the 'researched'. As a researcher, I chose the research topic, selected and designed the data gathering format, and I walked away with the data and the power of its representation. At the same time, we (researcher and participants) were all enmeshed within a larger power structure which 'privileged' my position by nature of belonging to the 'colonizer culture'. Do these power dynamics render participants completely vulnerable and powerless?

Reading through numerous literature on social science research, it appears as though a majority of researchers over-emphasize these power dynamics to the extent that Indigenous agency and subjectivity are somewhat denied. In respect to my own research, the interview process and environment seemed, to me at least, to be either more equitably based or in favour of the participants. First of all, all interviews took place on the participants 'home turf', a place in which they were comfortable and in control of the environment. Secondly, as all the interviews were conducted in pairs, there was an atmosphere of comradery and support such that participants were not only able to bounce ideas off one another, but also their views and perspectives were backed up or confirmed by each other. Thirdly, my positionality as a *wabey* made me an 'outsider' such that authority of knowledge and experiences were in the participants' hands. The open-ended and informal structure of the interviews rendered the participants the 'experts' and enabled them to direct

the flow of dialogue, drawing attention to 'logging conflict' processes and aspects deemed by them to be important. Within this context therefore, my timidity and shyness did not hinder data gathering, particularly where the interviews followed a dialogue between participants such that I rarely had to direct or intervene in the discussion. That such freedom existed within the interviews is evident in the diversity of all three sets of interview notes. While it could be argued that free flowing dialogue could jeopardize the 'integrity' of the research, in my situation it was precisely the opposite as it enhanced the content of the information so kindly shared by all participants.

A second preoccupation that concerned me was whether the small number of people interviewed would undermine the integrity of my research. Certainly I could have interviewed more people, but I chose not to do so. My original goal was to gather information on Wabanaki perspectives that had been absent in this 'logging issue'. The six people interviewed were indicative of some of this diversity, including: Mi'kmaq, Welastekwiyik, and Wampanoag; on and off-reserve; women and men; youth; 'traditional' and 'modern'; and differences between communities. My overall decision to limit my interviews to six people, therefore, was based in the nature of the information that had already been supplied through these six interviews, information which indicated the existence of multiple experiences and perspectives within Wabanaki communities<sup>16</sup>.

A third preoccupation that I encountered in my research is in respect to accountability. I have

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<sup>16</sup>The people I interviewed do not represent the whole community, but rather provide an indication of diverse identities and experiences. Further research would be needed before broader generalizations can be drawn. I am particularly conscious of the fact that I did not interview any 'elders'. My reasons for this absence include: having access to some Mi'kmaq and Welastekwiyik elder's voices through secondary data; apprehension about approaching elders due to all ready existing pressure and responsibilities upon their shoulders as a result of increasing inside and outside pressure for traditional knowledge, as well as their increasingly important role in cultural revitalization initiatives; and understanding that definitions of 'elders' are community/cultural specific such that external misconceptions and/or misunderstandings may lead to 'outsiders' according elder status to someone whom the community does not so duly recognize.

attempted to be as fully accountable as possible by providing a copy of the interview notes to all participants, as well as providing access to the final results. This will be accomplished by forwarding a copy of my thesis directly to participants, and/or placing the research results in accessible locations, including the University of New Brunswick library, and the Chair of Native Studies at St. Thomas University. I do question, however, whether this type of accountability in any way makes the research process reciprocal. Reciprocity to me equals a fair exchange, and I am in no way bold enough to presume that my research results will necessarily be perceived by the participants as a fair exchange for their time and information.

Finally, the most uncomfortable and ambivalent part of this entire research process, aside from the interviews themselves, was the interpretation and presentation of participants' voices within my thesis. Joan Scott (1992) argues that the taken-for-granted approach to 'experience' obscures the contradictory and contested processes through which 'experience' is conceptualized and by which diverse subject positions are assigned, felt, contested and embraced. For this reason she argues that there is a need to highlight the "discursive character of experience", particularly where identity is indelibly inscribed in and through 'experience':

Given the ubiquity of the term [experience] it seems more useful to work with it, analyze its operations and to redefine its meaning... Experience is at once always already an interpretation and is in need of interpretation. What counts as experience is neither self-evident nor straightforward; it is always contested, always therefore political (Scott, 1992, p.37).

It is this very process of analysis which Abu-Lughod (1993) refers to as "writing against culture", removing the fixedness of boundaries between self and other and enabling a clearer understanding of how social life proceeds:

Individuals are confronted with choices, they struggle with others, make conflicting

statements, argue about points of view on the same events, undergo ups and downs in various relationships, and changes in their circumstances and desires, face new pressures, and fail to predict what will happen to them or those around them (Abu-Lughod, 1993, p. 14).

By showing that people in effect “live their lives”, Abu-Lughod argues that there is a need to represent through textual means how this happens. For this reason, I have interjected an analysis of how ‘living life’ occurs in relation to and through Aboriginal ‘rights’ discourse by weaving participants’ own experiences and understandings throughout this thesis<sup>17</sup>. The presentation of research findings in the subsequent chapters is my own work, and hence my responsibility in relation to misrepresentations. However, Wabanaki Peoples’ own experiences of the ‘logging issue’ have greatly contributed to my understanding of this land struggle. As such, I have tried to ensure that the diversity of Aboriginal voices is clearly heard, ‘privileging’ their descriptions, analysis and knowledge as expressed through their own voices.

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<sup>17</sup>Having said that, there still exists a fine line between textual social justice and academic colonialism which leaves me feeling profoundly ambivalent about the totality of this research.

## **Chapter Two**

### **Setting the theoretical ‘stage’ and choosing analytical ‘props’**

#### **Introduction**

The purpose of this chapter is to set the ‘counter-hegemonic stage’, so to speak, in order to outline the various theoretical and analytical tools I draw upon in order to develop a conceptual framework which allows me to present and analyze critically the Aboriginal ‘rights’ trickster. In particular, I will draw a number of analytical tools from postcolonialism(s) and discourse analysis to provide a conceptual framework within which to explore relations between power, knowledge and discourse, which in turn informs discussions on processes of ‘othering’, as well as the problematizing of ‘subjects’, ‘identity’ and ‘authenticity’ within cultural representations. Within this objective, I am taking on Donald Moore’s (1996, p.139) challenge to “situate resource struggles within the cultural production of landscapes” in recognition that resource conflicts are not simply struggles over physical landscapes. Using landscape metaphors, therefore, proves useful in this endeavour as they “...portray not objectively given relations which look the same from every angle of vision, but rather [refer to] deeply perspectival constructs inflected very much by the historical, linguistic and political situatedness of different sorts of actors” (Appadurai, 1990, p.7). Placing the ‘logging issue’ within the “cultural production of landscapes” opens up inquiry into the ways in which the spatial imagery of landscapes are constituted discursively such that meanings of landscapes become a site for multiple and conflicting claims.

#### **Discourse analysis and the dynamics of discourse, power and knowledge**

In *The Anti-Politics Machine*, James Ferguson (1994, p. xv) comments that “ideas and

discourses have important and very real consequences” leading him to ask the critical question, “what effects do these ideas bring about”? In removing the ‘innocent’ mask from knowledge and truth, discourse analysis plays a critical role in addressing this question by drawing attention to the linkage between power, knowledge and discourse. To begin to explore this relationship(s), it is necessary first to delineate the theoretical orientation I wish to invoke in using the term ‘discourse’.

Jane Parpart and Marianne Marchand (1995, p.2-3) describe discourse as “a historically, socially, and institutionally specific structure of statements, terms, categories and beliefs”. For Andrew Arno (1995, p.3) a discourse is distinct in that it makes sense to its participants, while guiding their performance - that is thinking, saying, doing things in the real material and social worlds - because of a shared set of language and social expectations, as well as shared material context. Arno believes that it is crucial to recognize that a discourse is in “direct contact with historical and material reality” so that emphasis can be appropriately placed on the “social dimension of language” (Arno, 1995, p.3).

These definitions of ‘discourse’ coincide with Joel Sherzer’s (1987, p.296-7) contention that a discourse is the “nexus, the actual and concrete expression of thought, language and society”, drawing attention to “the social and cultural backdrop, the ground rules and assumptions of language”. Discourses within this context represent “frameworks that embrace particular combinations of narratives, concepts, ideologies, and signifying practices, each relevant to a particular realm of social action” (Barnes and Duncan, 1992, p.8).

Recognizing the social contingency of discourses enables those engaging in discourse analysis to focus on the power and ideological effects of a particular discourse. According to Roger Andersen (1988, p.9), “social power can be created and justified through discourse and practices

shaped by language". Similarly, Bruce Lincoln (1989) argues that discourse supplements force in important ways:

Discourses of all forms - not only verbal but also symbolic discourses of spectacle, gesture, costume, edifice, icon, musical performance and the like - may be strategically employed to mystify the inevitable inequalities of any social order and to win consent of those over whom power is exercised thereby obviating the need for direct use of coercive force and transforming simple power into 'legitimate' authority (quoted by Richardson, Sherman and Gismondi, 1993, p.12).

Michel Foucault's work on the dynamics of discourse and power have been instrumental in exposing the intricate connections between knowledge, power and truth:

There can be no possible exercise of power without a certain economy of discourses of truth... we are subjected to the production of truth through power and we cannot exercise power except through the production of truth (Foucault, 1980a, p.93).

Foucault emphasizes the need to examine the specificities of power, and in turn its relationship(s) to knowledge and 'truth':

Once knowledge can be analyzed in terms of region, domain, implantation, displacement, transpositions, one is able to capture the process by which knowledge functions as a form of power and disseminates the effects of this power (Foucault, 1980b, p.69).

Insights on "the mechanisms through which certain orders of discourse produce permissible modes of being and thinking" (Escobar, 1995, p.5), how discourses "guide the possibility of conduct and put in order the possible outcomes" (Foucault, 1982, p.789), and the way in which each discourse has "its own distinctive set of rules or procedures that govern the production of what is to count as a meaningful or truthful statement" (Flax, 1992, p.452) have led to a search for previously 'silenced' voices in an effort to better understand localized constructions of reality/landscapes. This "insurrection of subjugated knowledges" (Foucault, 1980a) in turn challenges the normalization of grandiose discourses, critiquing the universal as a particular conceptual practice through which power



is exercised in such a way as to exclude or foreclose any knowledges which do not fit within its framework.

These understandings leave me to question, with respect to Aboriginal land struggles, whether the environment in which claims to access are based on 'rights' is not in and of itself an exercise of power where the nature of the debate is framed in such a way as to exclude other ways of knowing the landscape. What types of knowledges are qualified and disqualified, which subjects of experiences are acknowledged and which are diminished in the very instant of demanding 'is it (it is) an Aboriginal right'?

According to Foucault there exists in 'Western' societies a highly specific organizational relationship between power, truth and right such that right serves as both an instrument and transmitter of domination. In the very process of ascertaining 'rights', is not the very discourse of rights invested with the effects of power which it claims and with which it has so often been attributed? Wabanaki Peoples, for instance, who demand acknowledgment of Aboriginal land rights or attempt to prove the practice of commercial logging as an 'Aboriginal right' invest a view of the landscape, and hence a particular body of knowledge - namely notions of landownership, private property, and the physical primacy of land - with a power they have often resisted. For this reason Foucault believes that "right should be viewed, not in terms of legitimacy to be established, but in terms of the methods of subjugation that it instigates" (Foucault, 1980a, p.96).

Foucault's (1980a, p.97-99) understanding of the relationship between power, truth and rights give rise to a number of methodological preoccupations worthy of investigation, including the need:

to try and locate power at the extreme point of its exercise,... to study power in its external visage... [and] how things work at the level of ongoing subjugation,... [to understand that] power is employed through a net-like organization... [such that]

individuals are the vehicles of power, not its point of application,... [and to] conduct an ascending analysis of power, starting, that is, from its infinitesimal mechanisms... and then see how these mechanisms of power have been - and continue to be - invested, colonized, utilized, involuted, transformed, displaced, extended, etc. by ever more general mechanisms and forms of global domination.

Discourse analysis, in my examination of the 'logging issue', enables me to "expose the processes through which different claims are made in the contest over a resource" (Mackenzie, 1998, p.512). Within this context, I am engaging in a "hermeneutics of suspicion" (Said, 1993, p.255), where my analysis of the Aboriginal 'rights' trickster is "concerned with power at its extremities" (Foucault, 1980a, p.96), and particularly with interpreting how and where, through the appropriation of the trickster, "power installs itself and produces real effects" (Foucault, 1980a, p.97).

At the same time, Indigenous land struggles are inextricably linked with the struggles waged by genealogies, which Foucault (1980a, p.83) defines as the union of erudite knowledge and local memories which allows one to establish a historical knowledge of struggles, against the effects of power of a discourse, such as the discourse of rights:

... in contrast to the various projects which aim to inscribe knowledges in the hierarchical order of power... a genealogy should be seen as a kind of attempt to emancipate historical knowledges from that subjection, to render them, that is, capable of opposition, and of struggle against the coercion of a theoretical, unitary, formal and scientific discourse (Foucault, 1980a, p.85).

In this sense, this thesis engages in a project "to deconstruct meaning claims in order to look for the modes of power they carry and to force open spaces for the emergence of counter meanings" (Ferguson, 1991, p.324). I am, therefore, examining 'subjectivity', 'identity', and 'authenticity' as a function of discourse, asking the critical question, "under what conditions and through what forms can an entity like the subject appear in the order of discourse?" (Foucault quoted in Ferguson, 1991,

p.328). Approaching Indigenous land struggles from this vantage point, secures an expedient role for ideas forwarded in a field classified as 'postcolonial', particularly where themes of 'identity', 'authenticity', and 'subject experiences' play such a critical role in Indigenous land struggles.

### **Using postcolonial tools to explore Indigenous issues**

While I acknowledge and accept a number of criticisms launched against the field of postcolonialism as a whole (McClintock, 1994 and 1995; Rattansi, 1997; Dirlik, 1992; Shohat, 1992; Weaver, 1998), I would argue that there are aspects of postcolonial thinking which are useful in analyzing the political constitution of Indigenous land struggles, including the destabilization and breaking down of binary oppositions such as colonized/colonizer, centre/periphery, traditional/modern, national/international. Ali Rattansi (1997, p.481) stipulates that postcolonial theorizing "investigates the mutually constitutive role played by colonized/colonizer, centre/periphery, metropolitan/ 'native', in forming, in part, the identities of both". Accordingly, Stuart Hall (1996, p.246-7) contends that a principal value of postcolonial theorizing lies in its ability to direct attention to the ways in which colonisation was/is never simply external to the colonizer:

It [colonialism] was always inscribed deeply within them - as it became indelibly inscribed in the colonized... The differences of course between colonising and colonized remain profound. But they have never operated in a purely binary way...

Kumkum Sangari (1995, p.147) argues, whether it be the Western project of modernity, development or globalisation for that matter "it never simply mummifies or overlays indigenous cultures but is itself open to alteration and reenters into discrete cultural combinations".

Breaking out of familiar and static binaries is a first and crucial step in recognizing Indigenous agency and subjectivity. Far too often theoretical orientations have erased 'subjects' from the picture,

having denied them agency by portraying the 'subjects' as passive recipients who are merely acted upon. For example, while the methodological analysis used by George Tinker (1993) in his book *Missionary Conquest: The Gospel and Native American Cultural Genocide* highlights the unintentional, albeit genocidal, actions of missionaries, it also unfortunately erases Indigenous Peoples' agency from this narrative. In contrast, Homer Noley (1991) in *First White Frost* discusses prominent Native missionaries who laboured among their own people. "Natives were, of course, actors in the drama as well. A response was required of them. Remarkably, despite brutality, a great many Natives did willingly embrace the alien faith and some of them went on to carry the message to others" (Weaver, 1998, p.5). In refusing 'here and there', 'then and now' types of analogies, postcolonial thinking acknowledges that relations which characterize 'the colonial', while still in existence, are no longer in the same place and relative position. Rather some other, related but as yet emergent, new configurations of power-knowledge relations are beginning to exert their distinctive and specific effects (Hall, 1996, p.254).

This acknowledgment is crucial for any comprehensive investigation of Indigenous struggles for it uses as a springboard an appreciation for the complexity of relations, interconnections and discontinuities between and within colonized and colonizer cultures. While colonialism has and continues to have profound effects on Indigenous societies, it has never done so in an egalitarian fashion. That is to say, precisely because colonialism has always functioned along a number of axes, and because colonialism has always involved not only a system of rule, power and exploitation but also a system of knowledge (Hall, 1996), its impacts have not been the same for all colonial subjects. Certainly the general effects of colonization are felt by Indigenous Peoples the world over, but to speak of a colonized/Indigenous experience or an Indigenous identity is to miss the pluralities and

multiplicities of experiences and identities. As Carol LaPrarie (1994, p.14) argues:

The pervasiveness of 'equality of victimization' stems from what is widely recognized by Aboriginal and non-Aboriginal people alike as the historical injustice of colonization... Degrees of victimization have not been isolated because to do so would diffuse the strength for the justification of Indigenous control.

It is within the context of 'inequality of victimization' that postcolonial theorizing offers a second useful tool, namely the problematizing of 'subject' and 'experience' which in turn is linked to 'identity'. I fully agree with Jace Weaver (1998, p. x) that "the dominant culture has always sought to homogenize and essentialize Native Americans and tried to determine those things that are 'Indian'". The naming process, critical to homogenizing/essentializing discourses, has always been an integral part of colonial landscaping, extending from places, to people, to actions and things. For example, J.B. Harley (1994) argues that place names in New England cartography played an essential role in colonial land acquisition and Indigenous displacement. "Naming a place anew is an act of political possession in settlement history. Equally the taking away of a name is an act of dispossession" (Harley, 1994, p.296). Anne Douglas similarly articulated, in a paper presented at the 1998 Colloque Nord-Laval en Sciences Humaines held at Laval University, that the designation and use of Christian names in Inuit schools influenced transformations of Inuit personal and group identity, assigning Inuit children new roles as social participants in a culturally-unfamiliar environment. Christopher Bracken (1997) in his insightful book *The Potlach Papers* explores how the name 'potlach' became attached to an Indigenous activity unfamiliar to European eyes. By investigating the lengthy colonial 'potlach' paper trail, he illustrates how naming this activity 'potlach' brought into existence a colonial invention that reflected not 'the Native' but rather 'the European', an invention that subsequently enabled colonial officials to control the 'unfamiliar'.

As the above works illustrate, the naming process brings the unknown or unfamiliar into the namer's own cognitive framework such that it renders the once 'unknown' familiar. And it is this familiarity which enables that being named to be brought into a regime of control and management. By generally defining colonialism as organization and arrangement, V.Y. Mudimbe (1988, p.20) contends that reductionist colonial discourses speak neither about Indigenous Peoples or their landscapes, "but rather justify the process of inventing and conquering a continent and naming its 'primitiveness' or 'disorder' as well as the subsequent means of its exploitation and methods for its 'regeneration'". Hence naming or managing within a colonial context is a highly political and possessory process, an act that engenders dangerous consequences for those belonging to or associated with that which is being classified. A prime example is Section 12(1)(b) of the *Indian Act* which stripped Aboriginal women of their "Indian" status if they married non-Aboriginal men. As Freda MacDonald (1998, p.69) explains:

I hold in my hand a card I was given by the government of Canada at the time I married a non-Native man. It reads, "Not deemed to be an Indian within the law or any other statute". It is a record of the loss of my identity. It is my alienation, banishment, and displacement from my birthplace and country by the government and its laws.

This managerial law, and its subsequent amendment Bill C-31, has and continues to have grave consequences for Aboriginal women, children as well as Aboriginal Nations.

This colonial naming process or regime of representation has not dissipated with the passing of time. As William Baldrige (1993, p.24) explains, "for Native Americans, perhaps the most pervasive result of colonialism is that we cannot even begin a conversation without referencing our words to definitions imposed or rooted in 1492". Generally speaking, non-Natives engage in it every time terms like 'Indian', 'Native', 'Aboriginal' or 'Indigenous' are used. Whether 'our' knowledge

is based upon invented racial stereotypes or new-age 'primitivism', non-Natives across this continent generally believe in 'knowing' what 'Aboriginality' or at least the essence of 'Aboriginal cultures' is all about.

By knowing the native population in these terms, discriminatory and authoritarian forms of political control are considered appropriate. The colonized population is deemed to be both the cause and effect of the system, imprisoned in the circle of interpretation (Bhabba, 1994a, p.83).

Jace Weaver is certainly correct in claiming that the 'settler' society always engages in homogenizing and essentializing discourses vis-à-vis Indigenous Peoples.

Having said that, cultural politics - the political nature in and for cultural representation (Emberley, 1996, p.97) - is not the exclusive domain of a colonizer/colonized binary. Certainly over the past number of years colonized peoples the world over have "...begun to find their voices and assert their own agency and subjectivity" (Weaver, 1998, p.14). In Turtle Island this is evident in the numerous Indigenous political organizations that sprang up when the Canadian government introduced the 'White Paper' in 1969 and the literary arrival of Aboriginal authors on the national scene in the 1970s, to name but a few examples. These endeavors are often defined as representations or agencies of resistance against colonial representations and processes. However, postcolonial thinking demands that critical scholars move beyond such narrow interpretations in an effort to uncover what else is going on. According to Julia Emberley (1996, p.100) 'both in their characterization and as writing subjects, Aboriginal women are writing themselves and their people into history as subjects to and of their own making'. She goes on to assert, however, that:

the extent to which Aboriginal women's writing can and does resist colonialist subjectivity and its relationship to the symbolic formation of internal colonialism, when Aboriginal people, too, are subject to the effects of being a colonialist subject, is a complicated question (Emberley, 1996, p.101).

Ella Shohat (1992, p.101) observes that the politically ambiguous developments in the 'Third World' over the past few decades have brought:

the realization that the wretched of the earth are not unanimously revolutionary... and despite the broad patterns of geo-political hegemony, power relations in the Third World are also dispersed and contradictory... Conflicts [occur] not only between but also within nations, with the constantly changing relations between dominant and subaltern groups.

It is imperative to recognize that the phenomenon of internalized colonialism (Freire, 1970; Fanon, 1963; Bear Nicholas, 1993 and 1996; Ryan, 1976; Adams, 1995) plays a critical role in intra-nation struggles and manifestations of violence:

From studies of colonialism around the world, we know that it is common, almost axiomatic, for colonized people to seek relief from their oppression or sense of crisis by adopting ways of the colonizer, and unwittingly participating in the oppression of their own people (Bear Nicholas, 1994a, p.235).

As Audre Lord (1984, p.112) warns, you cannot tear down the house of oppression by resorting to the tools of the oppressor.

The phenomenon of internalized colonialism and its impact on subjectivity and experiences have led postcolonial thinkers to problematize 'subjects', 'experiences' and 'identities', and to not take these categories for granted. According to Gayatri Spivak, we need to "make visible the assignment of subject-positions and begin to understand the complex and changing operations of discursive processes which formulate identities" (Spivak quoted in Scott, 1992, p.33). Not to problematize the 'subject' is to make invisible the ways in which power functions productively as incitement and interdiction (Bhabba, 1994a, p.72). Politics and power exist at the various levels through which subjectivity and agency are articulated:

If the subject is constituted by power, that power does not cease at the moment the



subject is constituted, for that subject is never fully constituted but is subjected and produced time and again. That subject is neither a ground nor a product, but a permanent possibility of a certain resignifying process (Butler, 1992, p.13).

From this vantage point 'subjects, in some way, are always destabilized' (Emberley, 1996, p.98) and hence always a problematic:

A repertoire of conflictual positions constitutes the subject... The taking up of any position, within a specific discursive form, in a particular historical conjuncture is thus always problematic - the site of both fixity and fantasy. It provides a colonial 'identity' that is played out... in the face and space of disruption and threat from the heterogeneity of other positions (Bhabba, 1994a, p.77).

Looking at processes of subjectivity forces one to inquire not only into the ways subjects are produced and agency made possible, but also into ways in which race, sexuality and class intersect with gender, the ways in which politics organize and interpret experiences, and the ways in which identity is always a contested terrain (Scott, 1992, p.31). Cultural identities are "the unstable points of identification or suture, which are made, within discourses of history and culture. Not an essence but a positioning"(Hall, 1994, p.395). Viewing identity as a production, as a discursive process composed within representations is to place it within a politics of construction:

Subjects are constituted discursively, but there are conflicts among discursive systems, contradictions within any of them, multiple meanings possible for the concepts they deploy (Scott, 1992, p.34).

Deconstructing 'subjects' and 'identities' is not to 'proclaim the end of subjectivity...[nor] to displace it politically' (Weaver, 1998, p.14 and 15). On the contrary, "deconstruction implies only that we suspend commitments to that which the term 'subject' refers, that we consider the linguistic functions it serves in the consolidation and concealment of authority... and to claim that certain versions of the subject are politically insidious" (Butler, 1992, p.13 and 15). Joan Scott (1992, p.38) similarly argues that "this kind of approach does not undercut politics by denying the existence of

subjects, it instead interrogates the processes of their creation... and opens up new ways for thinking about change". For Emberly (1996, p.102) the loss of a stable subject "leaves us open to the possibility of constructing ourselves as subjects...[while] the production of alternate subject positions allows for a diversity of articulations to take place".

A recognition of the divergent pulls on identity and the diversity of experiences is clearly significant in the context of the political constitution of Indigenous land struggles. As Donald Moore (1996, p.136) argues, "class, gender, age and ethnicity are important in shaping not only the experience of resource struggles... but also social actors' participation in those fields of conflict" . In reviewing the 'logging issue', one certainly needs to pay attention to the fact that social actors participating in this struggle were overwhelmingly male, predominantly status, on-reserve Natives, generally within a specific age group, and it could be argued that some of the more outspoken actors belonged to a particular 'class'. To disavow these 'internal' diversities, according to Homi Bhabba (1994a, p.75), "turns colonial subjects into misfits- a grotesque mimicry or 'doubling' that threatens to split the soul and whole... Denying the play of difference constitutes a problem for the *representation* of the subject in significations of psychic and social relations". bell hooks (1994, p.426) similarly remarks with respect to African-Americans that when diversity is ignored "it is easy to see black folk falling into two categories; nationalist or assimilationist, black-identified or white-identified".

This is not to say that a recognition of diversity forecloses collective identity or simplifies everything to an individual basis, something which is of great concern to many Aboriginal Nations. "Putting aside for the moment the diasporic nature of much of modern Native existence, one must nevertheless admit that there is something real, concrete and centred in Native existence and identity"

(Weaver, 1998, p.14). This coincides with Hall's assertion that difference persists in and alongside continuity:

The boundaries of difference are continually repositioned in relation to different points of reference... Its complexity exceeds a binary structure of representation. At different places, times, in relation to different questions, the boundaries are re-sited. They become not only what they have, at times certainly been - mutually excluding categories, but also what they sometimes are - differential points along a sliding scale (Hall, 1994, p.396).

### **The politics of Indigenous nationalism**

Often, however, the sliding scale scenario is discarded in favour of exclusivity or essentialism, particularly when colonial subjects interact or negotiate with the dominant culture. The difficulty of living in a colonial environment, specifically where the dominant society speaks about colonial subjects in essentializing 'then and now' or 'endangered specie' terms of reference, is that in an effort to counteract those representational boundaries colonial subjects tend to respond in a similar fashion.

Senja Gunew (1987, p.262) points out:

the oppressed Other supposedly speaks on behalf of the group she or he represents... In the drive towards a universalism one cannot admit that those oppressed Others whom we hear as speaking authentic experience might be playing textual games.

Weaver refers to this as 'strategic essentialism' where it is necessary to speak about a group's - as opposed to a given individual's - beliefs in order to say *something* rather than nothing (Weaver, 1998, p. x). Howard Adams (1995, p.132) argues that the deployment of essentialism within Aboriginal nationalist discourses serves to restore, revive and preserve Aboriginal histories and cultures:

It [Aboriginal nationalism] generates from a desire to reverse an intolerable situation and to challenge the legitimacy of the dominant system. It is a desire for freedom from both domination and contempt... [Nationalism] most importantly develops from

the struggles against imperialism, suppression and colonization.

Indigenous usage of 'strategic essentialism' has certainly served a significant purpose in decolonization processes, in asserting Indigenous identities and restoring communities, while at the same time instigating and advancing anti-imperial struggles (Said, 1993, p.218). Nicholas Thomas (1994, p.188) similarly asserts that:

[The] gains produced by nativism were probably more significant than the drawbacks arising from a recapitulation of a restrictive primitivism...[and] essentialist constructions of native identity are likely to continue to play a part in gaining ground for indigenous causes....

But at what cost? Diana Brydon (1995, p.141) comments that while she can sympathize with the usage of tactical strategies, "even tactically they prove to be self-defeating because they depend on a view of cultural authenticity that condemns them to a continued marginality and eventual death".

Essentialist constructions within Nativist/nationalist discourses can result in "a panacea for not dealing with economic disparities [and] social injustices... Cultural statism is often the result of a separatist, even chauvinist and authoritarian conception of nationalism" (Said, 1993, p.217). Gareth Griffiths (1995, p.238) similarly insists that "more subtly, it may construct a belief in the society at large that issues of recovered 'traditional' rights are of a different order of equity from them right to general social justice and equity". Anne McClintock (1995, p.352) argues that "all nationalisms are gendered, all are invented, and all are dangerous... in the sense that they represent relations to political power and to the technologies of violence".

Franz Fanon's warning of the 'pitfalls of national consciousness' are as poignant today as ever. Nationalisms enjoy a certain 'joie de vivre' in the heyday of their agency by mobilizing people with slogans of independence, freedom and justice. Through colonial reifications of 'us versus them',

nationalist movements “celebrate unity where none had existed before and create the illusion of a collective identity through the political staging of vicarious spectacles” (McClintock, 1995, p.373). But precisely because the power/knowledge fault lines of national identity are so precarious, and because Indigenous nationalisms assert their presence within a colonial context which falsely adheres to an us/them dichotomy, the winds of ‘justice’ rhetoric soon dies down. And it is within this lull that ‘colonialism recovers its balance... pulls every string shamelessly [and] is only too content to set at loggerheads those who only yesterday were leagued against the settler” (Fanon, 1963, p.160-161).

Accordingly, Adams contends that Aboriginal nationalism can become an oppressive and colonizing force, changing from a cultural nationalism to a cultural imperialism.

It then becomes a force in self-suppression - an opium of the masses... It is a false form of nationalism stressing legends and myths the state uses to direct Natives’ attention away from revolutionary nationalism. Cultural imperialism rejects issues of class struggle, and therefore, leads Aboriginals to accept domination uncritically (Adams, 1995, p.135).

While nationalist discourses, therefore, may serve to mobilize the masses, those who deploy such rhetoric also engage in “projecting a fetishistic denial of difference onto a conventionally abstracted ‘collective’” (McClintock, 1995, p.388) which for Adams often results in “a pseudo-Indian nationalism” which embodies a “caricature form of Native culture which the colonized have internalized as their authentic culture. Thus it becomes political oppression of the worst type”(Adams, 1995, p.134).

### **The Authenticity conundrum**

It is within the context of staging anti-colonial struggles, of asserting Indigenous identities as well as the viability and continued survival of Indigenous Nations, that the authenticity conundrum

becomes most poignant, insidious and divisive. According to Margery Fee (1995, p.243):

**the demand for authenticity denies Fourth World [peoples] a living, changing culture. Their culture is deemed to be other and must avoid crossing the fictional but ideologically essential boundaries between “Them and Us, the Exotic and the Familiar, the Past and the Future, the ‘Dying’ and the Living.**

How is this playing itself out within Aboriginal Nations? In many cases the power/knowledge regime which once characterized the ‘classic’ colonial regime has manifested itself in neo-colonial practices where oppressive methods are disguised under an air of ‘authenticity’. This not only preserves oppressive authority as “free enterprise in an honest way” (Penn, 1992) but also legitimizes unjust governing as an exercise of self-governance or self-determination. As V.S. Naipaul (1979, p.135) comments “it takes an African to rule Africa, the colonial powers never understood that”. The departure of the foreigner<sup>1</sup>, according to Fanon, will, therefore, equally give rise to internal rivalries:

**...minor confraternities, local religions, and maraboutic cults will show a new vitality and will once again take up their round of excommunications... It splits up the people into differential spiritual communities, all of them kept up and stiffened by colonialism and its instruments (Fanon, 1963, p. 160 and 161).**

There are numerous examples which can be drawn upon to illustrate this mechanistic fractionalism taking place within many Aboriginal Nations, a fractionalism which generally plays itself out in a context of ‘identity’, ‘authenticity’ and ‘authority’. In communities like Kahnawake, Kanesatake, and Akwesasne, peoples’ support has become divided along lines of traditionalism and modernism, the governing structure of the longhouse versus that of the band council (Alfred, 1995; York and Pindera, 1991). And even within the rubric of traditionalism there is division on its

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<sup>1</sup> In the ‘Canadian’ context this departure can not be defined within a classic decolonization context, but may be comparable to the general movement towards self-government or ‘management’ where Aboriginal peoples are now replacing non-Aboriginals within the governing structure of the Department of Indian Affairs and Northern Development responsible for the enforcement and management of the Indian Act.

interpretation and contemporary use. Thus in Kahnawake there exists the Mohawk Trail Longhouse, the Warrior Longhouse and the Five Nations Longhouse, all of which engage with, appropriate, and reinterpret various aspects of the *Kaienerekowa* - the Great Law of Peace (Alfred, 1995). “This lack of consensus has manifested in mainly negative ways and has led to serious confrontations within the community” (Alfred, 1995, p.83).

Similar fractionalism has also manifested itself in relation to community membership and in turn definitions of identity. These divisions were particularly ardent in 1985 when the Canadian government imposed *Bill C-31*, which was intended to rectify the sexually discriminatory provisions of the *Indian Act*. Many nations refused and continue to refuse to accept back those women and children who had originally lost their ‘Indian status’ as a result of the *Indian Act* and then had their ‘status’ reinstated as a result of *Bill C-31*. This issue has not only impacted male/female relations but also ruptured kin relations where brothers were pitted against sisters, fathers against daughters, etc. precisely because the issue became classified as a self-determination concern. In some First Nations, it has resulted in some stringent membership codes, such as blood quantum, inter-marriage regulations, and residency rules in an effort to preserve and protect cultural integrity and authenticity.

The proverbial ‘fractionalism’ buck, however, does not stop here. Internal divisions and frictions, which have in turn resulted in ‘cultural silencing’, also occur in the realms of status/non-status, band members/non-band members, on-reserve/off-reserve, and along the lines of age, gender, language<sup>2</sup>, and kinship networks. Federal government initiatives to promote Aboriginal

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<sup>2</sup> I remember a friend sharing in class one time his experiences of attending a meeting for Mi’kmaq youth. During the first break they began introducing themselves to each other. My friend was asked if he could speak Mi’kmaq to which he replied ‘no’. After this exchange he noticed that he was suddenly being treated differently, as though he was an outsider. He argued that the other youth had made him feel like he was not ‘Mi’kmaq because he could not speak the language.

entrepreneurship has increasingly brought class into intra-nation struggles as well (Cayo, 1997). This is particularly significant given that a majority of Aboriginal communities continue to have high rates of unemployment such that those entrepreneurs having the capabilities to employ people begin to wield a significant amount of political power within the community (RCAP, 1996). The governing structure of band councils, having derived their authority through the *Indian Act* and having generally been charged with nepotism, corruption and lack of accountability, are often classified as an 'illegitimate authority' (Cayo, 1997; Perley, 1996; Bear Nicholas, 1994). Often their actions, whether they be in the best interest of the community or not, derived from good intentions or bad, are cast off as simply colonial puppetry, part and parcel of the neo-colonial system of rule (Perley, 1996; Adams, 1995).

The cultural silencing that accompanies notions of authenticity, and hence authority, manifests itself in a wide variety of venues. For instance, a lecture given by Gerald Alfred in 1996, at the University of New Brunswick, revolved around the blending of traditionalism and modernism, the negotiable and non-negotiable aspects of Mohawk identity. For Alfred the 50% blood quantum was non-negotiable, while the traditionally held principle of sharing was. After the lecture I overheard a group of Native students criticizing and condemning what he had said, and concluding that his entire perspective was tainted - he was a neo-colonialist, an 'apple'<sup>3</sup>. I also remember a class discussion on the movie *Pochahontas*, how it portrayed Aboriginal Peoples and whether it was suitable viewing for Aboriginal children. The majority of students in the class held that it was inappropriate precisely because the movie reinforced racial stereotypes about Aboriginal Peoples and

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<sup>3</sup> It was explained to me by a friend that the insulting label of 'apple' refers to being red on the outside and white on the inside.



the notion of the 'dying race'. One Miigemag student, however, disagreed with the class arguing that while the movie had some serious faults, it did at the same time place Aboriginal peoples and cultures at the centre of the story. Indeed, she felt that seeing Aboriginal peoples in a central as opposed to a marginal position within a mainstream movie could very well make her son feel good and proud of being Mi'kmaq. After class I heard various Aboriginal students opposed to her position state that she had internalized colonialism to such an extent that she could not see 'the forest for the trees', that she was oblivious to the way in which colonialism tainted her perspective on the movie.

Cultural silencing is further exacerbated by 'external/outsider' interpretations of Indigenous authenticity, interpretations that are partly popularized through Indigenous movements' usage of 'strategic essentialism'. The complication of deploying such a strategy today, of course, is that the environment in which it is being asserted has changed. Today, cultural consumerism<sup>4</sup> is becoming increasingly popular, where particular versions of 'authentic cultures' are being bought and sold as a commodity; environmental and biodiversity concerns are popularizing and fetishizing Indigenous knowledges; and new-age movements in their quest for a deeper spiritual engagement with the world are appropriating, exploiting and distorting Indigenous spiritual practices<sup>5</sup>. In other words, the

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<sup>4</sup> I am thinking here of the entertainment and tourist industries, as well as the cultural product sector, which display and sell Indigenous Peoples and cultures in much the same way as museums and 'wild west shows' have traditionally done. A key selling feature within these industries is naturally 'authenticity', an authenticity which is significantly based on the fact that it is more often than not created, managed and controlled by Indigenous Peoples themselves. For further reading see Daniel Francis (1995), "Marketing the Imaginary Indian", Voices of the First Nations, eds. F. Ahenakew, B. Gardipy, and B. Lafond, Toronto, McGraw-Hill Ryerson Limited, 48-59; Marianna Torgovnick (1990), Gone Primitive: Savage Intellectuals and Modern Lives. Chicago, University of Chicago Press; S. Elizabeth Bird (1996), Dressing in Feathers: The Construction of the Indian in Popular American Culture, Boulder, Westview Press; Gerdine Van Woudenberg (1998), "Treading in the landscapes of others: Marketing cultures and claiming cultural ownership", paper prepared for an International Affairs Class (IA 46.504), NPSIA, Carleton University.

<sup>5</sup> See Andrea Smith (1991), "The New Age Movement and Native Spirituality", *Indigenous Women*, 1(1); Myke Johnson, "Wanting to be Indian: When spiritual teaching turns into cultural theft", November 26, 1996, Online, Internet, <http://dickshovel.netgate/respect.html>; Sweating Indian Style (Women make Movies).

contemporary context in which Indigenous Peoples are exposing injustices and asserting their 'rights' is one in which 'their' differences have not only become popularized and solidified, but also one in which those differences have become 'trendy'. As Trinh Minh-ha (1995, p.266-7) explains:

now, i am not only given the permission to open up and talk... i am also encouraged to express my difference. My audience expects and demands it... They, like their anthropologists whose specialty is to detect all the layers of my falseness and truthfulness, are now in the position to decide what/who is 'authentic' and what/who is not.

According to Gareth Griffiths (1995, p.241), "when 'authentic speech' becomes conceived as ... a fetishized cultural commodity it may be employed to enact a discourse of 'liberal violence', re-enacting its own oppression on the subject it purports to represent and defend".

We should not undermine the role external notions of 'authenticity' play in the politics of Indigenous struggles, including land struggles. I would argue that Mi'kmaq, Welastekwiyik and Wabanaki movements have over the years gained New Brunswickers' 'sympathy' for Aboriginal land rights. Part of that sympathy, of course, derives from fetishized notions of the 'green Indian' or the 'environmentally sound Indian'. As a result, when Wabanaki loggers went into the woods to exercise their Aboriginal 'right' and indiscriminately cut down trees wherever they could gain access, a large majority of New Brunswickers were outraged. It almost seems as though the 'sameness' of the process, the commercial enterprise of logging, relinquished any 'right' Aboriginals may have had to the land. In other words, the perceived 'differences' of Mi'kmaq and Welastekwiyik Peoples have become solidified to such a degree that anything they do which appears to be reflective of 'white' culture becomes labeled as 'unauthentic'. It is here, of course, that the discourse of sameness takes control, and within this discourse equal treatment serves as the rule of thumb. And if everyone is the same then they ought to be treated in a similar manner such that no special 'privileges', such as

Aboriginal 'rights', are allowed.

Clearly, there are real dangers in advancing authenticity claims and authentic Indigenous representations - a danger that manifests even more insidiously when appropriated and expressed through 'white' mediums of representation. It is therefore crucial to explore and expose the manner in which this 'authenticity conundrum' actualizes itself vis-à-vis Indigenous land struggles. As Griffiths (1995, p.237) notes, authenticity claims:

...by overwriting the actual complexity of difference, may write out that voice as effectively as earlier discourses of reportage. In fact, it may well be the same process at work, and the result may be just as crippling to the efforts of indigenous peoples....

The crippling effect of the authenticity conundrum is evident in Minh-ha's (1995, p.268) comment:

Every path I/i take is edged with thorns. On the one hand, i play into the Saviour's hands by concentrating on authenticity, for my attention is numbed by it and diverted from other, more important issues; on the other hand, i do feel the necessity to return to my so-called roots, since they are the fount of my strength, the guiding arrow to which i constantly refer before heading for a new direction.

These types of 'schizophrenic' understandings of 'self', of Indigenous identity and what that means to self-in-community development, are but another colonial manifestation, part of "colonialism's culture" (Thomas, 1994) . How many times have those of us who are 'white', those of us belonging to the colonizer culture been forced to deal with authenticity concerns? Is there such thing as an authentic Dutch or Canadian identity? Does it even matter to us? To therefore not ask "whose interests are being served by this retreat into preserving an untainted authenticity" (Brydon, 1995, p.141), to overlook the realization that the ideal of authenticity is relative and context-bound (Fee, 1995, p.245) is to ignore a power/knowledge battle that has increasingly come to play a critical role in all contemporary Indigenous struggles.

## **Conclusion**

This chapter has developed a conceptual ‘stage’ upon which to narrate the ways in which mechanisms of power merge, converge, invest, transform and displace the interface(s) between colonial structures and Indigenous agency. Focusing on power, postcolonial and discourse analysis ‘props’ enables me to explore the manner in which Aboriginal ‘rights’ discourse produces a certain economy of ‘knowledge’ and ‘truths’, and to investigate how this dissemination through the Aboriginal ‘rights’ trickster influences Wabanaki responses to and actions in the ‘logging issue’. At the same time, these analytical tools allow me to move beyond static binaries, to problematize ‘subjects’ and ‘experiences’ in such a way that highlights the multiplicity of identities and perspectives within Mi’kmaq and Welastekwiik communities. As such, these tools critically engage a recognition of the divergent pulls on ‘identity’ which challenge and subvert cultural ‘authority’ and ‘authenticity’ claims. Application of these tools, therefore, will inform the subsequent analysis of the Aboriginal ‘rights’ trickster, beginning with its performance in the New Brunswick provincial court.

## **Chapter Three**

### **Legal dynamics of the Aboriginal 'rights' trickster**

#### **Introduction**

“What rules of right,” asks Michel Foucault (1980a, p.93), “are implemented by the relations of power in the production of discourses of truth? Or alternatively, what type of power is susceptible of producing discourses of truth that in a society such as ours are endowed with such potent effects?” With this methodological preoccupation serving as a background, Foucault has sought to expose not only how right is an instrument of domination but also the extent and forms in which right, and all its associated agencies of application, transmits and puts in motion relations of domination (Foucault, 1980a, p.95-95). The following chapters of this thesis engage in a similar project vis-à-vis Aboriginal ‘rights’. This chapter begins this critical engagement by drawing upon the trilogy of Thomas Peter Paul cases in New Brunswick, which sparked the ‘logging dispute’, to explore not only the legal dimensions of Aboriginal ‘rights’ discourse, but also to expose the type of ‘knowledge’ and ‘truths’ this discourse draws upon and reaffirms. I am thereby acknowledging Foucault’s assertion that “...it is truth that make the laws, that produces the true discourse which, at least partially, decides, transmits, and itself extends the effects of power” (Foucault, 1980a, p.94). This acknowledgment is particularly significant given that the struggle over land in Turtle Island has predominantly played itself out in ‘Canadian’ courtrooms.

At the same time, as Jane Flax argues, each discourse has its own set of rules or procedures such that ‘truth’ is always contextual and rule dependent. “The rules of a discourse enable us to make certain sorts of statements and to make truth claims, but the same rules force us to remain within the system and to make only those statements that conform to those rules”(Flax, 1992, p.452). Resolving

conflicts, therefore can only occur if there is “prior agreement on the rules, not the compelling power of objective truth”(Flax, 1992, p.452). Aboriginal groups or individuals who bring, or are forced to bring, their land struggles within the rubric of Aboriginal ‘rights’ must do so within a set foundation of rules that govern not only the production of the discourse but also the nature of Aboriginal claims. What I therefore explore in this chapter is what those rules are that govern Aboriginal ‘rights’ discourse, and more specifically how the ambivalent functioning of these rules serve to police counter-hegemonic spatial displacement.

This chapter begins by reviewing what the various courts said in the Thomas Peter Paul case in order to gain an understanding of how the rules and assumptions that govern Aboriginal ‘rights’ discourse play themselves out within the legal realm. While I recognize that from a legal perspective this is a ‘weak’<sup>1</sup> case with which to explore Aboriginal ‘rights’ and ‘title’ arguments (van der Laan, personal communication, February 1999), the underlying assumptions of the discourse and the realm of ‘truths’ upon which the discourse depends, and with which I am most concerned, are as distinguishable in this case as in any other. As lawyer Jake van der Laan explained, Aboriginal ‘rights’ and ‘title’ are a legal fiction (van der Laan, personal communication, February 1999), and that fiction, in whatever form it may take in Aboriginal cases, is based upon a distinctive body of knowledge. In order to outline that knowledge base, as well as its inherent contradictions, it is necessary to review the legal discourse that flows from that knowledge as evidenced in the Thomas Peter Paul case. As Homi Bhabba (1994a, p.67) argues, “to understand the productivity of colonial

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<sup>1</sup>In my discussions with lawyers Jake van der Laan and Cleveland Allaby, it was explained to me that this case was considered legally weak because there had been no extrinsic evidence introduced to fully substantiate Thomas Peter Paul’s Aboriginal ‘right’ claim, such as Aboriginal oral testimony, anthropological and historical evidence outlining traditional Aboriginal land use and occupation. This case, as Cleveland Allaby explained, was generally based on the power of persuasion, as opposed to the power of evidence.

power it is crucial to construct its regime of truth". For this reason, I will move on to draw attention to the sorts of assumptions embodied within rights discourse and explore its contradictory and ambivalent nature in light of Mi'kmaq and Welastekwiyik landscapes. What becomes evident is that these 'legal fictions' serve to entrench a national narrative based upon a colonial image of both the landscape and its original inhabitants.

### **Her Majesty the Queen versus Thomas Peter Paul**

As was noted in the introductory chapter, Thomas Peter Paul was charged under Section 67(2) of the New Brunswick *Crown Lands and Forest Act*, S.N.B. 1980, C-38.1 with 'illegally' harvesting bird's eye maples on 'Crown' lands. His defense in the provincial court rested on the argument that the harvesting of those logs was in fact legal according to a number of treaties negotiated between the British and Wabanaki in the 18<sup>th</sup> century. To support this 'treaty right' claim a number of historical documents were placed in evidence before Judge J. Frédéric Arseneault, including:

- Submission and Agreements of the Delegates of the Eastern Indians, December 15, 1725; otherwise known as Dummer's Treaty or the Treaty of Boston
- Dummer's Proclamation, December 15, 1725
- Treaty of Peace with the Eastern MickMack Tribes, November 22, 1752
- Doucette's Promises, June 4, 1726 (two separate documents) and Doucette's Promises and Other Items, June 4, 1726<sup>2</sup>

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<sup>2</sup>The Trial transcript refers to these three documents as Mascarene's Treaty. However, it was noted by the New Brunswick Court of Appeal that Doucette's Promises related to a treaty known as Mascarene's Treaty, also made at Boston on December 15, 1725. The Court noted that this treaty was not placed in evidence, but that it was agreed that

- **Belcher's Proclamation, May 4, 1762**

The defense's purpose for submitting these documents, despite existing legal precedents concluding the non-applicability of some of these agreements to 'New Brunswick' Aboriginals, was two-fold. First, the defense lawyer, Cleveland Allaby, argued that, notwithstanding disputed territorial relevancy, the wording of these documents expressed British intentions at the time of execution vis-à-vis Aboriginal territory. It is important to recognize that the Atlantic 'Canada' region is classified as a "Peace and Friendship Treaty Area"<sup>3</sup>, referring to the fact that agreements entered into by and between Indigenous populations and the British in the 18<sup>th</sup> Century did not include the surrender of any land by Aboriginal Peoples (Bear Nicholas, 1994 and 1996; Department of Indian Affairs Northern Development (DIAND), 1985). Generally, earlier treaties and proclamations were intended to "secure the neutrality or assistance of Indian Nations,... to facilitate Indian trade, ...(and) to stabilize relations with Indian peoples to further the economic and military objective of the colonial power"(DIAND, 1985, p.2). However, and as Allaby attempted to show in Peter Paul's defense, the spirit of those agreements did provide for a general recognition of Aboriginal interest in the land. Take for example the following paragraph contained within the 1725 Submission and Agreements of the Delegates of the Eastern Indians:

...Saving unto the Penobscot, Narridgewalk and other Tribes within his Majesties Province aforesd, and their natural decedents respectively, All their lands, liberties and properties not by them conveyed or sold to, or possess'd by any of the English subjects as aforesd... (Arseneault, 1995, p. 55/20-25).

Belcher's Proclamation, according to the defense, provided further evidence of this territorial

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Doucette's Promises reflected the terms of the Treaty (*Enbanc*, 1998, p.3).

<sup>3</sup>See the National Atlas Information Service, Online, [Http://156.32.161/wwwnais/select/indian/english/html/Indian.html](http://156.32.161/wwwnais/select/indian/english/html/Indian.html)



recognition by referring to settler encroachment and possession taken “of lands, the property of which they [Aboriginals] have by treaties reserved to themselves” (Respondents Submission, 1997, p. 40). This proclamation issued in 1762 demanded that “all persons what ever who may have willfully or inadvertently seated themselves upon any lands reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom” (Respondents Submission, 1997, p.40). The proclamation then proceeded to outline a geographical description of the area claimed by Aboriginal Peoples:

And where claims have been laid... for Fronsac Passage and from thence to Nartigonneich, and from Nartigonneich to Piktouk, and from thence to Cape Jeanne, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Rommentin, from thence to Miramichy, and from thence to Bay Des Chaleurs, and the environs of Canso (Respondents Submission, 1997, p.40).

By making reference to a number of historical maps in an attempt to delineate the area to be covered by this description, defense counsel submitted that it did in fact encompass the area where Thomas Peter Paul harvested the bird’s eye maples in May of 1995 (Arseneault, 1995, p. 73/14-20).

The defense also argued that in addition to recognizing Aboriginal ‘title’ the documents expressly recognized and intended to prevent interference with ‘traditional’ activities engaged in by Aboriginal Peoples at that time. For instance, Allaby pointed out that all three of the agreements/promises made in 1726 under John Doucette, then Lieutenant Governor of Annapolis Royal, contained the following clause:

...That the said Indians shall not be molested in their Persons hunting, fishing, or planting on their planting ground nor in any other of their lawful occasions by his Majesties subjects or their descendants (Arseneault, 1995, p. 59/25-30; 60/20-25; 61/15-20 Emphasis added).

Similarly, the 1752 Treaty of Peace with the Eastern MickMack Tribes recognized Aboriginal activity

as “incident to ownership”(Respondent’s Submission, 1997, p.8):

**...The said Indians shall have free liberty to bring for sale to Halifax or any other settlement within this Province, skins, feathers, fowl, fish, or any other thing they shall have to dispose thereof to the best advantage (Arseneault, 1995, p. 62/15-25 Emphasis added).**

Accordingly, the defense submitted that the combination of all these documents, documents which have never been repealed nor the pursuant rights extinguished, clearly demonstrated that Thomas Peter Paul had the ‘right’ to enter upon ‘Crown’ lands as these were in fact lands his ancestors had reserved - hence never ceded to the Crown - for Aboriginal use and enjoyment. Moreover, Allaby argued that the specific phrases “in any their other lawful occasion” and “ any other thing they shall have to sell, where they shall have the liberty to dispose thereof to their best advantage” granted Thomas Peter Paul not only “his right to harvest things that grow naturally in the forest” but also “the right to engage in commercial enterprises” (Arseneault, 1995, p.62/22-28). Trial Judge Arseneault was therefore asked to find the defendant, Thomas Peter Paul, not guilty of unlawful harvesting on ‘Crown’ lands (Arseneault, 1995, p.86/10-15).

While the defense’s arguments were built specifically on a historical understanding and interpretation of the alleged criminal activity, the Crown’s approach tended to be more ‘modern’ in nature. Crown Counsel, Keith McCormick, focused specifically on the commercial aspect of the harvesting, submitting to the Court that this was the defining feature of the case at hand:

**He [Thomas Peter Paul] intended from the outset to cut the logs for the purposes of resale, that is not for religious or cultural purposes but for the purposes of sale. The Crown submits that this is important (for) what you have here is small scale selective commercial logging... (Arseneault, 1995, p. 87/5-10).**

Before advancing this argument, however, Crown counsel proceeded to deal with the some of the issues brought forth by the defense through the introduction of the various historical documents.

With respect to the 1752 Treaty of Peace with the Eastern MickMack Tribes, the Crown held that this treaty did not apply to the case at bar as an earlier Supreme Court of Canada (S.C.C.) decision (*R. v. Simon*, 1985) had adjudicated that the relevancy of the document was restricted to members of the Shubenacadie band and their descendants (Arseneault, 1995, p. 89/20-25).

The second issue dealt with by the Crown was the relevancy of Dummer's Treaty (1725). Here too the Crown submitted that the treaty did not apply to 'New Brunswick' as the agreement specifically referenced Aborigines within the Province of Massachusetts Bay where the Penobscot and Narridgewalk tribes of Indians were reputed to reside (Arseneault, 1995, p.91/20-25). Crown counsel noted that while the document did "reference in passing the territory of Nova Scotia, the provisions concerning assurances given to the Indians...[were] made in respect of the Natives in other parts of the territory which is now the United States" (Arseneault, 1995, p. 91/28-30).

Thirdly, Belcher's Proclamation (1752), according to McCormick, had a limited jurisdiction on two fronts. First, the wording of the document implied that land encroachments were initiated by 'white settlers' such that the phrase 'I do hereby strictly enjoin and caution all persons to avoid any molestations' speaks directly to private citizens and not the Crown (Arseneault, 1995, p.115/15-20). Secondly, Crown counsel argued that the proclamation's jurisdiction was further hindered by the phrase "till His Majesty Royal pleasure shall be signified of the Indians in their claims". In 1784 the Province of New Brunswick was established by royal authority and thereby "His majesties Royal pleasure" was signified. Accordingly, the combination of these two limitations led the Crown to conclude that the *Crown Lands and Forest Act* and the application of that Act to Aborigines in the province were not inconsistent:

Belcher's Proclamation doesn't prohibit that especially since who are enjoined... and

the authority which is purportedly exercised by the game wardens in this case has been assented to by the Monarch. This document enjoins private persons from doing things (Arseneault, 1995, p. 117/5-10).

From the Crown's perspective, the "real meat of the issue... the real treaty that counts is Mascarene's Promises made to the delegates of the Natives that lived in this jurisdiction" (Arseneault, 1995, p. 93/10-20). This particular treaty negotiated in Boston by Paul Mascarene, a major in the British army, in December of 1725 was later ratified under John Doucette in Annapolis Royal whereby agreements made with Mascarene were recited in Doucette's Promises of June 4, 1726<sup>4</sup>, including the right not to be molested "in any other their lawful occasion".

Crown counsel noted that according to the S.C.C. "it is incumbent upon an individual who alleges (s)he has a treaty right to prove to the court that there is a treaty, the scope of the treaty, and that the activity for which (s)he is claiming treaty protection falls within the treaty" (Arseneault, 1995, p. 96/10-15). The question of central concern for the Crown, therefore, was whether the particular clause cited in Mascarene's Treaty, and specifically the phrase "in any other their lawful occasion", included the right to harvest logs commercially.

From the Crown's vantage point the meaning of "in any other their lawful occasion" refers to "those types of aboriginal practices outside hunting, fishing, and planting, or the exercise of religion which would have been recognized as such in those days and which continues today" (Arseneault, 1995, p. 99/10-15). In other words, Crown counsel submitted that if Thomas Peter Paul had a defense under Mascarene's Treaty then it had to exist under the catchall phrase of "Aboriginal rights", and if it was an Aboriginal right then it needed to comply with those judicial rules governing

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<sup>4</sup>It was noted by the Crown that such a ratification was necessary because the negotiators in Boston recognized that the Natives who lived in Nova Scotia who were interested in this treaty were not there; their representatives were (Arseneault, 1995, p. 93/25-30).

the constitution of aboriginal rights - *R. v. Simon* (1985); *R. v. Sioui* (1990); *R. v. Sparrow* (1990); *Delgamuukw v. British Columbia* (1997). These rules include the following:

- The protection of aboriginal rights (are) extended to those practices which were an integral part of their distinctive culture (Arseneault, 1995, p. 101/15-20),
- Aboriginal rights are intimately connected to pre-sovereignty aboriginal practices. They are site and activity specific... (Arseneault, 1995, p. 101/10-20),
- The nature and scope of an aboriginal right is determined as a fact from the evidence adduced at trial (Arseneault, 1995, p. 101/25-30).

Given the above criteria, the Crown submitted that there was no evidence on the trial record showing that logging on a commercial basis was an activity carried on prior to the assertion of sovereignty in 1713<sup>5</sup> (Arseneault, 1995, p.104/1-2). Indeed, Crown counsel argued that the evidence led by the defense was mostly anecdotal - it was not the kind of 'professional' evidence necessary to reconstruct for the court what aboriginal society was like prior to European contact (Arseneault, 1995, p. 104/2-10; 114/16-22). While the Crown did acknowledge the need to interpret treaties perspectively, as 'living documents' so to speak, such that the exercise of a treaty right changes over time in order to take advantage of modern means (Arseneault, 1995, 112/15-25), the commercial harvesting of logs was perceived by the Crown to be a "new phenomenon because it is economically driven and the demand for the species and quality of wood drives the search for it"(Arseneault, 1995, p. 111/5-8). In other words, the purposes for harvesting logs by Aboriginals in pre-sovereign times

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<sup>5</sup>The assertion of sovereignty date was deduced from the recital in Mascarene's Treaty, which reads: "Whereas His Majesty King George by the commission of the Most Christian King made at the Treaty of Utrecht is become the rightful possessor of the Province of Nova Scotia or Accadie to its ancient boundarys" (Trial Transcript, 95/1-5; 102/1-10). The appeal transcript (118/5-10) noted that the Crown's reasoning for the 1713 sovereignty date was that this was the date by which the Treaty of Utrecht ceded Acadie to the English Crown and that the area in question in this trial fell within Acadie. Justice Turnbull, however, disagreed with this conclusion and argued that the date of jurisdiction might some day be very important. He further contended that 'Her Majesty could not claim jurisdiction according to her own law unless they came upon heathen lands...By the 1700s the Indians in the province were Christians" (Turnbull, 1997, p. 119/10-15).

as compared to the commercial harvesting of logs today was seen by the Crown as “not simply a change in degree but a change in the very purpose” (Arseneault, 1995, p. 104/24). The Crown therefore appealed to Judge Arseneault to find Thomas Peter Paul guilty of illegally harvesting logs on ‘Crown’ lands.

**...And the winner is?**

In August, 1996 Trial Judge Arseneault rendered his decision in the Thomas Peter Paul case. Having found that all the essential elements of the charge had been proven via the trial and admissions in relation thereto, he defined the issue to be adjudicated on as follows:

...whether the removal of the timber was ‘unlawfully’ made since the defense is that, being a status Indian, Thomas Peter Paul is exempted from the requirement of obtaining and/or submitting to a licence or permit by reason that he has a treaty right to harvest timber on Crown lands, which said right is guaranteed in the Constitution Act of 1982 (*Enbanc*, 1998, p.5).

By focusing specifically on the phrase “in any other their lawful occasion” contained within Doucette’s Promises of 1726, Judge Arseneault concluded that harvesting trees did fall within the scope of this phrase, and therefore constituted a treaty right (Turnbull, 1997, p. 6/5-15; *Enbanc*, 1998, p.5). Specifically, Judge Arseneault found because of the language used in the promises and in the subsequent treaty of 1752, that there was a commercial aspect to the right, and that because commerce was contemplated in those documents that there did not have to be a ceremonial or religious aspect to the harvesting (*Enbanc*, 1998, p.6). Furthermore, he also found that this treaty right had not been extinguished by pre-confederation legislation, and that Thomas Peter Paul’s harvesting of bird’s eye maples on Crown land, despite the fact that those same lands were leased, was compatible with Crown ownership. Thomas Peter Paul was therefore found ‘not guilty’. It

should be noted, however, that Judge Arseneault did qualify the nature of this treaty right, arguing that its existence did not extend to trees that are spoken for by other users (Turnbull, 1997, p. 74/1). It could therefore not encompass or protect activities such as “a native owned sawmill company engaged in cutting wide swaths into limits already granted to others. Incompatibility would then be evident” (*Enbanc*, 1998, p.6).

Not surprisingly, the Crown appealed this judgement to the New Brunswick Court of Queen’s Bench by notice of appeal and both parties argued their case before Justice John Turnbull on March 3, 1997. By a written judgement dated October 28, 1997 Justice Turnbull upheld the trial court’s decision and dismissed the Crown’s appeal (Appellant’s Submission, 1998, p.4). Interestingly enough, while Justice Turnbull agreed with Judge Arseneault’s final conclusion, he did not concur with his rationale:

With the greatest respect I am unable to agree that the 1725/26 treaties and agreements entered into at Boston, Casco Bay and Annapolis Royal and their subsequent reaffirmations gave the Indians of the present provinces the unrestricted right to cut trees under the treaty aegis of trade (*Enbanc*, 1998, p.6).

Turnbull, in fact, took a much broader approach to the issue at hand by directing his attention to two concerns: whether the British Crown ever obtained title to Indian land and whether Indians had/have the right to harvest trees (*Enbanc*, 1998, p.7). To assist in answering these questions Justice Turnbull took judicial notice of disputable historical data and engaged in his own independent historical research. He therefore drew upon a number of documents that had not been entered as evidence in either the trial or appeal proceedings, including: the Treaty of Breda, 1667; Royal Grant, 1691; the Treaty of 1713; a report of a conference between the Governor of Massachusettes and eight Indian chiefs in 1717; two accounts of Dummer’s Treaty negotiations; an account of the treaty

ratification; a post ratification meeting; an exchange between Dummer and Indians not residents of Nova Scotia; and a report from the Board of Trade to His Majesty's Privy Council (*Enbanc*, 1998, p.8-9).

By combining his own research with the evidence submitted and arguments made in both courts, Justice Turnbull concluded that:

The trees on Crown land are Indian trees. Not exclusively, but their rights are protected by Treaty. The Crown has jurisdiction and dominion over all land. Undoubtedly the Legislature and Parliament can enact laws which affect treaty rights in New Brunswick. Governments must accept that Dummer's Treaty was understood to protect Indian land and recognizes the Indian's primacy when enacting legislation if it intends to enact laws affecting treaty rights. **At the present time Indians have the right to cut trees on all Crown lands.** If this provision in the Crown Lands and Forest Act had met the guidelines set out in *R.v. Sparrow* [1990] 1 S.C.R. 1075 the law would apply to Mr. Paul.. My ratio is that the Act is not applicable to the Indians of New Brunswick (Respondents Submission, 1998, p.17 Emphasis added).

Given the significant ramifications of this judgement on the biggest industry in New Brunswick, and the province's interest in upholding its ownership of Crown lands and forests, Crown counsel quickly proceeded to file a leave for appeal in the New Brunswick Court of Appeal<sup>6</sup>. The thrust of the Crown's appeal was grounded in the following:

- Justice Turnbull erred in law in considering documentation not entered as evidence at the trial or appeal (Appellant's Submission, 1998, p.5);
- Justice Turnbull erred in law in deciding the appeal on grounds upon which the Crown was not afforded an opportunity to submit argument or call evidence (Appellant's Submission, 1998, p. 5);
- Justice Turnbull erred in law in finding not only that Thomas Peter Paul was entitled to cut down and remove trees from Crown lands as of right from Dummer's Treaty, but also in

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<sup>6</sup>The New Brunswick Court of Appeal is made up of five justices. This case was heard by Justices Hoyt, Rice Turnbull, Ryan and Drapeau. It is interesting to note that Justice Drapeau was new to the bench having only been sworn in on February 20, 1998, replacing Justice L.C. Ayles who chose to become a supernumerary judge. The Thomas Peter Paul case was scheduled to begin on February 26, 1998 (Staples, 1998).



failing to find that this treaty right has been extinguished by pre and post-confederation legislation (Appellant's Submission, 1998, p.5).

It should be noted that the first and only time external stakeholders were permitted to voice their concerns and opinions was in the Court of Appeal. The stakeholders selected to submit written statements and granted 'intervener' status were J.D. Irving Limited, Her Majesty the Queen in the Right of Canada, Juniper Lumber Co. Ltd., Big Cove First Nation, and the Union of New Brunswick Indians. The points raised by the interveners and the Crown, according to the Court of Appeal, all related to four key questions to be resolved (*Enbanc*, 1998, p.7) were:

1. Could Justice Turnbull take judicial notice of disputable historical data?
2. Should Justice Turnbull have used the results of his exclusive research after the hearing without notice to the parties?
3. If so, does the evidence disclose a treaty or other right that exempts Thomas Peter Paul from the provisions of the Crown Lands and Forest Act?
4. If Thomas Peter Paul has such an exemption, has pre-confederation legislation extinguished that right?

In reviewing the various legal precedents governing judicial notice, the Court of Appeal argued that not only had Justice Turnbull erred in conducting and relying on his own research, but that in so doing he had transformed the very nature of the case from one dealing with "the basis of a treaty right to trade" to one premised upon "aboriginal title" without ever providing either counsel an opportunity to respond (*Enbanc*, 1998, p.13). For this reason alone the Court of Appeal held that the appeal should be allowed. However, the Court of Appeal noted that because Justice Turnbull's "comments with respect to aboriginal title to the Province of New Brunswick have generated uncertainty" (*Enbanc*, 1998, p.15), it was necessary to make some conclusions vis-à-vis Aboriginal

title from the evidence presented in trial<sup>7</sup>.

First, the Court of Appeal held, as it had on two previous occasions, that Dummer's Treaty and Proclamation of 1725 did not apply to New Brunswick as both documents referred specifically to Aboriginals in the Province of Massachusettes Bay (*Enbanc*, 1998, p.15). Similarly, the 1752 Treaty of Peace with the Eastern MickMack Tribes was also deemed to be inapplicable as "it has been held only to apply to an Indian band in Eastern Nova Scotia" (*Enbanc*, 1998, p.16).

Secondly, the Court of Appeal argued that neither Doucette's Promises (1726) and Doucette's Promises and Other Items (1726) "asserted or acknowledged any aboriginal title to those lands" (*Enbanc*, 1998, p.15). It was argued that if anything, Thomas Peter Paul's ancestors, by signing these documents, "acknowledged not only the Crown's jurisdiction and dominion over the lands, but also the Crown's title and rightful possession to the lands" (*Enbanc* 1998, p.16).

Thirdly, with respect to whether Thomas Peter Paul had a treaty right within the scope of the phrase "in any other their lawful occasion" contained within Mascarene's Treaty, the Court of Appeal ruled that "there was no evidence to support the claim that commercial tree harvesting falls within the intended meaning of the term" (*Enbanc*, 1998, p.20). Indeed, it was noted that the ambiguous wording in the treaty led both Judge Arseneault and Justice Turnbull to opposing conclusions. The Court of Appeal (*Enbanc*, 1998, p.21) stated that the only way to resolve ambiguous wording when interpreting a treaty is to follow extrinsic evidence 'guidelines' as outlined by Lamer, J. in *R.v. Sioui* (1990), which include: the continuous exercise of a 'right' past and present; reasons why the Crown

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<sup>7</sup>In a lecture held on February 18, 1999 entitled "Aboriginal Title in New Brunswick" held at the University of New Brunswick, Brian Slattery commented that after chastising Justice Turnbull for going beyond his proper legal boundary by making a decision in the absence of evidence, the New Brunswick Court of Appeal went beyond its own boundary by similarly going on to make some suggestions about Aboriginal 'rights' and 'title' in the absence of evidence.

made such a commitment; the situation prevailing at the time the treaty was signed; and evidence of relations of mutual respect and esteem between negotiators and subsequent conduct of parties. As this type of evidence was not submitted by Thomas Peter Paul and where he bears “the burden of proving that his actions were authorized by a treaty... he cannot rely on a treaty right” (*Enbanc*, 1998, p.21).

Finally the Court of Appeal examined whether Thomas Peter Paul could claim exemption from the *Crown Lands and Forest Act* under an Aboriginal ‘right’. A number of legal precedents have set out a jurisprudential framework in which to determine and examine an Aboriginal ‘right’. Namely, that the specific nature of the activity in question is determined, and that the evidence led illustrates that this activity, custom or tradition was an integral and defining feature of the Aboriginal culture prior to European contact (*Enbanc*, 1998, p. 22-23). It was articulated by the Court of Appeal that the specifics of the activity in this case were the “harvesting and selling of timber”. The question that therefore needed to be addressed was whether this activity was an integral part of Mi’kmaq culture before ‘contact’. Accordingly, the Court of Appeal noted that the only evidence brought forward by Thomas Peter Paul was that “he and other Micmac had been harvesting wood on Crown land since he was an adult, and that he had only begun commercial harvesting the previous fall” (*Enbanc*, 1998, p.25). The failure to provide any further evidence that the harvesting and selling of timber was an integral and distinctive aspect of pre-contact Mi’kmaq society resulted in Thomas Peter Paul being unable to claim an Aboriginal ‘right’. Consequently the Court of Appeal allowed the Crown’s appeal, directed that a conviction be entered and remitted the matter to the provincial court for sentence<sup>8</sup>

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<sup>8</sup>On June 19, 1998 Thomas Peter Paul’s counsel filed a notice of application for leave to appeal to the Supreme Court of Canada. A panel of three judges reviewed the application to examine whether or not the case was worthy of further hearing. As many had suspected, the Supreme Court of Canada rejected the application concluding that the case

(*Enbanc*, 1998, p.26).

While the New Brunswick Court of Appeal's ruling currently stands in relation to Aboriginal 'rights' and 'title' in the province, it has by no means resolved the issue. According to one newspaper editorial, the trilogy of Thomas Peter Paul cases has left the "forests of the province, and all the politics pertaining to them, in a muddle" (*Telegraph Journal*, 1998). "This is so far from settled", notes the former head of the Union of New Brunswick Indians, "there is still a comprehensive land claim, win or lose" (Hrabluk, 1998b).

There seems to be a general recognition amongst all parties involved that the Thomas Peter Paul case was a 'weak' legal case through which to examine and decide the status of Aboriginal 'rights' in 'New Brunswick'. The suggestion has therefore been made that either a test case or an Aboriginal title case be initiated to 'resolve' the matter or at least to clarify the nature and scope of Aboriginal 'rights'<sup>9</sup> (Hrabluk, 1998c; Bear, 1998; Hrabluk, 1998d). A test case could pursue one of three Aboriginal claims: a treaty claim, an Aboriginal 'right' or the broadest of them all Aboriginal 'title' to the land (Hrabluk, 1998c).

My preoccupation is not so much which Aboriginal claim ought to be pursued, but whether this type of strategy ought to be pursued at all. My concern is not simply a recognition that the Canadian legal system as an adversarial system will result in a winner and a loser, or the difficulty

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was too 'weak' to warrant the Court's attention (Morrison, 1998).

<sup>9</sup>While doing field research in New Brunswick in February, 1999 and in speaking with Cleveland Allaby in April 1999, I was informed that there currently is another 'logging case' (Barnaby) working its way through the courts. While the situation is similar to the Thomas Peter Paul Case, the defense has been upgraded from a "fifty dollar defense to a million dollar defense" (Allaby, personal communication, April 1999) meaning that this time around a substantial amount of evidence is being entered into the trial, including historical, oral, and anthropological evidence. Apparently there are also a number of other 'logging cases' set to go to trial but Allaby noted that these would probably be postponed pending the outcome of the Barnaby case.

Aboriginal Nations will face in gaining access to the financial resources necessary for launching such a claim. Rather, my concern is grounded in the very narrative of the legal system: the political and cultural agendas this narrative implicitly promotes, the ways of knowing it legitimates, and the complex power relations it complements. Given that the source of Aboriginal 'rights' is the Canadian legal and political system (Monture-Angus, 1995) it is necessary to explore the ways in which the underlying assumptions or 'knowledge' on which Aboriginal 'rights' law is grounded governs the legal performance of the Aboriginal 'rights' trickster. Can the counter-hegemonic narratives Aboriginal Peoples bring into colonial courts subvert nation-state pedagogy?

### **Canadian nation-state pedagogy and spatial sovereignty**

When pursuing Aboriginal 'rights' within the parameters of Canadian law, one of the first rules to be encountered, one which often becomes obscured within the forked-tongue of 'prior rights', '*sui generis* interest in land', and '*prima facie* ownership', is the Crown's assertion of sovereignty, and in turn its underlying 'just' title or paramount lordship over the land. This spatial imaginary premise applies not only to the Canadian system of law but also to the very foundations upon which the Canadian nation is constructed. Justifications for this assertion of sovereignty include the presumption that Europeans discovered 'America' (Gray, 1989) and that this 'discovery' "under the norms of international law at the time of contact...gave the discovering nation immediate sovereignty and all rights and title to the lands" (RCAP, 1996b, p.43).

According to proponents of the common law approach to Aboriginal 'title', there is a significant distinction to be made between sovereignty and title, a distinction which for them is a lynch pin in the legal establishment of Aboriginal 'title' and 'rights'. Legal scholars such as Brian Slattery

and Kent McNeil argue that Crown sovereignty, whether it be asserted by way of conquest, cession or settlement would not affect private lands such that pre-existing private property rights would continue by virtue of the doctrine of continuity:

The public lands of the former sovereign and lands that were unoccupied and unowned in a settlement would vest in the Crown as a consequence of the act of State by which the territory was acquired but other lands would remain unaffected (McNeil, 1989, p.192).

Setting aside for the moment the problematic dichotomies of private/public and unowned/unoccupied lands, whatever path one wishes to pursue within this narrative - be it common or civil law - the rule of sovereignty acquisition remains intact.

In the context of the 'Atlantic Canada' region one may ask the question of how the British acquired territorial sovereignty and the common response would be either by way of settlement or derivatively through conquest and cession from France (McNeil, 1989, p.267-268). The question of how France acquired sovereignty will generally be answered within the realm of discovery, effective occupation or symbolic acts (Slattery, 1999). The 'knowledge' or 'truths' of these responses are grounded in an understanding that at the period of European exploration and settlement 'North America' was *terra nullius* - territory not belonging to any recognized international entity (Slattery, 1999; McNeil, 1989).

Over the course of time, the concept of *terra nullius* was extended by European lawyers and philosophers to include lands that were not in the possession of a 'civilized' people or were not being put to a proper 'civilized' use according to European definitions of the term (RCAP, 1996b, p.43).

Being absent of any sovereign entities the 'new world' was legally vacant at the relevant time (Slattery, 1999), a vacancy argued to be evidenced by the absence of cultivation ( Bracken, 1997; Turpel, 1989).

Every subsequent European transaction with respect to the land that flows from here is therefore deemed to be 'just' and 'legal'. This includes the Treaty of Utrecht in 1713 where the French relinquished control of Acadia to Britain; the 1763 Treaty of Paris which ceded the remainder of French Canada to Britain; the various treaties delineating the boundary between the 'United States' and 'Canada'; the British North America Act of 1867; and the series of 'Indian legislation' culminating in the *Indian Act* of 1876 and its various amendments. The whole structure depends on the premise that North America at the time of European encounter was legally vacant land available for appropriation (Slattery, 1999) and was 'legally' open to the assertion of sovereignty by whichever European crown could plant their flag first.

This national narrative, as Patricia Monture-Angus points out, provides "no recognition and no respect that there are other traditions that came with this land" (quoted in Gray, 1989, p.147). This lack of recognition and respect is after all what current Aboriginal 'rights' and 'title' cases are all about, in more ways than one. The Royal Commission on Aboriginal Peoples (RCAP) report notes, "arguments [like discovery, vacant lands, uncivilized peoples] which distort the reality of the situation and converted *differences* into *inferiorities*... are at the heart of the modern doctrine of Aboriginal title"(RCAP, 1996b, p.45). Indeed, respect for Aboriginal occupation and traditions is only granted where they can be proven to exist (Slattery, 1999), and where such a claim is proven to exist it is always subject to the 'Crown's pleasure' (Mandell Pinder, 1998). Solidification of this national pedagogy occurs through the very processes of 'dealing' with Aboriginal 'rights' and land claims domestically. Sovereignty, as Brian Slattery (1999) explains, is a question of international law whereas Aboriginal 'rights' to the land, being defined as property rights, are a matter of domestic law.

### **Counter-hegemonic narratives and spatiality**

But are they, and according to whom? For many Aboriginal peoples the question of ‘how did the Crown acquire title to our land’ (Mandell Pinder, 1998, p.19) is indeed a million dollar question that remains unanswered. More importantly it is a question that cannot be compartmentalized or divided into either a sovereignty or land issue as such a distinction is not necessarily understood or appreciated from Aboriginal world views.

It is important to recognize and understand that the landscape described by the aforementioned ‘Canadian narrative’, in spite of its persistence and dominance, is but one among many. For Mi’kmaq and Welastekwiyik Peoples, as well as many other Indigenous Peoples, land is defined in a broad sense “... covering the environment, or what ecologists know as the biosphere, the earth’s life supporting system. Land means not just the surface of the land but the subsurface, as well as the rivers, lakes (and in winter, ice), shorelines, the marine environment and the air” (RCAP, 1996c, p.448). Oral teachings speak of land as ‘...a sacred source of life, like water or air. It could not be owned, bought, sold or abused, but only respected, used and shared” (Bear Nicholas, 1994b, p.8). Ancestral voices in these narratives speak of a time when Mi’kmaq and Welastekwiyik Peoples were free to carry out the creator’s instructions (gkisedtanamoogk, 1996b) in accordance with a symbiotic relationship<sup>10</sup> between humans and land that the peoples had practiced since time

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<sup>10</sup>On Aboriginal peoples understanding of and relationship with land, see: Royal Commission on Aboriginal Peoples (1995), Treaty Making in the Spirit of Co-existence: An Alternative to Extinguishment, Ottawa, Minister of Supply and Services; Linda Clarkson, Vern Morrisette, and Gabriel Regallet (1992), Our Responsibility to the Seventh Generation: Indigenous Peoples and Sustainable Development, Winnipeg, International Institute for Sustainable Development; Report on the Royal Commission on Aboriginal Peoples (1996), Restructuring the Relationship, vol.2, Ottawa, Minister of Supply and Services; World Council of Indigenous Peoples (1984), “An Indian Without Land is a Dead Indian”, *WCIP Newsletter*, 4(February); Roger Moody (1993), The Indigenous Voice: Visions and Realities, 2<sup>nd</sup> edition, Utrecht, International Books; Oren Lyons (1984), “Spirituality, Equality and Natural Law”, in Pathways to Self-Determination, eds. L.Little Bear, M.Boldt, and J.A. Long, Toronto, University of Toronto Press.



immemorial:

**Our whole approach to the relationship, to life that was around us, the earth life, the sky life, the water life, was all about taking what we really needed to take. And even in doing that we showed our respect for the fact that if we hunted a moose, what we would be taking from a family, that the moose is a family, or the deer or the fish. We would be upsetting someone else's family. And if we did that without any awareness, any cognition or respect for that family, that something would happen to our family. That is our experience, if we live a life that we don't care what happens around us (KG, Interview, March 1999).**

The symbiotic relationship between people and land served not only to govern modes of interaction and patterns of activity with the natural environment, but also provided Wabanaki Peoples with teachings about themselves and their place in the universe, which in turn spurred the development of social/political institutions (gkisedtanamoogk, 1996; Clarkson, Morrisette and Regallet, 1992). As the Wampanoag man interviewed explained:

**The fact that they [ancestors] paid attention to the muskrats or the deer is based on a real ancient relationship to the land, because our identity was tied up with that. We had our deer clans, extended families of communities whose identity is tied to the deer, or to the moose or to the salmon (KG, Interview, March 1999).**

A Miigemag woman from Esgenoopetitj expanded upon this further by explaining how environmental notions of interconnectedness extended to inter-nation relations:

**One community can't make a decision alone, it affects the whole territory. We are talking about the Wabanaki Confederacy, the Wabanaki Nation and that is all of the eastern coast. When you make a decision in one area it affects all... And when you bring the larger issues home, to your own personal circle it creates a lot of understanding. And when you have that understanding, how I walk, how I am, that I have a responsibility to walk a good way, I become aware because I am responsible for the well being of the community, and it grows from community to Mi'kmaq to Wabanaki (GM, Interview, March 1999).**

Following these narratives, it is not surprising to discover that not only are Wabanaki Peoples' identities intimately connected to the land but also to the exercise of sovereignty, to 'walk in a good

way'. When Indigenous Peoples speak of sovereignty the notion includes freedom of movement in one's own territory, freedom to manage one's own territorial affairs, and the responsibility to maintain and safeguard territorial and social integrity. Certainly such understandings of sovereignty, the freedom to be Mi'kmaq and Welastekwiyik, have arisen out of a more recent history of rapid change and struggle. As Mi'kmaq poet Rita Joe (1991) articulates in her poem "The Hidden fences":

Once upon a time I was in spaces free  
 I trod the land of the rainbow road  
 My identity my own  
 And all the earth and sky my friend.  
 In barricaded fences of rescue  
 Submission becoming my prison  
 Now slowing to a trickle.  
 My stride becoming a shuffle  
 The feather hanging limp as I signed the X.

The more recent histories of Wabanaki Nations have not been a cause for celebration but rather "a painful education of the fact that so much has been lost" (Bear Nicholas, 1995). "Yes, the history of my people holds much pain which you see. / but I challenge you to look deeper: ask, what could the cause be?" (Montour, 1995, p.27). What causes an 85 year old Mi'kmaq man to look back over his life and comment, "this not Micmac country... poor Indian - he have no country - call'em stranger here" (Quoted in Upton, 1979, p.141). The 'cause' that I have heard most Mi'kmaq and Welastekwiyik Peoples speak about includes the theft of their lands (Reid, 1995; Upton, 1979) and the usurpation of their sovereignty. In 1749, for instance, Mi'kmaq elders and Chiefs speaking to the Governor at Halifax about the great theft perpetuated against them stated:

This land which you wish to make yourself now absolute master, this land belongs to me. I have come from it as certainly as the grass, it is the very place of my birth and of my dwelling... Show me where I the Indian will lodge? You drive me out, where do you want me to take refuge? You have taken almost all this land in all its extent (quoted in Holmes Whitehead, 1991, p.114).

Similarly, in an 1840 petition to Queen Victoria, Mi'kmaq Chief Pemmeenautweet stated:

My people are poor. No Hunting Grounds - no Beaver - no Otter - no nothing... All these woods once ours. Our fathers possessed them all. Now we cannot even cut a tree to warm our wigwam unless the white man please (Quoted in Upton, 1979, p.134).

While the “white man and his courts” are pleased to interpret treaties within a national narrative, Wabanaki Peoples understand these historical documents in a very different manner. Take for example the 1725 Submission and Agreements of the Delegates of the Eastern Indians. As noted earlier in this chapter, the New Brunswick Court of Appeal (1998) held once again that this treaty did not apply to Mi'kmaq and Welastekwiyik Peoples in the province because, according to their interpretation, the document referred specifically to Aboriginals in the province of Massachusettes Bay. From Aboriginal Peoples' perspectives, however, this treaty of peace negotiated with the British in Boston was signed by leaders of the Wabanaki Confederacy on behalf of the various Wabanaki Nations, including the Mi'kmaq and Welastekwiyik:

The terms of the Treaty in 1725 conform to a pattern that had been established earlier. It was built on the law of *Nikamanen* [Mi'kmaq term for international law]... For us, it served as a fundamental agreement on the nature of our relations, and it was to be renewed at appropriate intervals (Marshall Sr., Denny, and Marshall, 1992, p. 75 and 80).

Indeed, prior to the arrival of the Europeans the law of *Nikamanen* was already well established and served to maintain peace and national territorial integrity in Turtle Island. “We carried on relations with other indigenous peoples throughout North America, among other things for the purposes of trade, alliance and friendship. All such dealings were based on mutual respect and co-operation, formalized through the treaty-making process (Marshall Sr, Denny and Marshall, 1992, p.75). Therefore, entering into peace negotiations with the British was not a foreign practice for

Wabanaki leaders but instead served as a continuation of a practice already well entrenched. Such practice was not, however, based on colonial concepts such as 'ownership of land' for giving up their land would be to terminate their existence (Bear Nicholas, 1994b). Rather the mindset of Wabanaki negotiators was based upon the principle of "...sharing land with all creatures [which] was integral to the Native concept of land, hence one could not refuse a people wanting to live in and share the land in peace and friendship" (Bear Nicholas, 1994b, p.8). As the Wampanoag man I interviewed further explained:

A fundamental responsibility of the [Wabanaki] Confederacy is territorial integrity and that means that no one community can deprive itself of its own land base, and we are beginning to re-examine that at the Confederacy level because treaties were made with the Confederacy. They weren't just Mi'kmaq or Maliseet treaties, they were Wabanaki treaties and all other Nations were brought into those treaties. And those treaties were specifically to safeguard the territorial and social integrity of the Confederacy (KG, Interview, March 1999).

Given these understandings of the historical process of treaty-making it should not be surprising to discover that comments like the one made by Mi'kmaq Chief Francis Paul in 1853 that, "we treated as independent nations... we are not the subjects of Queen Victoria" (quoted in Upton, 1979, p.135), continue to resonate throughout Wabanaki territory. This was evidenced, for instance, in 1989 when twenty-nine Mi'kmaq community leaders took part in a summit to develop a common approach to land and treaty matters culminating in a Declaration of Mi'kmaq Nation Rights (Marshall Sr., Denny, and Marshall, 1992):

The Declaration reaffirms the Mi'kmaq commitment to the principles of self-determination, sovereignty and self-government... These are not alien concepts, and they are not threatening as some would argue. They are based on the reality of historical record and on the prevailing norms of international law that guide the conduct of nations in their relations with one another (Marshall Sr., Denny and Marshall, 1992, p.104).

Similar evidence of sovereignty and nationhood can also be found in the meeting notes of a Wabanaki organization known as the Hunters and Gatherers (1997, p.3):

We tell them “your laws do not apply to me”... Our rights go back a long way. Treaties meant liberation, a guarantee to not be dependent on the Crown. The intent of the Treaty was the preservation of freedom. Words in the Treaty, FREE LIBERTY, have meaning behind them (emphasis in original).

As well, a declaration made by one Welastekwiyyik family in St. Mary’s during the midst of the ‘logging issue’ articulated:

We are Waloostookwiyyik, and claim absolute title to all the lands of our ancestors, which have never been surrendered, ceded or given to anyone... We have a right to our nationhood and self-determination, to determine our citizenship, and to live and move freely about on our land. We do not recognize provincial borders or the Canadian/American boundary which was established without our knowledge, participation or consent (Brookes and family, 1997).

The nation-to-nation relationship emphasized by Aboriginal Peoples and depicted through treaties is “... in the clearest terms, important and vital to the survival of our cultural integrity as nations over our inherent sovereignty, jurisdiction and territorial viability” (gkisedtanamoogk, 1996). One simply needs to listen to what Aboriginal Peoples across Turtle Island were saying before and after the repatriation of the Canadian Constitution, or in their resistance to any provincial involvement in Aboriginal affairs, an involvement that despite protests seems to be intensifying in both scope and nature. One Mi’kmaq youth informant articulated:

It is almost like a slap in the face that this [Thomas Peter Paul] case was brought to the province, appealed in provincial court, and that the provincial court is even questioning this[Mascarene] treaty. This treaty was signed between the Wabanaki Nation and Britain, so the fact that they [province] are even questioning this treaty is like a travesty of justice. A big part of this goes back to sovereignty. They don’t see us as a sovereign nation, they don’t recognize our sovereignty, our nationhood and because of that, they have the full jurisdiction to take us to provincial court, to question those treaties. The way it is viewed by them is that our treaties are dead because our nations are dead because we are ‘Canadian’ Aboriginals (DH, Interview,

February 1999).

Wabanaki appropriation of the colonial language of 'sovereignty', 'nationhood', and 'rights' serves two important functions<sup>11</sup>. First, as a counter-hegemonic narrative, it "points to a profound ambivalence in the very narration of the nation-state itself" (Sparke, 1998, p.464) such that space, territory and jurisdiction become contested, contingent and negotiated terrains. Secondly, the power inherent in such counter-hegemonic narrative is having a substantial effect within Wabanaki Nations, particularly given the increasing emphasis on Aboriginal histories, traditions, and languages. Indeed, younger Aboriginal Peoples are increasingly identifying themselves first and foremost not as 'Indian' or 'Aboriginal' but rather as Mi'kmaq, Welastekwiyik. "When I was young we would say, 'yea, I'm Indian'. But now children are saying I'm Lakota, I'm Navaho, I'm Cherokee... That is very powerful" (Black Elk, 1996, p.55). Powerful indeed, particularly where more and more people begin to have a sense of themselves as being not only Mi'kmaq or Welastekwiyik but also belonging to, being citizens of those nations. And this sense and pride of being Mi'kmaq or Welastekwiyik is part and parcel of the various decolonization initiatives - initiatives emphasizing language, spirituality, Aboriginal history - that have been taking place at the local levels:

All this stuff we are talking about, not being able to be self-determining, are by-products of colonialism. People forget who they are, they forget the real reason why we are here on this earth, and it is getting to the point that we call ourselves 'Canadians'. That is something that is really big for me, last year especially. I am not a 'Canadian'. I am not a citizen of the 'Canadian' Nation. I am a citizen of the Mi'kmaq Nation. People have been saying that for years and now a lot more are saying it. We have come to that understanding (DH, Interview, February 1999).

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<sup>11</sup>I have come to understand from listening to a variety of Aboriginal speakers during my years at St. Thomas University that such notions are not necessarily Indigenous in a linguistic sense (no comparable word in Mi'kmaq and Welastekwiyik languages). This was articulated by the Wampanoag informant: "owning the land is not an indigenous concept, like rights, sovereignty, nationhood. We sort of react to these concepts. And the reason we have to react to those is because if we don't say we own the land that gives them justification for denying our presence on this land. A standard historic play on words" (KG, Interview, March 1999).

If these are the understandings and ways of knowing prevalent within a Wabanaki landscape, then how does this work within the colonial context of Aboriginal 'rights' law? Matthew Sparke (1998, p.468) argues that the voicing of "contrapuntal cartographies" can enable a rethinking of the "colonial frontiers of national knowledge... subverting the notion of a singular national origin... and [a reconsideration of] the discontinuous positions of native peoples" . Unlike the *Delgamuukw* case, the Thomas Peter Paul trial did not rely on Indigenous oral and cartographic evidence that 'roared' disruption into the national spatial imagery. Rather, this case's subversion potential hinged indelibly upon "playing the game against the game" (Sparke, 1998) by tapping into the ambivalence of colonial discourse as expressed in historical treaties. That there was power in this tactic of subversion is evidenced with both Judge Arseneault (1995) and Justice Turnbull's (1997) rulings. Sparke discusses this same disruptive potential with respect to the arguments in *Delgamuukw* over the applicability of the Royal Proclamation of 1763. "It was the direct appeal to colonial law that came closer to disrupting the abstractions of state pedagogy. It forced a radical review of the limits of Canada's past in space" (Sparke, 1998, p.479).

The question that remains, however, is how close can Aboriginal Peoples come in actually displacing Canadian state pedagogy through Aboriginal 'rights' discourse? According to Sparke (1998, p.479), despite the disruptive potential of appealing to historical colonial law, it "was no equal to the court's colonial clasp on the dominant apparatus of power/knowledge in the present". One can not ignore the paradox Aboriginal Peoples find themselves in when appropriating the canon of Aboriginal 'rights' as an ally in the process(es) of substantiating their counter-hegemonic narratives. Having land claims adjudicated by a Canadian court acknowledges state jurisdiction on these matters, an acknowledgment of jurisdiction that not only envelops Aboriginal Peoples and Nations within a

nation-state effect, but that in turn invests the state with the power to define the nature, scope, and beneficiaries of Aboriginal 'rights'. It can therefore be argued that appealing to or appropriating Aboriginal 'rights' discourse 'invites' the nation-state to trespass into the heart of Aboriginal cultures through its power to adjudicate on traditions, customs, and practices, all of which are intimately linked with Aboriginal understandings of individual and collective identities.

### **Notions of 'other', 'authenticity' and historical passivity in Aboriginal 'rights' law**

To gain an appreciation of what I am referring to, it is necessary to turn back to Aboriginal 'rights' law in an effort to explore how this discourse understands Aboriginal Peoples and cultures. I classify this as another rule of discourse within the power-knowledge complex of Aboriginal 'rights', namely the rule of 'others'. This rule plays a very significant role precisely because the us/them dichotomy inherent in Aboriginal 'rights' law sets out 'authentic' boundaries that may not be crossed if Aboriginal 'rights' and 'title' claims are to be awarded. To understand how this plays itself out, one needs to critically examine the various standards or tests set out within the legal precedents governing Aboriginal 'rights'.

For instance, in *R. v. Van der Peet* (1996, p.549) Supreme Court Justice Lamer stated, "...to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right". In *Pamajewon* (1996) Justice Lamer went on to argue that prior to applying this test 'the court must first identify the exact nature of the activity claimed to be a right and must then go on to determine whether... that activity could be said to be a defining feature of the culture in question prior to contact with the Europeans" (quoted in *Enban*, 1998, p.22). Thus in the Thomas Peter Paul case the activity claimed to be a 'right' was the



commercial harvesting of timber. The question therefore facing the court(s), as set out by the various Aboriginal rights tests, was whether this practice was "...rooted in the pre-contact societies of the aboriginal community in question" (*Enbanc*, 1998, p.24). And while continuity of the activity claimed to be a 'right' is deemed to be a further consideration, the Supreme Court noted in *Delgamuukw* that any "practice, custom or tradition that arose solely as a response to European influences do[sic] not meet the standard for recognition as aboriginal rights" (quoted in *Enbanc*, 1998, p.24).

Given these criteria, it is not surprising that Crown counsel in the Thomas Peter Paul case consistently emphasized the commercial nature of the activity in question:

We're not dealing with somebody that's cutting wood for ceremonial or religious purposes or purposes dealing with natives. This case has very narrow application because it deals with somebody who is engaging in small scale commercial logging (Turnbull, 1997, p. 33/15-20).

Later on McCormick reiterated again:

What is the nature of the right claim? Small scale commercial logging. What is the evidence to show that prior to the arrival of the Europeans the natives in this part of the country had involved themselves in even bartering logs? None. There's not one shred of evidence (Turnbull, 1997, p. 46/20-25).

The absence of evidence to which he is referring is, of course, not just any evidence. Aboriginal 'rights' law demands specifics rooted in 'pre-contact' times. Indeed, when Justice Turnbull asked "what's wrong with calling it making a living off the land" (Turnbull, 1997, p. 48/17-18), the response by Crown counsel was that such an argument had been specifically rejected by the Supreme Court. In *Gladstone*, for instance, the Supreme Court argued that "there is no point in the appellants' being shown to have an aboriginal right unless the aboriginal right includes the actual activity in which they were engaged" (quoted in Turnbull, 1997, p. 49/5-8). In *Van der Peet* the

majority of Supreme Court Justices agreed that:

Where two customs exist, but one is incidental to the other, the custom which is integral to the aboriginal community in question will qualify as an aboriginal right, but the custom that is incidental will not. Incidental practices, customs or traditions cannot qualify as aboriginal rights through a process of piggybacking on integral practices, customs or traditions (quoted in Turnbull, 1997, p. 51/15-20).

Such standards certainly lead one to question, as Justice Turnbull did, 'what's left'? The Crown counsel's response was, "all kinds of things are left, all the core things; hunting, fishing, all the things that aboriginals did before the arrival of the white men" (Turnbull, 1997, p. 52/5-10). But what are these things that Aboriginals did prior to European 'contact' which can, under Canadian law, be recognized as aboriginal 'rights'? "I don't know my Lord.. I don't know" (Turnbull, 1997, p. 54/8).

Interestingly enough, while this lack of knowledge extends to what Aboriginal Peoples did prior to 'contact', it does not seem to extend to the classification of non Aboriginal 'pre-contact' activities. For instance, McCormick argued at trial that:

there was wood gathered in pre-sovereignty times and there were things made out of them, but my suggestion is that you can not keep the commercial aspect out of it because it is not simply a change in the very degree, but it's a change in the very purpose (Arseneault, 1995, p. 104/20-25).

He goes on to argue as follows, "it's a relatively new phenomenon because it is economically driven and the demand for the species and quality of wood drives the search for it" (Arseneault, 1995, p. 111/5-10).

What emerges in this discourse is a "line of thinking which reasons that 'selling' is a money economy concept, and in pre-contact times there was no money economy" (Clark, 1996, p.1). Even if Thomas Peter Paul would have provided the necessary 'evidence' to establish a 'pre-contact' trade

in timber, would it have made a difference? If one examines the *Marshall* case - which dealt with the selling of fish - and the *Pamajewon* case - which dealt with gambling - the answer is clearly 'no'. In both these cases evidence was provided to the court indicating that these activities, bartering fish and gambling, existed prior to European arrival. Both courts' focus, however, fell not upon the existence of these activities in 'pre-contact' times, but rather on the nature of and scale upon which these activities were being carried out today (Clark, 1996). In fact, the "conclusion reached by the courts was that modern forms were not permissible, precisely because, being modern as to style and scale, they were not aboriginal" (Clark, 1996, p.2).

It should be noted that the 1997 Supreme Court decision in *Delgamuukw* did provide a more 'liberal' interpretation of Aboriginal activities vis-à-vis use of the lands where 'title' is proven to exist. In making a distinction between Aboriginal 'rights' and 'title'<sup>12</sup>, the Court stated that the test for 'proving' Aboriginal 'title' is "to show that their ancestors had exclusive occupation of the lands at the time when the Crown asserted sovereignty" (Mandell Pinder, 1998). Relevant evidence to prove such occupation includes: Aboriginal laws, perhaps "a land tenure system or laws governing land use"(Quoted in Mandell Pinder, 1998, p.13); past physical occupation such as dwellings, cultivation and enclosure of fields, and regular use of tracts of land; present physical occupation, with or without interference, as long as the "substantial connection between people and land is maintained" (Quoted in Mandell Pinder, 1998, p.14), and oral histories<sup>13</sup>.

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<sup>12</sup>The Supreme Court recognized a range of Aboriginal 'rights', a range which depended upon the degree of connection to the land. Accordingly, Aboriginal 'rights' involve practices integral to the Aboriginal society before 'contact', but no title is proved (the standard I therefore described above continues to prevail); Site specific 'rights' refer to certain activities at particular places; and 'title' is a right to the land itself (Mandell Pinder, 1998).

<sup>13</sup>The *Delgamuukw* case called for the recognition and respect of oral testimonies, that they be given 'due weight' by the courts and be placed on 'equal footing' with other historical evidence the courts are familiar with (Mandell Pinder, 1998). The difficulty which will emerge is how judges will know how to give oral histories their due

Where title is established, the Supreme Court held that “aboriginal title is not limited to the right to carry on traditional practices or activities [but]... is a broad right to the exclusive use and occupation of land for a variety of purposes” (Mandell Pinder, 1998, p.3). The variety of purposes, however, “...is subject to the limitation that they must not be irreconcilable with the nature of the attachment to the land which forms the basis of the particular group’s aboriginal title” (quoted in Mandell Pinder, 1998, p.5). Once again, one wonders what types of activities are deemed to “maintain a substantial connection to the land” or held to be “irreconcilable with the nature of attachment to the land”, and according to whom? As Mandell Pinder (1998, p.7) note in their analysis of *Delgamuukw*, “we can envision legal and political debate, now and in the future, over where the line is drawn... Is the native connection to the land broken when the land is used to build a shopping mall? A saw mill? The line is very blurry”.

When one begins to examine critically what Canadian law is saying about Aboriginal Peoples and their ‘rights’, what begins to filter to the forefront is a peculiar notion of ‘aboriginality’. Certainly, the us/them dichotomy is consistent with earlier colonial discourses which similarly sought to impose rigid boundaries between colonists and Natives. As Franz Fanon (1963, p.45-46) argues, “the colonial context is characterized by the dichotomy it imposes upon the whole people”. V.Y. Mudimbe (1988, p. 4) similarly asserts:

Because of the colonizing structure, a dichotomizing system has emerged, and with it a great number of current paradigmatic oppositions have developed: traditional versus modern; oral versus written and printed; agrarian and customary communities versus urban and industrialized civilization...

The colonizing structure to which Mudimbe refers includes the project of “acquiring, distributing, and

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weight and how these histories are going to be interpreted by judges. Given the colonial dichotomies existing within Aboriginal ‘rights’ discourse, this could prove to be a very dangerous evidentiary tool.

exploiting lands in the colonies” (1988, p.2), a project which was/is clearly facilitated by the great divide between traditional and modern worlds (Robins, 1998). Big Bear was right on the mark when he commented those many years ago, “the land, it is always about the land” (CBC, *Big Bear*, 1999).

However, the way in which ‘aboriginality’ modalities around land play out within colonial discourses points to their inherent ambiguities and ambivalence:

**It is the force of ambivalence that gives the colonial stereotype its currency: ensures its repeatability in changing historical and discursive conjunctures; informs its strategies of individuation and marginalization; produces the effect of probabilistic truth and predictability which, for the stereotype, must always be in excess of what can be empirically proved or logically constructed (Bhabba, 1994a, p.66).**

For instance, earlier colonial discourses constructed both the ‘new world’ and its inhabitants as ‘wild’, ‘savage’ and ‘uncivilized’ (Reid, 1995; Wynn, 1981; Burtis, 1860; Haliburton, 1829). To therefore bring ‘civilization’ and ‘progress’ to this world required “unobstructed access to the land” (Reid, 1995, p.33), where the ‘salvation’ of original peoples depended upon their being made ‘civilized’ as well. “The civilization of aboriginal peoples would require the adoption of agricultural modes of subsistence...[and] educating them in agricultural methods and technologies (as well as the English language)” (Reid, 1995, p.41). In other words, access to the land, albeit extremely limited, depended upon Aboriginal Peoples becoming white, becoming “liberated from their masters” and disjoined from the “haunts and habits of their forefathers” (Gesner, 1847).

Today however, the discourse of Aboriginal ‘rights’, which continues to embody this colonial stereotype, claims that these “haunts and habits of the forefathers” are those customs and traditions integral to Aboriginal cultures, and that their continued existence and practice must be proven in order to secure access to lands and resources. In other words, the purity of the us/them dichotomy continues to prevail and exercise its authority, albeit in an ambivalent fashion, to continue to deny

Aboriginal Peoples access to land.

Similarly, current formulations of 'aboriginality', as perpetuated in Aboriginal 'rights' discourse, 'time-freezes' Aboriginal cultures, and in so doing limits those who can lay claim to having Aboriginal 'rights'. In this fashion 'rights' discourse continues on with *Indian Act* practices, namely defining who is and who is not 'Indian' or 'Aboriginal' in accordance to definitions that arise from the consciousness and imagination of the nation-state<sup>14</sup>. The evidence needed to prove a 'rights' claim in a Canadian court of law is akin to pulling out one's Indian status card, where a failure to prove one's claim indicates a lack of 'authenticity'.

At the same time, the solidification of Aboriginal cultures within this 'rights' discourse perpetuates 'us and them', 'there and now' type of analogies which serves to reinforce an understanding of colonialism as being characterized by the binary relations between colonized and colonizer. This in turn projects a number of ambiguous 'truths' about both colonial history and Aboriginal Peoples.

First, it denies Aboriginal Peoples agency, subjectivity and humanity. By focusing exclusively on 'pre-contact' and 'pre-sovereignty' customs and traditions, Aboriginal 'rights' discourse treats Aboriginal Peoples as blank slates to be written upon, as 'primitive objects' devoid of cultural creativity and ingenuity, as though Aboriginal Nations housed themselves in 'glass boxes' to remain pristine and untouched. The absurdity of this is evident in the very survival and continued existence of Aboriginal Peoples and cultures, despite colonial efforts to the contrary. As Jennifer Reid (1995, p. 84) suggests, in order for Wabanaki Peoples to survive the turbulent changing landscape, they

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<sup>14</sup>For further reading on this imagination see Daniel Francis (1992), *The Imaginary Indian: The Image of the Indian in Canadian Culture*, Vancouver, Arsenal Pulp Press.

needed to come face to face with the colonial world:

**They exploited every niche in the settler economy that had not been closed to them... Survival required of Native people a clear understanding of the reality of a changed homeland. Acquiescing to reality, however, did not signify an acceptance of cultural meanings that had nourished the changes.**

Similarly, Kenneth Morrison (1994, p.123) in his article "Mapping Otherness" explores how Algonquian mythology shaped and mediated Wabanaki Peoples' understandings of and interactions with European 'others':

**Algonquian religion stressed that the struggle against the dangers of otherness had high value and that people (human and otherwise) faced responsibility... [Mythology] established the ethical premises by which Algonquian peoples faced the challenge of history. Theirs were not defeatist religions. To the contrary, Algonquians knew by definition that present trouble needs to be faced constructively.**

A common understanding of culture is its permeability, as well as its adaptive and regenerative capacities. As Edward Said (1993, p.217) articulates, "the history of all cultures is the history of cultural borrowings... Culture is never just a matter of ownership, of borrowing and lending with absolute debtors and creditors, but rather of appropriations, common experiences and interdependencies of all kinds". Claiming that practices which arose as a response to European influences do not qualify as a 'right', Aboriginal 'rights' law appears to 'punish' Aboriginal Nations for surviving. Moreover, such a claim embodies two key assumptions: first, that the cultural information flow was a one way street (Harp, 1994), and secondly that cultural borrowing or responses to European influences equals assimilation<sup>15</sup>. As explained by Jennifer Reid (1995, p.89), however:

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<sup>15</sup>One can equally argue that this is also assumed to be one way process as historical texts never claim that the survival techniques and technologies borrowed by colonists from Aboriginal peoples assimilated them into Native cultures.

Being Mi'kmaq [Welastekwiyik, Wabanaki] did not signify a rupture with the reality of being entrenched in a colonial world, but neither could being New World people negate a notion of humanity contained in being Mi'kmaq. This duality afforded aboriginal peoples a vision of themselves with which they could withstand the pressure to become extensions of the British imagination that sought to make of them either British clones or dead Mi'kmaq.

Secondly, the perpetuation of 'us and them' dichotomies within Aboriginal 'rights' discourse projects an 'innocence' and 'passivity' on the colonizer's history. For Aboriginal Peoples to gain access to lands and resources through Aboriginal 'rights' law, they need to prove the existence and continuation of 'pre-contact' practices, traditions and land uses. This onus of proof, however, obscures the existence of a pre and post-confederation national agenda (Dickason, 1992; Polson and Spielman, 1993; Bear Nicholas, 1996). Whether hidden or implicit, the objective of this agenda was assimilation, or as Indian Affairs veteran Duncan Campbell Scott noted "to continue until there is not a single Indian left in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian Department" (quoted in Francis, 1992, p.221). To this end, numerous domestication laws and regulations were enacted and enforced to dismantle those Indigenous institutions and customs which: 'disorganized' Indian Affairs efforts; 'unsettled them' for serious work; encouraged them in 'sloth and idleness'; and served as 'obstacles' to progress (Elliot, 1921; Paul, 1993; Francis, 1992). The endurableness of this regulatory system had and continues to have grave consequences for First Nations, consequences often referred to by Aboriginal Peoples as genocidal (Smith, 1998; Bear Nicholas, 1996; gkisedtanamoogk, 1996; Harp, 1994).

The idea, therefore, that 'rights' equals access to land where the continuation of customs and traditions can be proven to exist silences this 'active' and 'violent' side of Canadian nation-building. Ronald Wright (1998) argues that in order "for whites to be at peace in this land they need to forget



this part of history”, this part of history including: dispossession of ancestral lands and confinement on reserves, the abduction of Aboriginal children, the establishment of residential schools, forced enfranchisement, the criminalization of traditional governments and customs, an ‘Indian’ registry system, denied access to land litigation, Indian agents, the disenfranchisement of Aboriginal women and their children from their own communities, management of Aboriginal Peoples lives through the *Indian Act*, to name but a few. According to Patricia Monture-Angus (1995, p.59), “every oppression that Aboriginal people have survived has been delivered up to us through Canadian law... Canadian law is about the oppression of Aboriginal people”.

## **Conclusion**

Franz Fanon (1963, p.142) warns that “colonialism never gives anything away for nothing”. The discourse of Aboriginal ‘rights’ within this context may be regarded as a ‘concession’ extorted by continued demands of and claims to lands and resources by Aboriginal Peoples. However, and as this chapter has demonstrated, the underlying assumptions or rules on which Aboriginal ‘rights’ law is grounded serve to entrench a narrative of Canada. And herein lies the colonial paradox. On the one hand, Aboriginal use of this body of law as a response to colonial manifestations on their lands and in their communities has to some degree served to ward off further colonial violence and trespasses (Bear Nicholas, 1993). On the other hand, it has also opened up the door and ‘invited’ continued trespasses on and violations of treaty established nation-to-nation relations. Therefore, even though the ‘dubious alliance’ between First Nations Peoples and Aboriginal ‘rights’ law is based upon counter-hegemonic narratives which potentially (can) subvert the spatial imagery of the Canadian state, the ground rules or assumptions of this body of law police these narratives into a

nation- state effect. As the Wampanoag informant articulated, “it doesn’t take a genius to figure out that the way to respond to this colonial process is to stop participating in it and to revitalize a sense of ourselves”(KG, Interview, March 1999). The difficulty inherent in such a response, unfortunately, is that the power-knowledge dynamics of Aboriginal ‘rights’ discourse does not end when leaving the ‘Just Us’<sup>16</sup> buildings. Patricia Monture-Angus (1995, p.80) comments that , “even First Nations people are talking about our Aboriginal rights”. As the next chapter will show, the appropriation and varying degrees of internalization of this discourse, and the ways in which the Aboriginal ‘rights’ trickster manifests itself within Aboriginal communities, has created a variety of internal dynamics, which have in turn heightened and expounded the ‘politics’ of land struggles.

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<sup>16</sup>David Gidmark’s book entitled Indian Crafts of William and Mary Commanda makes reference to a conversation between then Chief William Commanda and Prime Minister Pierre Trudeau when he visited Maniwaki. According to William Commanda, the prime minister asked him if there was anything he didn’t like with respect to the ‘Indian situation’ in Canada. Commanda’s response was that he thought the word justice on the court houses were spelled wrong. They should have been spelled J-U-S-T U-S. See David Gidmark (1980), Indian Crafts of William and Mary Commanda, Toronto, McGraw-Hill Ryerson, p.12-13.

**Chapter Four**  
**Community dynamics of the Aboriginal 'rights' trickster**

I see the spirit  
The load on his back, heavy  
He is unsure of himself, so very shy  
The spring of the year awakens the song  
He sings through his life, but  
The pattern of history is in the way  
You ask why<sup>1</sup>

**Introduction**

It was noted in the previous chapter that Aboriginal Peoples have appropriated or allied themselves with the discourse of Aboriginal 'rights' in an effort to secure access to land and resources. Roderick Neumann (1995, p.377) argues that appropriation of the language of rights is a significant political act which heralds a new assertiveness. Certainly, one cannot dismiss the pressure such assertiveness has applied to provincial and federal governments across this land to 'deal' with Aboriginal land and resource claims. According to Oren Lyons and John Mohawk, it has been individuals, not 'Indian' governments, that have led this struggle by asserting 'rights', taking the necessary action and risking the consequences. "They were the heroes of the movement to those of us who sought Indian self-determination and independence from the state and federal bureaucracies and they were absolutely necessary to that struggle" (Lyons and Mohawk, 1994, p.60). In the context of the 'logging issue', those Mi'kmaq and Welastekwiyik loggers who asserted their 'right' to harvest trees on 'Crown' lands had a profound effect on pushing the 'land ball' into motion. Every Wabanaki individual I have spoken with about this issue could not deny that the actions of those individuals, regardless of motives, launched the land debate in New Brunswick into a new realm. A

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<sup>1</sup>Rita Joe (1991), "Analysis of My Poem: 1", in Lnu and Indians We're Called, Charlotte Town: Ragweed Press.

comprehensive land claim filed a number of years ago by a group of Aboriginals had failed to solicit any response from either the provincial or federal government (Hrabluk, 1998a). According to Gary Gould, “for 25 years we’ve been calling on the federal and provincial governments to come and sit down and look at this evidence” (quoted in Hrabluk, 1998a, p.18). By winning the first two legal battle rounds, the Thomas Peter Paul case forced the provincial government to look at this evidence and to take Aboriginal claims more seriously.

Having said that, one cannot examine the appropriation of Aboriginal ‘rights’ discourse by First Nations Peoples, and the success or failures effectuated by it, without placing it in context. This chapter moves the location of focus from the courtroom into Mi’kmaq and Welastekwiik communities with the understanding that Aboriginal ‘rights’ discourse simultaneously plays itself out within and outside those communities. It is not simply a matter that this ‘rights’ discourse has been appropriated, it is also important to ask why and to what effect? Nor can it be assumed that all Aboriginal Peoples have appropriated the language of ‘rights’, or that it is appropriated and understood by everyone in a similar fashion. It needs to be remembered that those individuals or collections of individuals who utilize Aboriginal ‘rights’ discourse are subjects constituted through and by the ‘politicized communities” (Lithman, 1984) to which they belong.

This chapter begins with an examination of the context into which Aboriginal ‘rights’ discourse is appropriated to formulate some understanding of existing dynamics at play within Wabanaki communities. Post-colonial tools of analysis are expedient in this context, particularly the problematizing of ‘subject’, ‘experience’ and ‘identity’ within cultural representations, as they enable me to explore critically how multi-layered social interfaces with, diverse interpretations of, and differential responses to, cultural symbols simultaneously mobilize and polarize Wabanaki

communities in their articulation and exercise of 'rights'. Following the Aboriginal 'rights' trickster's journey through the confrontational process of the 'logging struggle', particular attention is paid to the ways in which the trickster solicits the use of "contested, contingent and never absolute" (Cohen, 1985) cultural symbols. These symbols, whose performative function marks the spatial boundaries of community, function ambivalently within the context of this struggle, for while they are harnessed as a medium through which to present a collective claim, this chapter will demonstrate that their internal contestation results simultaneously in enhancing individual claims as a result of colonial manifestations of power transmitted through Aboriginal 'rights' discourse.

### **The political milieu of 'Indian Country'**

To understand the context in which Aboriginal 'rights' are being asserted requires one first to examine the politics inherited by and inherent in 'Indian country', politics that on the one hand reinforce a sense of community, while at the same time at odds with evidence of dislocation, including high rates of unemployment, family violence, sexual abuse, suicides, alcoholism and drug abuse (York, 1990; RCAP, 1996; Cayo, 1997).

The contradictory and ambivalent milieu of 'Indian country', according to Paulo Freire (1970) is contingent upon a "historical reality of dehumanization" blended with a contemporary "vocation of humanization":

This vocation is constantly negated, yet it is affirmed by that very negation. It is thwarted by injustice, exploitation and oppression, and the violence of the oppressors; it is affirmed by the yearning of the oppressed for freedom and justice, and by their struggle to recover their lost humanity (Freire, 1970, p.26).

For Anthony Cohen (1985, p.77), 'Indian country' is illustrative of the hegemonic logic of 'national'

and 'international' pedagogies which "attack the old *structural* bases of community boundaries ... Communities respond by rebuilding their boundaries on symbolic foundations". As such, understandings and sense(s) of being within 'Indian country' are concurrently grounded in spatial location and displacement where cultural symbols serve to reinforce a sense of community despite evidence of social dislocation.

For instance, and contrary to 'quality of life' indicators, 'Indian country' is filled with the 'wealth' of many smiles and much laughter, familial communitarianism, a sense of belonging and great pride in being Mi'kmaq, Welastekwiyyik, Wabanaki. Elder Maggie Paul claims "I'm comfortable where I am. This is my community, where I live and nobody on earth could make me move" (quoted in Cayo, 1997a, p.10). Mi'kmaq youth like Yale Augustine and Todd Simon argue that the best thing about Big Cove is the familiarity and belonging, traditions and the employment of the Mi'kmaq language (Cayo, 1997a, p.11). For Juanita Perley (1997, p.43) from Tobique, "culture and tradition are just like getting up in the morning, opening your eyes and being happy that you were born Indian. This is how I always felt, I would not want to have been born anything else". Perspectives such as these contradict statistical data depicting Aboriginal Peoples as 'disadvantaged'. As Patricia Monture-Angus (1995, p.13) explains:

I just can't understand how Aboriginal people are disadvantaged... I have an entire community, or rather pockets of community all over this land...[where] things are done in a different way, against a different value system. So when the world of the dominant culture hurts me and I cannot take it anymore, I have a place to go where things are different. I simply do not understand how that is disadvantaged.

The interface between a sense of community on the one hand, and a sense of dislocation on the other, are constituted through much more than material 'poverty', social 'problems' and cultural 'wealth'. 'Indian country', according to Don Cayo (1997a) is also divided, inequitable and corrupt,

where issues of accountability and representation continue to rise to the surface. To understand these conditions requires one once again to turn back to history and into the face of colonialism, in order to explore how simultaneous notions of placement and displacement within contemporary Aboriginal landscapes serve to incite individual and collective 'identity' as a site of multiple and conflicting claims. As Andrea Bear Nicholas (1996, p.63) articulates, "until it is recognized that current conditions in 'Indian country' are consequences of deliberate imperialism, the strategy of which is colonialism, there can be no liberation". Indeed, historical and contemporary forms of colonialism have instigated various displacement processes within Indigenous economic, social, cultural and political realms.

First, there exists an *Indian Act* originally passed in 1876 and based on 'Indian' policies that had developed in the 19<sup>th</sup> Century. Sometimes referred to as a 'legal straitjacket', it regulates almost every aspect of 'Indian' peoples' lives and hence is/was a direct trespass and intrusion upon Aboriginal sovereignty by removing all self-governing power and control from the hands of Aboriginal Nations to the hands of the 'white man'. This is why it is perhaps more suitably named the 'White Man's Act'(Gidmark, 1997), as it says more about 'Canada' than it does about Aboriginal Peoples. And while its jurisdiction is 'Indians' and lands reserved for 'Indians', its impact extends to those Aboriginal Peoples who fall outside of its definition of 'Indian', and hence not entitled to 'status' conferred by this Act. The dilemma that has arisen as a result of 'Indian Status', and the 'benefits' that 'status' confers, is that it has divided Aboriginal Peoples along this arbitrary identity divide. As Rick Harp (1994, p.50-51) explains:

Proof of the effectiveness of this divisive strategy can be seen in Native peoples actually organizing themselves along this designation into Status (most notably, the Assembly of First Nations) and Non-Status (including the Native Council of Canada)

political groups... Could there be a more apt or blatant symbol of our colonial condition than the fact that our sense of who we are has become contingent upon a legal definition we have had no part in creating?

At the same time, nobody in 'Indian country' likes the *Indian Act*, seeing it as "the most paternalistic, oppressive, piece of legislation that ever was" (Cayo, 1997a). Yet the paradox of the *Indian Act* lies in the fact that Aboriginal Peoples are sharply divided about what to do with it. While some scream for its abolishment, others fear that it will strip away a last protective vestige of their distinctiveness, and yet others "refer to the rights and protections it contains as almost sacred" (RCAP, 1996b, p.259). It is therefore not surprising that when there is talk in 'Indian country' about self-determination or self-governance, how ever they are defined, the *Indian Act* hangs like a dark cloud over their landscape.

A second displacement process was the creation of 'reserves', which were inherited by and institutionalized through Canadian law. Reserves, or lands set aside for 'Indians', began as early as the 17<sup>th</sup> Century in New England and Acadia and continued on through the 19<sup>th</sup> Century due in part to settlement pressures (RCAP, 1996c, p.473), although even these parcels of land came to be regarded as 'retarding' colonial settlement of the colony<sup>2</sup>. The general philosophy behind reserves, apart from facilitating colonial land acquisition, was to confine Aboriginal Peoples until they became 'civilized'. "Once they had learned 'proper habits' of industry and thrift, they could then be released into the general society" (RCAP, 1996c, p.473). Control over reserves, sometimes referred to as laboratories (Jamieson, 1978), as well as their population was delegated to the federal government through Section 91(24) of the *British North America Act* and exercised through the Department of

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<sup>2</sup>See *An Act to regulate the Management and Disposal of the Indian Reserves in this Province* (New Brunswick), 1844, 7 Vict. Chapter XLVII.



Indian Affairs. “When reserves were first established, they were very much part of a plan to control Indian populations... Indians were even once prohibited from traveling off these reserves without a pass secured from the Indian agent (Monture-Angus, 1995, p.181).

The establishment of reserves, however, is not just a story of Aboriginal land dispossession<sup>3</sup>, but it is also about the disruption and disorganization of Aboriginal families and communities (Monture-Angus, 1995). Only registered ‘Indians’, as defined by the *Indian Act*, hold the ‘right’ to reside on reserves as ‘Indian Status’ equals an entitlement to band membership<sup>4</sup>. Prior to 1985, the *Indian Act* definition of an ‘Indian’ included a clause which stripped Aboriginal women of their ‘Indian Status’ if they married non-Native men. As result, a significant number of women and their children were banished from their communities and barred from their families (Native Women’s Association of Canada, 1991), becoming involuntarily disenfranchised from their own cultures and enfranchised into Canadian society. The philosophy then, as it is now, was that one could not be ‘Indian’ and ‘Canadian’ at the same time (RCAP, 1996c, p.473). To, ‘remove’ oneself from the reserve is to assimilate into Canadian culture and to give up one’s ‘Indian-ness’.

Over time, reserve residency has come to be equated as the ‘true’ or ‘authentic’ Aboriginal experience, as though non-reserve residency is somehow less real or legitimate (Monture-Angus, 1995, p.180). It must be said, however, that this dichotomy has not been lost on Aboriginal Peoples as some have embraced this distinction. “This attachment to reserves on the part of some native

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<sup>3</sup>Don Cayo (1997a) in his report on ‘Indian country’ notes that “the total amount of reserve land set aside for Indians in Canada is less than the Navaho own in Arizona” (p.10), which certainly indicates the enormous extent of the colonial land grab.

<sup>4</sup>Under the Indian Act a band member is awarded various ‘rights’ such as living on the reserve, voting in elections, owning and inheriting property, having a share in the income of band resources, on-reserve housing, and health, welfare and educational services. See Joan Holmes (1987), “Bill C-31, Equality or Disparity? The Effects of the New Indian Act on Native Women, A Background paper”, Ottawa, Canadian Advisory Council on the Status of Women.

peoples is just another example of the way we've accepted, if not embraced, the boundaries others have laid out for us" (Harp, 1994, p.52).

This on-reserve/off-reserve dichotomy is of course problematic on a number of fronts. First, it has had a disproportionate effect on Aboriginal women who "statistically are more likely to live off-reserve (Monture-Angus, 1995, p.181). Despite *Bill C-31*, the 1985 amendment to the *Indian Act* which repealed the discriminatory 'marry out' clause, only a limited number of women have been able to move back into their 'reserve' communities. "The women are excluded because there is no land and no housing...[some] have been shut out of their communities because band governments do not wish to bear the costs of programs and services to which they are entitled (Native Women's Association of Canada, 1991, p.14).

This leads directly into another problematic assumption, namely that those who live off-reserve 'choose' to do so. One Welastekwiyik woman I interviewed explained:

If you don't live here [reserve] where do you live? Myself, I live in Oromocto, I live off-reserve. It wasn't really a choice I made. I could not live on-reserve as there is no infrastructure for me. I had to live somewhere else but it is not really a 'choice' (TQ, Interview, March 1999).

When asked if it was relatively easily for individuals to move back and forth between on and off reserve the answer was emphatically 'no'.

Often there is no infrastructure, no housing. When people come back they would need to move in with immediate families or relatives. It's very hard to find a place... Like here at St. Mary's there are 160 people/families on the waiting list for a house, and it has always been that way as long as I can remember (TQ, Interview, March 1999).

The irony of the on-reserve/off-reserve dichotomy does not end here. Federal funding criteria are based on total population which includes off-reserve members. However dispersal of those funds

for services and programs are restricted to the on-reserve population only.

Any diversion of funds coming from the band council could be seen as misappropriation of funds if it were diverted for services and programs for people who do not live in the community. In essence it is done [informally] but it is not talked about (TQ, Interview, March 1999).

That is where you also get a lot of abuses taking place, a lot of misuse of funds (KL, Interview, March 1999).

Similarly, with respect to political representation, off-reserve Aboriginals are represented by the Chief and Council of the communities to which they are a member:

They [off-reserve] see their Chief and Council as being their representative. And bureaucratic wise that is what all other departments and groups view as being their representative (KL, Interview, March 1999).

Yet, off-reserve [Aboriginals] don't have the right to vote for Chief and Council. That they cannot participate in that political process - but Chief and Council represent them - is in the Indian Act (TQ, Interview, March 1999).

Gary Gould similarly articulates this lack of democracy:

I'm a band member at Woodstock because of Indian Act legislation. I am used to determine the size of the band council [which has one position for each 100 band members]. Yet I don't have a say in the electoral process of choosing those councillors. In my band there are 400 of us who live off reserve. So there are basically four councillors elected on our backs, and we don't have a say (quoted in Cayo, 1997a, p.17).

Consequently this leads directly into another colonially instigated displacement, namely the current governing structure in Aboriginal communities, Chief and Council. First 'introduced' in 1869 under *An Act for the gradual enfranchisement of Indians*, the elective band council system (originally every three years but now every two) was designed to undermine and eliminate traditional governing structures which were seen by colonial officials as impeding their policy goals (RCAP, 1996b). Under the band council system election terms and conditions were to be determined by the

superintendent general; elected chiefs could be disposed of by the federal authorities; only 'Indian' men could vote; authority accorded to band councils concerned only minor matters with no powers of enforcement, restricted to individual reserves, and always subject to confirmation by cabinet (RCAP, 1996b, p.275). It is no surprise that Aboriginal Nations opposed the colonial imposition of this alien governing structure, an opposition which for colonial authorities confirmed that "the Indian mind is in general slow to accept improvements. It would be premature to conclude that bands are adverse to the elective principle because they are backward in perceiving the privileges which it confers" (Spragge quoted in RCAP, 1996b, p.257-8). That Aboriginal Peoples continued to resist adopting this 'responsible' form of government is evident with the passing of the 1876 *Indian Act* which criminalized traditional governments and ceremonies (Jamieson, 1978). This act and its subsequent amendments had the effect of continuously increasing the powers of the superintendent general and local Indian agents (Bear Nicholas, 1996). Moreover, as the RCAP report (1996b, p.286) notes;

Although Indian agents began to be phased out in the 1960s, band councils still operate under the restrictive and limited by-law making framework developed in 1869. In the modern era, most band council by-laws are subject to either a ministerial power of disallowance or a requirement that the Minister confirm them.

Given the history of the band council structure it should not be surprising to discover that a number of Aboriginal Peoples today continue to denounce its legitimacy. As Monture-Angus (1995, p.180) notes, "the source of authority for the political leaders in our communities is illegitimate as that source is someone else's system of law and belief". Juanita Perley (1996, p.47) similarly asserts, "today the mock government of the Indian people is more like a puppet of the white man's government". Part of this perspective speaks to the governing (in)ability of Chiefs and Councils, and

in turn their (in)capabilities of meeting the needs and aspirations of their communities due to the heavy hand of the 'white man'. As Miigemag Albert Levi, who served as Chief of Big Cove for over twenty years explains, "the system has stripped the chief. The chief has no more power than a city dogcatcher. And that's the truth" (quoted in Cayo, 1997b, p.11).

Unfortunately it is not as simple as all that. While some may blame Chief and Council governing problems on the 'white man's' legacy, others claim that the 'all-powerful chief replaced the all-powerful Indian agent" (Cayo, 1997b, p.11). Millie Augustine notes, "all that getting rid of the Indians agents did was give control of the money to a few people, a small percentage of the population, and they became millionaires" (quoted in Cayo, 1997a, p.12). It would certainly appear that over the years some Aboriginals have indeed learned to perceive 'the conferred privileges' of a band council system. Yngvs Lithman's (1985, p.125) research on the politics of the Maple Ridge community concluded that "control over the reserve economy is to a remarkable extent lodged with the political leadership, the Chief and Council. It is a consequence of this that 'politicking' is an essential part of 'making a living' in social as well as economic terms". Andrea Bear Nicholas (1994a, p.235) articulates a similar scenario:

Chiefs and Councils have the powers both to give and to withhold nearly all community resources, their powers over community members are all but absolute, and limited only to the extent that the same hierarchical powers are imposed on Chiefs and Councils by the Canadian state through the Indian Act.

How does this type of governance play itself out in 'Indian country'? Perley (1996, p.48) explains, "you will get a house if you are a favorite or if the council wants to pay back a favour, not because you need it". Roche Sappier from Tobique claims, "not all native people are treated the same or given the same set of liberties as others. It usually depends on who you are, what family or group

you belong to and what your particular value is or was to those in charge” (*Victoria County Record*, 1998d). Some studies explicate the existence of kinship favouritism as being the result of blending two incompatible systems, traditional kinship networks and family values on the one hand and a hierarchical band structure on the other (Brown, 1991). Others lay the blame more on a system which “puts oppression on our own people because everything is run by an elite. If you live on a reserve and want a house, then you’d better not open your mouth to criticize that Chief and Council” (Augustine quoted in Goguen, 1998a).

Once again, there is more to politics in ‘Indian country’ than this. Not everybody is against the Chief and Council, perhaps because the current system has served them well. Nor for that matter is every chief and counselor ‘hell-bent’ on serving themselves with little regard for others in the community. “They start out with the intention of helping their people [but] they become preoccupied with material things... They never fight based on Aboriginal rights, they fight with the Indian Act” (Perley, 1996, p.48). From this vantage point it is not so much Chiefs and Councils, or the people that support them, that is the problem but rather the very structure itself, a structure which is bred for corruption and undemocratic practices:

Another fundamental betrayal for Indian people is democracy. You hear about democracy and we are described as if we never had democracy in our lives. When they bring this idea about voting and how one votes and so forth, [this] democracy is a real failure in Indian country and it has led to disastrous effects, a system accountable to no one but itself. And then this potential for corruption. I wouldn’t wish a band council system on any people in the world (KG, Interview, March 1999).

A ‘system accountable to no one’ appears to be the manner in which band council politics operate<sup>5</sup>

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<sup>5</sup>When it comes to band politics there seems to be a lot of finger pointing but no source is to be found. Community members point fingers at both the band council and Indian Affairs; the band council points fingers at Indian Affairs and the ‘system,; Indian Affairs points a finger back at band councils claiming it is an internal matter, and many Canadians point fingers at the communities claiming ‘you elected them’.

where one can usually find a 'scapegoat' for when things go 'wrong'.

This is not to suggest that community politics is frozen in 'inaction'. If anything it seems to be a continual work in progress. As the Wampanoag informant explained vis-à-vis the Esgenoopetitj community:

When something really important comes up in this community, the community has really voiced their opinions to Chief and Council, to the point where Chief and Council has actually listened and responded... It hasn't always worked that way, in the sort of politics that go in Indian country when provincial and federal dollars are at stake.[But] what is really important here, when something significant takes place, the community evolved to the place where they feel good in their perception of what is going on, and that they are able to voice their opinions. And that point of view is given legitimacy by Chief and Council when they incorporate that view in their actions and their decisions. This whole process is evolving in itself (KG, Interview, March 1999).

Within this process, however, other dynamics rise to the surface. While there exists a general consensus in Mi'kmaq and Welastekwiyik communities that political, economic, social and cultural conditions need to be changed, the voices raised and opinions expressed by community members are by no means unanimous, and can perhaps partly explain some of the difficulties faced by Chiefs and Councils when making community decisions. Consensus or commonality, as Cohen (1985, p.20) explains, does not mean "uniformity but rather a commonality of forms (ways of being) whose content (meanings) may vary considerably among its members".

For instance, many Wabanaki Peoples I have spoken with or listened to argue that the road leading towards Indigenous recovery lies in "walking the way our ancestors tell us to walk" (Perley, 1996, p.46) and where "maintaining traditional cultures must be the first line of defense" (Bear Nicholas, 1996, p.63). Pursuant to such understandings, colonialism in its various forms is seen to be the root cause for "Aboriginal peoples growing up not feeling ok about themselves" where the

“world is upside down and inside out, it doesn’t make any sense” (Monture-Angus, 1997). As a result, the road toward establishing well-being in Wabanaki Nations is “not to be found in the institutions and systems of our oppression which keep perpetuating this sickness and unbalance” (gkisedtanamoogk, 1996b). Rather, the liberation process demands the re-establishment and institutionalization of traditional governing structures, structures which not only are principled upon democracy, inclusivity, individual and family respect, and responsibility, but also reflects Wabanaki Nations’ continuity in terms of sovereignty and territorial integrity (Brooks and family, 1997; Bear Nicholas, 1993 and 1996; Perley, 1996; gkisedtanamoogk, 1996b). Points of departure to this end include: re-valorization of Mi’kmaq and Welastekwiyik languages, drumming and singing; revitalization of spirituality and spiritual ceremonies like smudging, sweats, and tobacco offerings; reconfiguring families according to longhouse principles; elder-youth programs, home schooling, and revival of a Welastekwiyik traditional court which issued an order to the province in 1996 (see Appendix B). By ‘walking their talk’ many traditional or spiritual people, as they are sometimes referred to, are striving to promote traditional ways by being an example and inspiration for others (gkisedtanamoogk, 1996).

While manifestations of Wabanaki traditions “have had a powerful influence on many, many lives” (Cayo, 1997b, p.10), support is by no means absolute. Some Aboriginals argue that traditional ‘rhetoric’ is too idealistic, unreal and impractical, particularly for those engaging in political and entrepreneurial affairs whose language consists of deficit control, job creation, resource allocation and programs, economic development and establishing conditions for fiscal growth. Perhaps part of this scenario is the notion of being ‘bothered’ by culture, as Lorne Simon (1994, p.73) articulates through the character of Megwadesk in his book Stones and Switches:



**How much of the past is good to keep anyway? If them witch tales can stop me from doing things, stop me from doing what I know to be better, then if I told my child the same silly stories, won't he, too, grow up to be bothered by 'em?**

**For others, the traditional 'trend' is too culturally rigid, denying Mi'kmaq and Welastekwiyik communities the adaptive and regenerative capacities necessary for cultural survival.**

**I really question whether it is traditional to say 'we shouldn't cut wood' or 'not for profit'. I don't agree with that because that is more likely to lock native people in the past, rather than using it as an economic development or sustainable development tool for the present day. I think we can use our resources for commercial purposes and help our communities move forward to become more independent. I don't think we should be locked into using snowshoes and arrowheads (KL, Interview, March 1999).**

**According to Rick Harp (1994, p.52), "the debate among native peoples over how we are to organize and govern ourselves seems to have come down to being an either/or proposition, either you advocate a so-called 'traditional' way of doing things or you buy into the 'modern' presumably non-native way". Monture-Angus (1995, p.99) similarly asserts, "when we ground our ideas in a conflicting dichotomy of either 'Indian' or 'white', traditional or modern... we ground our thinking in racist stereotypes of Aboriginal peoples". More often than not, the traditional/modern split in 'Indian country' is not such a clear cut dichotomy. Miigemag poet Rita Joe (1990, p.325) articulates, "In accepting new ways, / native life has changed. / Yet, re-attracted to traditions, / they are practiced again". Those in the 'traditional camp' recognize the 'modern' existence in which Aboriginal Peoples find themselves, while those belonging to the 'modern camp' often respect and acknowledge the significance of traditional values and customs. The struggle between the two, however, seems to arise in the context of nation-building, the process of moving toward living in a decolonized way. What traditional ways of being, thinking and acting can be applied to 'contemporary' Wabanaki lifestyles? What form of governance will be reflective of Mi'kmaq and**

**Welastekwiyik values and territorial integrity? How are (extra) land and resources to be used in a spiritually responsible way during the process of developing and maintaining community well-being?**

As the above discussion illustrates, 'Indian country' is a complex, contradictory, and ambivalent landscape. When it comes to the politics of self-determination, or Indigenous community recovery, contestations over 'ways of being' become even more acute and complex. As Monture-Angus (1995, p.147) asserts, "there are complications that arise within our relationship with the dominant political structure of Canada, as well as within our own communities. When these sets of complications collide, confusion and struggle can be the only result". Often, outsiders point to what is classified as 'internal divisions' or struggles and 'blame the victim' for their inability to 'get their stuff together' and speak with one voice. Critical scholars, however, have classified these internal dynamics as a result of 'divide and conquer' tactics (Freire, 1970; Harp, 1994; Maliseet Court, 1996) and the phenomenon of internalized colonialism (Fanon, 1968; Freire, 1970; Polson and Spielman, 1993; Adams, 1995). As Cherokee artist Jimmie Durham notes, "...colonization is not external to the colonized, and it makes for neither wisdom nor charity among the colonized. Made to feel unreal, inauthentic, we often participate in our own oppression by assuming identities and attitudes within the colonial structure" (quoted in Harp, 1994, p.46). Freire (1970, p.27) similarly argues that "the very structure of their [oppressed] thought has been conditioned by the very contradictions of the concrete existential situation by which they are shaped".

It is these types of understandings that postcolonial theorists are appealing to when arguing the need to deconstruct 'subjects' and 'experiences', recognizing that politics and power operate at the various levels through which subjectivity and agency are articulated. Recognizing these divergent pulls on identity and the diversity of experiences is crucial to exploring an Indigenous land conflict

such as the 'logging issue', particularly where a colonial discourse such as Aboriginal 'rights' calls for the harnessing of cultural symbols, which demarcate the community's boundaries, to substantiate 'rights' claims.

### **The appropriation and exercise of 'rights' - Scene one**

It is within the above described context that the Aboriginal 'rights' trickster is employed by Aboriginal Peoples. What follows in the remainder of this chapter is a critical analysis of the ways in which the trickster solicits the employment of cultural symbols as a medium through which individual and collective responses and agency manifest themselves within and outside Wabanaki communities. It may be pertinent at this time to highlight that the character of 'trickster' in many Aboriginal oral narratives is a shape-changer, and as such has the ability to not only change its form but also to change its mind (Holmes Whitehead, 1988). This shape-changing aspect of 'trickster', as well as many other characters, serves to illustrate that the universe is both unpredictable and unreliable (Holmes Whitehead, 1988). What emerges in the pursuant discussion is that as the Aboriginal 'rights' trickster changes forms within the confrontational process of the 'logging issue', so too do the meanings and forms of cultural symbols. While ordinarily this is perceived as a "symbolic community resource" (Cohen, 1985), within the context of 'rights' it becomes a community 'disadvantage' in the sense that when pressure becomes applied to the community to 'negotiate' within a colonial setting certain meanings or 'ways of being' become solidified at the expense of others, resulting in the advancement of individual or factional claims.

It was noted previously that Aboriginal Peoples have varying opinions and ideas on what a self-determined community could or should look like. However, all would agree that the basic and

fundamental premise for its actualization depends upon gaining access to and control over more land and resources. To this end, favourable 'settlement' of outstanding land claims is a result Wabanaki Peoples ultimately desire, and many see this debate over logging as part of the process (Hrabluk, 1998c).

It is therefore not surprising that when Justice Turnbull in October of 1997 ruled that "the trees on Crown lands are Indian trees...[and that] Indians have a right to cut trees on all Crown lands" (Respondent's Submission, 1998, p. 17), Wabanaki Peoples saw this decision as the beginning of 'the enlightenment' as had been prophesized. According to a Mi'kmaq prophesy, the coming of a ship to Wabanaki territory would bring with it a great darkness that was to be followed, in time, by a light and an awakening (Clark, 1996). In fact, the accepted free translation of Wabanaki means 'people of the first light or dawn-land'<sup>6</sup>. Generally speaking, Wabanaki Peoples saw this enlightened ruling as justice long overdue. As Miigemag Lloyd Augustine commented, "I want to applaud Justice John Turnbull for taking the initiative to understand the subject he admittedly did not know. Most people would recognize this as a fair and just ruling. I thank you Judge Turnbull" (Augustine, 1998).

While Wabanaki Peoples collectively understood this ruling as re-affirming and giving reality to their cultural boundaries, the ways in which this understanding was internalized by individual members was subject to "idiosyncratic interpretation by members in light of their own circumstances and experiences" (Cohen, 1985, p.108). As a result, Mi'kmaq and Welastekwiyik peoples' responses to this new dawn played itself out on a variety of levels.

First, there was a level of pride, as explained to me by a younger Miigemag member from Eel

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<sup>6</sup>Information obtained from a Wap'qtotimoinoag/Oetjgoapenageog (Wabanaki Nations Cultural Resource Centre) information pamphlet.

River Bar<sup>7</sup>:

For a little while you finally had treaty rights being recognized and for me this was the first time that I've seen treaty rights go through the court system and being backed by the justice system. So a little bit of a sense of pride, I guess, almost on a nation status... For me and a lot of other people this was a rallying point (DH, Interview, February 1999).

Tobique member Dan Ennis similarly explained, "I see something very positive happening to native people. More than anytime in the recent past, I see a tremendous reawakening of native peoples, a resurgence of solidarity, and a return to traditional ways and beliefs of our ancestors" (*Victoria County Record*, 1998b).

This level of pride arose not only from a recognition of Aboriginal 'rights' and a reaffirmation of Mi'kmaq and Welastekwiyik culture boundaries, but also from the pride inherent in economic self-sufficiency and independence, being able to take care of oneself and one's family. What emerges, therefore, is an interplay between levels of pride and economics, as explained by Noah Augustine, a Mi'kmaq from Metepenagiag (Red Bank):

I have never seen any change as drastic as what happened on reserves after the court decision... The pride it brought, the spirit of the people who were out working, making money, no longer dependent on chief and council for a job, it was unbelievable (quoted in Toughill, 1998).

Tobique band councillor Tina Perley Francis similarly asserts, "finally we can crawl out of this economic depression. There is a really positive outlook among our people" (quoted in Llewellyn, 1998a).

Indeed, of all else that may be said about this six month period of time when 'Crown' lands were accessible to Wabanaki Peoples, for the first time in a long time it brought varying levels of

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<sup>7</sup>Throughout the remainder of this chapter I will identify the communities to which Wabanaki speakers belong. See Appendix E for approximate location of these communities within New Brunswick.

independence to 'Indian country', which in turn effectuated other community dynamics. For instance, Esgenooetitj (Burnt Church) resident Kathy Lambert claims:

People have developed a sense of pride in work. When they had to depend on the band for jobs, they never had that... People would [now] get up in the morning, go to work and go home. People who used to get drunk a lot, working kept them away from all that (quoted in Maclean, 1998).

Chief Burton Martin of this same community explains that he has never seen his reserve like this before, "the crime rate has gone way, way down. The drug problems are easing off. Nobody has time to do that now. They're either too tired to do them or they're too eager to go to work" (quoted in Maclean, 1998). According to Betty Ann Lavalee, President of the New Brunswick Aboriginal Peoples Council which represents non-status and off-reserve Aboriginals, "it is the first time in most of their adult lives that people have been able to put food on the table and clothe their children. The social violence and suicides have dropped over the past couple of months and it's because people are actually out there making a living" (quoted in Cox, 1998). Logger Stewart Clement from Big Cove claims that his five hundred dollar earnings per week go a long way in supporting his wife and four children. "This is the first full time job I have had in six years" (quoted in Tenszen, 1998a).

Certainly, one cannot deny that Aboriginal 'rights', where they can be 'proven' to exist, confer benefits to individuals of claimant communities:

I can't deny it. It did help the community. Like I said, the young were doing work and they weren't drinking and doing drugs so much. I can't really blame the community either as there is no employment on reserves. You have your select few, there are only so many full time positions, and then you have seasonal workers (QT, Interview, February 1999).

A second level of response incited by this new dawn stood in direct contrast to initial levels of pride and economic self-sufficiency. For some Wabanaki Peoples, the new landscape they found

themselves in was not just about 'rights' and the economic opportunities that confers, but also a responsibility to the forests and the land, a responsibility which was not seen to be exercised by many of the Aboriginal loggers:

**Myself and other people who have the same ideology of taking care of Mother Earth, it would not really be the 'right', it would be the responsibility that comes along with that right. What are you going to do with it, you have to sort of put it in context. Sure you have a right to the land...[but there] is a responsibility that goes along with that, and living up to that responsibility, of taking care of it. A right will last as long as the forest lasts. That is what those people couldn't see (DH, Interview, February 1999).**

For those Mi'kmaq and Welastekwiyik who understand Aboriginal 'rights' as being "an Aboriginal responsibility to take care of Mother Earth" (QT, Interview, February 1999), the sense of pride first effectuated by the Turnbull ruling soon ended in light of the "blatant disregard for that responsibility to the earth" (DH, Interview, February 1999):

**There was a sense of pride until you could see clear cutting all over the place. You could see the trees, you could almost feel their pain. That is where I drew the line. I'm glad we had our rights recognized but look at the trees now (QT, Interview, February 1999).**

The landscape described by this Miigemag woman was not lost upon New Brunswick residents either. My own family and friends lamented, in anger and disgust, at the loss of a beautiful pine grove along the highway in Brockville that had been harvested by Aboriginal loggers. Similarly, Juniper resident Rick Newman on a fishing outing with his children describes the landscape he encountered as follows:

**Trees were tossed along the side of the road and some even fell across the road. Huge hardwoods had been dragged across the mouth of some roads and left there. Branches, rotten pieces of wood, log ends and garbage littered the landscape... What do you say to your children who have been raised to believe in the strong pride and respect native people have to this land?... Is this how the new stewards of our Crown lands are going to return to their heritage, reclaim the right to manage the forests?**

(Newman, 1998).

Often lacking the necessary (wo)manpower and equipment to log further in the forests, a difficulty heightened by the time of year that this harvesting was occurring, some Aboriginal loggers worked along the side of the road harvesting what they could:

Signs of their work are evident kilometre after kilometre - the bare treeless patches that poke through the even lines of trees that stretch along the highways, the logs lying by the roadside waiting to be picked up and the chips and bark left behind after the load has departed (Hrabluk, 1998a).

New Brunswickers used to seeing a buffer zone along the highways, which hide similar yet more extensive destructive corporate practices, became outraged at the sight of this 'new dawn' landscape and demanded an answer to the question, why? The common response cited in the media, as articulated by Forestry Officer Steve Ginnish from Eel Ground, was, "when a people who haven't been allowed to participate all of a sudden get so much opportunity, it's going to take a while to iron itself out. There's always a few who buck the system" (quoted in *Grand Lake Mirror*, 1998b). The unfortunate reality, however, is that those "few who buck the system" in the exercise of their Aboriginal 'right' serve, for many New Brunswickers, as the 'real' illustration of Aboriginal 'rights' application. This too has had an impact on 'Indian country' as all Mi'kmaq and Welastekwiyyik Peoples are being held accountable to and answerable for the actions of a few.

Focusing solely on the actions of a few, however, obscures the divergent pulls and diversity of experiences found in Wabanaki territory. It was not simply a matter of all Aboriginal Peoples rushing into the forest to exercise their 'right'. In fact, estimates by government officials of the number of Aboriginal loggers in the woods during this period of time ranged around 500 (Graham, 1998). There are approximately 15,000 Aboriginal Peoples in New Brunswick (Ennis, 1998), which



means that those individuals logging represented only 3.3% of the total Aboriginal population. Nor for that matter was it the case that economic opportunities opened up through this legally proven 'right' were equitably distributed, despite the fact that Aboriginal 'rights' by nature are held to be collective (Mandell Pinder, 1998; Lyons and Mohawk, 1994).

As a result, the level of response within this economic realm was also diverse and served to stratify Wabanaki communities more acutely along already existing divisional lines, namely individual opportunism (generally equated with entrepreneurs) and collective responsibility referring to equitable distribution of resources (RCAP, 1996c):

I heard someone at one time bring up in a talking circle that people are putting food on the table. But how much food can you put on the table when it is spilling over and falling on the floor? You had some people that were making hand over fist in the interim period... You had those who owned their own rigs, trucks and stuff and they were making hand over fist. But you still had that stratification where some people weren't making that much money, who were just workers putting food on the table (DH, Interview, February 1999).

Another Miigemag informant explained how the benefits conferred by this Aboriginal 'right' were viewed by some as being solely about individual economic opportunism, "...going in there and making lots of money instead of making enough to get by. People would make like five thousand dollars a week easily, and to them they are exercising their Aboriginal right" (QT, Interview, February 1999). That this individualistic economic opportunism was recognized is evident in many Wabanaki Peoples' reference to this six month interim period as a 'free for all'. It was also evident in the birth of logging organizations and businesses like the Native Loggers Business Association, Great Earth Consulting, and Bear Paw, as well as the expansion of existing logging operations such as Thunder East Corporation and Jigug Enterprises.

It is within this context that the Aboriginal 'rights' trickster makes its first visible

transformation, albeit fluidly interchangeable, from a struggle over land 'rights' to a struggle over resource 'rights' and in particular logging 'rights'. This transformation in turn incited a corresponding level of response, particularly where the trickster's new shape significantly reduced the commonality of the struggle. This response arose, therefore, from a recognition of what was happening in the woods and in relation to the trees, but also from a broader understanding of this struggle as encompassing land and not just trees. Being more holistically based, this level of response was more conscious of process, methodology and justification:

During this whole process [Thomas Peter Paul trails and forest rush] we never really had a way to create a standard of how we are going to use our own resources... We never really had the forum to sit down and premeditate or discuss how we are going to manage our resources. It was more like a reaction. And while everybody was cutting this evolution of thought - of, 'hey wait a minute, we are being like them [non-native peoples]. We had objected to their methods and here we were doing the same thing' - took place, that there is a better way to approach our economic needs than just obliterating our relatives out there (KG, Interview, March 1999).

The evolution of thought to which this Wampanoag man is referring includes a recognition that current processes were exclusionary in the sense that "...people are left out, the people who make the baskets, and pipes and drums" (QT, Interview, February 1999). Indeed for some Wabanaki Peoples the confining restrictions of 'trees' and 'logging' meant an exclusion of half of the population, namely women who were traditionally the community gatherers. One Miigemag informant spoke about an Elder in one community who was speaking out on behalf of the gatherers:

She [the Elder] makes a clear distinction between hunters and gatherers and loggers... They [treaties] were signed by hunters and gatherers, each had their own particular interests and their own interests were heard in a hunter-gatherer society... Whereas today the emphasis is on logging not on gathering, gathering medicines, food whatever (DH, Interview, February 1999).

For others, the narrowing classification of this struggle as a 'logging issue' also confined focus and

attention to the present day, immediate gratification as opposed to future sustainability, looking at seven generations into the future (TQ, Interview, March 1999; QT, Interview February 1999).

The culmination of these types of understandings spurred the creation of more broadly based, collective initiatives such as the Micmac-Maliseet Hunters and Gatherers Association and the Mi'kmaq-Maliseet Coalition. Indeed the Wampanoag informant noted that the formation of the coalition - which included elders, chiefs, council people, on and off-reserve Aboriginals, and others interested in creating a standard of operation - was a direct result of women's participation in the process:

It was the women speaking out that formed the basis of the coalition, It was the women who did that and the men who were hearing that had this insight about responsibility and what had to be done (KG, Interview, March 1999).

Reviewing what occurred within this first phase of 'rights' appropriation and application, what emerges is a contradictory picture. On the one hand, the Aboriginal 'rights' trickster's fluid transformation between land and trees served to divide people along dichotomies such as rights/responsibilities, individual/collective, men/women. At the same time and as the process continued to unfold, there arose an understanding of the need for communal participation, collective responsibility, governance and ownership and the potential for cultural development inherent in this new dawn which served to unify people across the (falsely) dichotomized divides. It is important to note that at this time the trickster's shape changing remained fluid and interchangeable such that its engagement with cultural symbols was flexible enough to accommodate individual and collective interpretations of community boundaries without significantly constraining the expression of internal diversities.

## **The 'rights' squeeze - Scene two**

On April 22, 1998 the New Brunswick Court of Appeal ruling changed the landscape once again and diminished the light of the new dawn to a glimmer. The land-ball was now in the court of the provincial government, which up until this time had sat relatively quietly<sup>8</sup> on the sidelines, hoping for a reversal of the power dynamics that had emerged as a result of the Turnbull judgement in October of 1997. Having refused to 'deal' with Wabanaki Nations prior to the Court of Appeal decision, the provincial government now expressed a desire to 'settle' the matter through 'negotiation'<sup>9</sup>. To understand what evolved from here, I will outline the sequence of events in 1998 that followed the Court of Appeal ruling.

- April 22      New Brunswick Court of Appeal ruling. From this point forward all Aboriginal logging activities that occurred without express permission from the provincial government were 'illegal'. The province issued a call for all Aboriginal harvesters to 'cease and desist', although no deadline was given as to when Aboriginals had to be out of the woods before charges were laid and equipment seized.
- April 29      A meeting was held where the chiefs of all fifteen reserve communities and loggers formed an alliance in preparation for a meeting with then Premier Ray Frenette. At this meeting, loggers voted to stay in the woods despite threats from the premier's office that negotiations would not occur unless all Native harvesting stopped (White and Hrabluk, 1998; Hrabluk, 1998e).
- April 30      First meeting between Aboriginal representatives and the province. Aboriginal

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<sup>8</sup>The provincial government did interfere in Aboriginal logging operations with respect to non-native participation, were they harvesters or truckers. According to the provincial government, the Aboriginal 'right' to harvest on crown lands was non-transferable.

<sup>9</sup>There is a divergence of opinions as to why the government decided at this point and time to negotiate, especially since the Court of Appeal had upheld the 'fact' that the land in question was 'Crown' land. There is speculation on 'ulterior motives'. For instance, Aboriginal peoples fear that the interim agreements are going to become land receipts. One lawyer I spoke to stated, "ask yourself why the government would spend millions of dollars on Aboriginal communities [which is not their jurisdiction or responsibility] when the land is deemed to be theirs" (Allaby, personal communications, April 1999). For a number of people the negotiations are more telling of future diversion or 'milking down' of Aboriginal land 'rights' should another court decision rule in favour of Aboriginal peoples. The question that will need to be answered should that occur, is what do these agreements mean with respect to Aboriginal 'title'?

representation included President Tim Paul and Spokesperson Noah Augustine of the Micmac-Maliseet Loggers Business Association; Chief second Peter Barlow of the Union of New Brunswick Indians which represents twelve of the fifteen reserve communities; and some loggers. Discussions that took place in this closed-door meeting revolved more around setting the stage for negotiations where the proposal put forth by the Premier outlined that negotiations for a percentage of the annual allowable cut would proceed once Aboriginal harvesters left Crown lands (White, 1998a).

- May 1 In an open letter to all chiefs, Premier Ray Frenette offered 200 acres for harvesting purposes to all Aboriginal communities as a whole (Gregoire, 1998a)
- May 2 A general assembly of Wabanaki peoples was held at Big Cove to discuss the negotiation's process and the premier's proposal. The 400 people in attendance voted 'no' to the proposal, calling it an 'insult' and a 'joke'. A counter-proposal by loggers and leaders asked for 50% of the annual allowable cut, demanded federal government involvement in the negotiation procedure, and Aboriginal loggers once again vowed to continue harvesting on 'Crown' lands. A liberal leadership convention was held on this same day which resulted in Camille Theriault becoming the new Premier of New Brunswick (MacPherson, 1998).
- May 5 The Department of Indian Affairs and Northern Development Minister Jane Stewart announced that her department had no intention of playing a key role in these negotiations (Morrison and Porter, 1998).
- May 7 Eleven out of fifteen reserve communities were in favour of resuming discussions with the province, and reaffirmed support for those loggers still harvesting on 'Crown' lands. Of the remaining four communities: Buctouche First Nation had not yet held their community meeting; Big Cove elected to sit in on negotiations but to not participate; and both Esgenoopetitj and St. Mary's did not support negotiations (*Telegraph Journal*, 1998b).
- May 8 The provincial government puts together a facilitator team for a Task Force on Aboriginal Issues whose recommendations will form the framework for a long term 'Crown' land harvesting arrangement with Aboriginal communities. This team consisted of retired Supreme Court Justice Gerald La Forest and Provincial Court Judge Graydon Nicholas (Gregoire, 1998b; *Victoria County Record*, 1998c).
- May 8 The Premier makes another offer to the chiefs. This deal includes promises to hire more Aboriginals in silviculture, mills and manufacturing plants, and acquiring shares of Eagle Forest Products limited. Under this agreement all loggers would work under existing Crown licensees, and a portion of royalty money paid to the province by licensees would go directly to chiefs and councils to be used at their own discretion.

It is important to note that this offer did not include off-reserve Aboriginals (approximately 7500 Aboriginals), and placed chiefs and councils as the 'gate keepers' not only of royalty monies received but also of employment contracts. Ten out of fifteen chiefs expressed an interest in this offer (Gregoire, 1998c).

- May 11 Rally of Aboriginal loggers and supporters at the Fredericton Inn where they rejected the province's latest offer. Noah Augustine appealed to the province to give Aboriginal peoples enough time to develop a counter-proposal based on a unified Aboriginal position (Hrabluk, 1998f).
- May 16 This week saw the formalization of the Micmac-Maliseet Coalition and a meeting was held to try and reach a consensual position within Aboriginal communities (White, 1998b).
- May 21 'Crackdown in the woods' began on Native logging operations. Some loggers were arrested and had their equipment seized (White, 1998c).
- May 22 Micmac-Maliseet Coalition spokesperson, Noah Augustine issued a statement to the provincial government warning that if harassment of or interference with Aboriginal loggers continued then all negotiations would cease (Gregoire, 1998d).
- May 28 Doug Tyler, Minister of Natural Resources and Energy warns mills and processors that they will be charged if provincial inspectors find illegal 'Crown' wood on their premises (Gregoire, 1998e).
- June 3 Aboriginal peoples held a meeting in Big Cove to discuss various counter-proposals developed by different groups and to try and reach a consensus on one to present to the province. By this time they were looking at around 30% of annual allowable cut (Goguen, 1998b).
- June 5 Information comes forward about the provincial government holding secret meetings with some Aboriginal chiefs in an effort to strike logging deals with individual Aboriginal communities. Aboriginal peoples charge the government with applying divide and conquer tactics. Government justification for their actions was based on their frustration with the on again off again negotiations (Hrabluk, 1998j).
- June 10 Tobique First Nation signs an interim agreement with the provincial government worth 2.1 million dollars (Gregoire, 1998f).

During this second phase of the struggle a number of transformations take place, most significant of which is the solidification of the Aboriginal 'rights' trickster's form change from an

issue over land to one of logging. Michael Foucault (1980a, p.101) argues that there is a need to examine how “mechanisms of power... by means of a certain number of transformations have begun to become economically advantageous and politically useful”. The transformation of the power-dynamics of this struggle through the Court of Appeal decision served an extremely important political and economic function as the provincial government could control again the manner and direction in which this struggle was proceeding. As a result, the proposals put forth by the province to Aboriginal communities were based not on Aboriginal ‘rights’ or ‘title’ to the land, but rather on a resumed presumption of ‘Crown’ sovereignty and on a realization of the need to be more ‘accommodating’ to the ‘needs’ of Aboriginal Peoples. The stage of negotiation prepared by the provincial government, therefore, was from the beginning designed to solidify the new nature of this struggle as being essentially a struggle over logging evidenced in the fact that the proposals offered to integrate Aboriginal loggers into the existing forest industry.

This change in the very nature of the struggle placed Wabanaki Peoples in a precarious situation. First, to negotiate with the provincial government was to undermine their very position on and claims to sovereignty. Secondly, offers tabled by the province confined the issue strictly to ‘logging’ which effectively diminished the number of those entitled to a ‘participatory right’. One Welastekwiik informant noted with respect to the St. Mary’s community that “community participation was there when it was a land and Native issue, but when it became a logging issue people tended to think that it was not their thing... so when it became a logging issue there was not a whole lot of participation from the community” (KL, Interview, March 1999). Inherent in the transformation to a logging issue were the problematic dichotomies of men/women, rights/responsibilities, individual/collective - dichotomies which subsequently shaped social actors’

experience of and participation in this struggle. Thirdly, the option of not negotiating with the province ran the risk that Wabanaki Peoples and communities would walk away at the end of the day with nothing more than they had prior to arrival of the Thomas Peter Paul case, an option that, for those who had invested so much time and financially gained so much throughout this struggle thus far, was not an option at all.

It is therefore not surprising that the already existing community tensions, and those which were heightened during the first phase of this conflict, became more acute. According to Oren Lyons and John Mohawk (1994, p.60), those individuals whose aggressiveness brings about “the assertion of Indian rights in the first place create conditions around which choices must be made”.

One such condition in this particular case was the dynamic change of power, which after the Court of Appeal decision once again gave the power advantage to the province. While most people expected that this decision would be appealed to the Supreme Court of Canada, few believed, given the weakness of the case, that the Court of Appeal decision would be overturned. The first choice therefore to be made by Wabanaki Peoples was whether or not to negotiate with the province. Some Mi'kmaq and Welastekwiyyik Peoples believed that any form of negotiation was an admission of defeat. As Carol Polchies, a Woodstock Band Councillor argued, “it’s our land, so why should we negotiate?” (Quoted in Brennan, 1998a). For others, the idea of negotiating was not as distasteful as the idea of having to negotiate with the provincial government. As the president of the Union of New Brunswick Indians articulates, “the main point that has to be made is that our people feel that the Province of New Brunswick should not be discussing aboriginal rights” (quoted in MacPherson, 1998). There was also a contingent of Wabanaki Peoples, such as chiefs and loggers, who were willing to negotiate with the province if the deal was right. Evidence of this lies in the first meeting



held between the province, loggers and the Union of New Brunswick Indians, as well as the various provincial proposals refused and counter-proposals offered.

Consequently, it is this last contingent, whose choice was to negotiate with the province, that ultimately prevailed. However, given that their willingness to negotiate was based on the premise of a 'good deal', the next condition around which a choice had to be made was the definitional characteristics of a 'good deal', an extremely subjective process. The first deal offered by the province, a 200 acre block of land, was recognized by all as a bad deal. The second offer, however, which provided for some Aboriginal employment opportunities in the forestry sector and a percentage of royalty money to be controlled by Chiefs and Councils, was seen by ten out of fifteen chiefs as a 'good deal' while being outrightly rejected by the loggers. For instance Noah Augustine, spokesperson for the Micmac-Maliseet Business Loggers Association commented:

The beauty of this whole Crown land issue was that it brought independence to the people... [with this deal] we're going back to the very system we have been oppressed under. Once we got the taste of that independence, boom. The province gets control and they throw it back to the chiefs and say 'fight it out guys' (quoted in Hrabluk, 1998i).

Gary Gould, secretary of the New Brunswick Aboriginal Peoples Council expressed similar frustrations with the deal:

They [off-reserve] were hoping that there was going to be some way in which the off-reserve community was going to benefit by an agreement but it is obvious that the Premier... is only going to deal with the chiefs of the on-reserve community (Hrabluk, 1998i).

Interestingly, this second proposal served to facilitate a better understanding among various Aboriginal factions of characteristics reflective of a 'bad deal'. As a result, those Mi'kmaq and Welastekwiyik Peoples who wanted to negotiate with the province but found the last deal offered

inadequate found themselves rallying more or less on the same side. It would appear that the inadequacy of the second proposal, coupled with people's fear that Chiefs and Councils would resume their monopoly on employment and financial resources, people's desire to strike a deal that would account for more than meager 'provincial scraps', and people's concerns that the current negotiation process left more Aboriginals out of the fold than it did in, served as the impetus for formalizing the Mi'kmaq-Maliseet Coalition. Indeed, there arose among those directly and actively involved with the conflict a general recognition that there was power in numbers and that Aboriginal Peoples' interests could better be served if Aboriginal Peoples represented a united front. "We need to put our differences aside", "forget our own issues and band together on this"(DH, Interview, February 1999) , became the rallying cries by various spokespeople at meetings and demonstrations. "Stand by your rights - these are all your rights as a community, as a people" (KL, Interview, March 1999).

Cohen (1985, p.107 and 114) argues that "people assert community when they recognize in it the most adequate medium for the expression of their whole selves... [and] it provides them with the means to gloss over the innumerable factors which divide them in the course of day-to-day social life". While the structure of the conflict had been transformed from land to logging, Aboriginal spokespeople matched this transformation in turn by calling on cultural symbols which stressed collective boundaries. Harnessing symbols that spoke to people's sense of locality and belonging, Aboriginal spokespeople were able to galvanize support for a struggle that for all intents and purposes was no longer so much collective as it was individualistic. That is to say, through the solidified shape changing of the Aboriginal 'rights' trickster, the nature of this struggle now supported certain experiences and interpretations of the 'logging issue', namely trees over land,

individuals over the collective, men over women, economic over spiritual. Therefore, even though the harnessing of cultural symbols ‘spoke’ to the people as a whole, such a recognition did not necessarily imply that people perceived an exact identity between themselves and their community (Cohen, 1985). As a result, the recognition that “as long as we remain divided and stick with these politics we are never gonna win” (QT, Interview, February 1999), created a largely precarious and fragile unity. As one Miigemag youth who attended the various gatherings explained:

When I went to that protest [Fredericton Inn] you could really feel that [political/spiritual] dichotomy between people... There has always been that undercurrent with people I hang around with from the spiritual side. You knew who the people were that were involved for money, you could tell by the way they talked... [but] there were political and spiritual Indians there together (DH, Interview, February 1999).

Oren Lyons and John Mohawk (1994, p.60) explain that “if unity means anything, it means that people have agreed that the interests of the whole are greater than the interests, even ideology, of the individual. This applies to factions as well as individuals”. The difficulty that a number of Aboriginal Peoples found in forging and attempting to maintain some sort of unity was that individualistic/factional aspirations took precedence over the well-being of the group. Reginald Ginnish argues:

The land is held in common and a lot of those loggers don’t agree with that. It’s suppose to benefit everyone on the reserve including the smallest child born today and the elders. Now some [loggers] don’t care about the elders or children. All they are concerned with is their own interests (quoted in Hrabluk, 1998e).

Roger Augustine similarly remarked:

While this fight, this chaos is going on, a lot of money is being made. How much of that is actually filtering down into the community? From what I can see, it’s zero. I’m not saying anything about anyone making money. But if you’re making it in the name of Indian rights, then some of it should filter to the community (quoted in Andersen, 1998).

From the point of view of the loggers, there was a lot at stake in these negotiations as they stood to 'lose' the most in a deal. First, it needs to be remembered that during the 'free for all' interim period, those Wabanaki individuals who gained the most financially, be it making a living or earning 'hand over fist', were the ones exercising their 'rights' in the woods. Two Welastekwiyik women I interviewed noted community members could not really benefit during this period of time, short of going into the woods and cutting, as there was no agreement or structure in place governing distribution of either natural or financial resources (KL, Interview, March 1999; TQ, Interview March 1999).

Second, many loggers believed that had it not been for their initiation and assertiveness in the woods this 'logging issue' would not have reached the apex it did. As a result, there was a tendency for loggers to claim ownership of this conflict, which in turn generated a 'protectiveness' over the manner in which negotiations were proceeding, particularly in relation to their interests and 'rights'. "It's the loggers that brought this issue alive", claims Noah Augustine, "and now the chiefs want to step in and take control" (quoted in Andersen, 1998). Charles Paul, a logger from Tobique argued that, "nobody has ever come to the loggers. The province went to the chiefs and people with no concerns in the woods. But if they want the real truth and facts, they should talk to people who are in the woods" (*Daily Gleaner*, 1998). Thomas Peter Paul noted that, "the deal should be with cutters themselves, not just a few chiefs. Why should the bands administrate who's going to cut where? I mean if they are in the business, who do they [province] think is going to get the cream of the crop?" (quoted in *Telegraph Journal*, 1998a).

Third, loggers' determination to remain on 'Crown' lands and stake their claim did, to some extent, ensure them a place at the negotiating table. Former premier Ray Frenette confirmed this by

stating, “we meet with them [loggers] because they are the stumbling block in the native community” (quoted in Andersen, 1998). This ‘staying in the woods’ tactic was also supported by Chiefs and Councils and other parties interested in striking a ‘good deal’ with the province, particularly where loggers’ presence maintained pressure on the provincial government. However, the assertion of ‘rights’ on ‘Crown’ lands also placed Aboriginal loggers in the direct line of provincial fire. Crackdowns in the woods meant that they were risking being arrested or fined, and/or having their equipment seized. It is no wonder, therefore, that Aboriginal loggers wanted to take a leading if not deciding role in the negotiating process.

Of course, loggers were not the only ones participating on a ‘factional’ interest basis. During the ‘free for all’, Chiefs and Councils were able to support loggers’ actions but generally gained little financially by doing so. In fact, because the ‘free for all’ had no structure or distributive process in place, Chiefs and Councils tended to lose governing control to the extent that employment opportunities no longer needed their stamp of approval. At the same time, money being brought into the community was no longer syphoned through their governing bureaucracy. This had the effect of inhibiting any equitable distribution practices Chiefs and Councils might have had in place, while at the same time preventing those engaged in corruptive practices from attaining any ‘cream of the crop’. To this end, negotiating directly with the province and striking a deal along the lines of the second proposal certainly served in the best interests of Chiefs and Councils. Not only would employment contracts once again be under their control, but so too would any royalty monies received from the province. Phase two of this ‘logging conflict’, therefore, saw a resurgence of local politics where provincial desire to negotiate with *Indian Act* chiefs propped up a political faction who during the ‘free for all’ had been standing more or less along the sidelines.

With these two factions competing for a predominant role in negotiations in order to effectuate a deal which would secure their 'rights', other community members and factions were either busy acting in a conciliatory role in order to strike a unified position or were left having to take care of their own. For instance, in a position paper prepared by the New Brunswick Aboriginal Peoples Council which is said to represent 7800 off-reserve peoples, it notes:

...although we [coalition] have publicly agreed to a cooperative approach on developing a strategy aimed at resolving the forestry issue, varying interests, opinions and approaches to this subject have prevented and diverted our attention from the main reasoning for establishment of the coalition (NBAPC, n.d.).

As a result, the NBAPC put together their own position paper outlining the needs and aspirations of their own constituent population. In the end, the coalition's fragile unity fell apart, due mostly to the aggressiveness of self-serving individual/factional interests than anything else (Lloyd Augustine, personal communications, 1999).

What gets lost amidst the factional/collective contradictions and struggles is the will and well-being of all Wabanaki Peoples. "The whole idea of sovereignty is easily lost in divisions" (Lyons and Mohawk, 1994, p.60), to the extent that a 'win' generally refers to the win of a faction, not Mi'kmaq and Welastekwiik communities. In this instance, the breakdown of the Micmac-Maliseet Coalition, as well as other community dynamics, created prime conditions for the provincial government to come in and strike a deal. And this is precisely what happened. On June 10, 1998 Tobique First Nation's Chief Edwin Bernard signed an interim deal with the province based on 5% of the annual allowable cut and worth 2.1 million dollars. Tobique Chief and Council rationale for this move was based on frustration with 'internal' negotiations. As Chief Bernard noted, "Too many native groups were trying to push their own agendas" (quoted in Hrabluk and Poitras, 1998). Similarly, Tobique

Band Councillor Wayne Nicholas explains, “we waited and waited but there was no consensus. There were too many interest groups erupting, making it impossible to come to an agreement” (quoted in Brennan, 1998b).

### **‘Externalities’ of Aboriginal ‘rights’ discourse**

Reviewing what occurred within phase two of this struggle, it is probably fair to argue that community divisions limited the negotiating capabilities of political elites (Andersen, 1997). Having said that, it would be incorrect to place the blame at the feet of Wabanaki Peoples, as though it was through their own ‘ineptitude’ that Mi’kmaq and Welastekwiyik communities received what many characterize to be a raw deal, “a blatant sell out” (Francis, 1999) or “crumbs” (KG, Interview, March 1999). Indeed, by focusing solely on internal dynamics and divisions excludes the roles played by external actors and structures throughout this ‘logging issue’.

Generally speaking, negotiations are about compromises, and parties to negotiations are always eager to ‘get a hand up’ on others at the table in order to secure a deal in which they make the least compromises or give the fewest concessions. From this vantage point, the positionality of the provincial government, already advanced due to the Court of Appeal ruling, was further strengthened by the internal divisions within Wabanaki Nations. In fact, it was to the government’s negotiating advantage to maintain internal strife precisely because a unified Aboriginal position would ultimately result in the province having to make more concessions than it was willing to do. Freire (1970) refers to this as the divide and rule dimension of oppressive action where the oppressor must divide and keep divided the oppressed in order to retain their power. “It is in the interest of the oppressor to weaken the oppressed still further, to isolate them, to create and deepen rifts among

them” (Freire, 1970, p.122). It is for this reason that many Aboriginal Peoples argue that “...to interpret the resulting divisions within our communities as mere internal differences is to overlook divide and conquer tactics that are being deliberately employed ... to create internal divisions” (Maliseet Court, 1996).

As noted earlier in this chapter, prior to the arrival of this ‘logging issue’ there already existed a wide variety of structural factors that impinged upon establishing a consensual Wabanaki front. More often than not, the structural forces, such as the *Indian Act*, which divide communities along colonially manifested fault lines, are heightened by existing material conditions in ‘Indian country’, such as high unemployment, limited financial resources, and inequitable distribution practices. These divisions were not lost upon those external parties which had a significant stake in the outcome of this conflict, namely the provincial government and the logging industry. What occurs as a result is a lot of ‘double-talk’. For example, in one breath the provincial government would argue that “in dealing with the native community you have to involve everyone” (Andersen, 1998) and in the next it would comment that “it’s up to the native groups to get over their differences and form a coalition” (White, 1998b). Similarly, prior to Tobique signing the first agreement the provincial government promised that the off-reserve Aboriginal population would be duly recognized and taken into account in the negotiating process (Gregoire, 1998f). After the Tobique break through, however, the province claimed that there were not enough trees to grant cutting rights to off-reserve. “There is a limit to the amount of forest resources which can be cut. We cannot satisfy everyone with what we have here” (Porter, 1998).

More insidious, however, is that with the ‘knowledge’ of existing internal divisions and diversities within Wabanaki communities, the province and logging industry were able to manipulate



“the masses to their objectives” (Freire, 1970, p.128). In his discussion on “why do men [sic] obey”, Gene Sharpe (1973) argues that the desired cooperation of individuals and groups can be obtained by offering incentives, such as money, positions and prestige. Adams (1995, p. 181) similarly argues that “purchasing the support of [some] colonized people who never had enough money to live on is easily done”. It is within this context that the provincial-corporate ‘cow-catching scheme’<sup>10</sup> proved to be successful in managing to “anesthetize the people” (Freire, 1970), or in this case some Wabanaki people and leaders.

It is important to remember that forestry is a 3 billion dollar industry in New Brunswick, and as such, provincial and corporate stakeholders were anxious to have the ‘logging issue’ resolved as quickly as possible in order to resume ‘business as usual’. The provincial government, therefore, was holding ‘buckets of money’, made available to First Nations through signing interim agreements and accepting incitements to settle. Attention was continuously drawn to the amount of money that would be directly injected into reserve economies were chiefs to sign a deal: Tobique, \$2.1 million; Burnt Church, \$1.6 million; Eel Ground, \$750,000+ (Francis, 1998); Woodstock, \$877,500 (Brennan, 1998); Kingsclear, \$893,750 (Gregoire, 1998g); Oromocto, \$568,000 (*Daily Gleaner*, 1998); Big Cove, \$2.8 million (Tenszen, 1998b). Incitements to settle included \$20,000 start up funds as offered to Burnt Church and Tobago First Nations and \$1 million dollar signing bonuses as

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<sup>10</sup>When reading through the various newspaper articles on this struggle and reviewing what was being said and done by the province and logging corporations, it struck me how similar their approach was to the ‘catch the cow scenario’ which functions on the basis of exploiting weakness. I say this in light of my own experiences of growing up on dairy farm and the tactics we employed to catch cows that had escaped into open land. The catching process usually involved two people, one with a bucket of feed and the other with a halter, as this increased the chances of ultimate success. Where more than one cow was loose, the general goal was to approach and catch one and lead it away, which often had the effect of others following with little coaxing. That we were successful is evident in the fact that there are no cows running around the neighbourhood in Harvey Station. Success within the farming context is to place the cow back into confinement, at which time you may need to mend some fences, fix some gates, or increase the voltage on the electric fence.

offered to Big Cove (Hrabluk, 1998g; Poitras, 1998). As New Brunswick Natural Resources spokesman Wade Wilson commented with respect to the \$20,000 start up funds, “they can use the money for whatever they want...[and] there is more money available for other bands who sign harvesting agreements with the province” (quoted in Hrabluk, 1998g).

While the provincial ‘cow catchers’ were attempting to lure Aboriginal communities on one front, the logging corporations were working on another, namely holding out the ‘employment halter’. As reported by the *Telegraph Journal*:

The eight forest companies that hold leases for Crown land are holding their own negotiations with native communities. J.D. Irving plans to have at least one 15 member crew per native community performing silviculture work on Crown land leased to the company (White, 1998d).

In fact, at this point J.D. Irving had already struck a deal with Tobique and Fort Folly and would later on strike a deal with loggers from Big Cove to harvest sixty acres from the company’s lease on Bronson Road (White, 1998d; Gregoire, 1998h). According to Irving’s communication director, Mary Keith, “the company has shown its willingness to work with native people by giving them jobs in silviculture and by working out their own agreements with bands” (quoted in Gregoire, 1998j). Other corporations were employing similar tactics in an effort to resolve this dispute. For instance, an informant from Eel River Bar explained that representatives from Fraser Paper Inc. had come to his reserve to speak and negotiate with the community, and they ended up signing a deal with this company.

That is what these paper companies did when they came to the community. They flashed dollars, told people they would get rich quick... They were really just trying to protect their own interests (DH, Interview, February 1999).

Protecting their own interests was precisely what the provincial/corporate ‘cow catching scheme’ was

all about, and in which they were ultimately successful given that every 'reserve' community has now signed an agreement (Lloyd Augustine, personal communications, April 1999). As one Miigemag informant noted, "they are not helping us, they are just allowing us so much to shut us up" (QT, Interview, February 1999).

At the same time, government and corporate stakeholders needed to publicly justify their course of action(s), which they deemed necessary for a quick resolution. What emerges as a result is a media campaign against Aboriginal harvesters that veers on the edge of alarmism. First, numerous cartoon editorials were published in Irving owned newspapers such as the *Daily Gleaner* and the *Telegraph Journal* (see Appendix C). Secondly, there were newspaper articles explaining the dangers and problems of Aboriginal harvesters on 'Crown' land. For instance, the Minister of Natural Resources warned New Brunswick residents that Native loggers would throw non-natives out of work, while the Minister of the Environment accused Aboriginals of destroying the forests (Toughill, 1998). "We understand they have a right to cut", explains Jim Lawless, J.D.Irving district superintendent, "but we don't see them following the management plan. It's like cutting the future" (quoted in *Grand Lake Mirror*, 1998a). In fact, the J.D. Irving corporation argued that "commercial logging under a treaty right would make it impossible for licensees to manage leased lands in any manner required by the Act" (Llewellyn, 1998b). This notion is backed up by such comments as the one made by Max Cater, the Executive Director of New Brunswick Forest Products Association:

Our wood supply in New Brunswick is very critical... Every tree on Crown land has a designation now. To manage our forests sustainably you cannot be cutting wood at random... The randomness of harvesting that goes along with individual rights is a disaster for us (quoted in Llewellyn, 1998b).

Another forest technician notes that "with no quota on the amount of wood to be cut, it is a free for

all. Greed has taken over... I believe the amount of white pine harvested by native operations may already make a difference to future management" (*Grand Lake Mirror*, 1998b).

A noticeable absence throughout this 'logging struggle' has/is the federal government, particularly given their fiduciary responsibility for 'Indians and lands reserved for Indians', as well as the Department of Indian Affairs and Northern Development (DIAND) obligations to protect the interests of Aboriginal Peoples. From the beginning of this 'logging issue', the federal government found itself engaging in colonial ambivalence, perhaps driven in part by its inherently 'conflict of interest' position. Ottawa, through the Attorney General of Canada, supported the provincial government in appealing the Turnbull ruling to the New Brunswick Court of Appeal (Tenszen, 1998c). During phase one of this struggle, Ottawa, through the DIAND provided \$20,000 non repayable grants to Aboriginal micro-enterprises, money which was used by Wabanaki loggers to harvest trees on 'Crown' lands (Tenszen, 1998c). When asked by Mi'kmaq and Welastekwiyik peoples to become involved in this matter, Ottawa declined. According to DIAND Minister Jane Stewart, this 'logging issue' has to be resolved between the province and First Nations (Morrison and Porter, 1998; Morrison, 1998). In light of federal assimilation goals and its reaction to the *Delgamuukw* decision where it has placed a two year moratorium on implementation with respect to Aboriginal 'title', Ottawa's silence on this issue, other than its support of the province, is in line with its policy agenda. And this is precisely why the question asked by a Wabanaki man at the Brian Slattery (1999) lecture needs to be more seriously considered. Will these 5% interim agreements become receipts for Aboriginal land?

### **‘Rights’ last resort ?**

Michael Foucault (1980a, p.95-6) argues that right serves not only as an instrument of domination but that the way in which it manifests itself “transmits and puts in motion relations that are not relations of sovereignty, but relations of domination”. This thesis has followed the journey of ‘right’, how it proceeded, where it installed itself, and to what effect. In the beginning of this journey Aboriginal ‘rights’ as understood and conceived by Wabanaki Peoples included notions of sovereignty, territorial integrity and self-determination.

It was the assertion of Aboriginal ‘rights’ and the exercise of those ‘rights’ that brought Mi’kmaq and Welastekwiyik communities to this point, namely the first deal ‘negotiated’ between the province and the Tobique First Nation. By signing this agreement, Chief Edwin Bernard changed the landscape dynamics once again, installing what is left of ‘right’ within the wording of the agreement. First, access to ‘Crown’ resources is limited to 5% of the annual allowable cut, proportional to Tobique’s on and off reserve population. Second, making Tobique a ‘Crown’ land permit holder (which the provincial government held was a significant concession on their part) brought this Welastekwiyik community further into the fold of provincial jurisdiction. Now it has to conform to the regulatory management scheme of the New Brunswick *Crown Lands and Forest Act*.

Part and parcel of this scheme, as pointed out by two Welastekwiyik women, is the issue of taxation. First Nations who sign these deals will be obliged to collect the harmonized sales tax.<sup>11</sup> paid to them by the mills they sell their lumber to.

What the hell do we do with it? Where does it go in the community?... Do we just

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<sup>11</sup>In New Brunswick the provincial tax and the federal goods and services tax has been harmonized into one.

keep it or do we hand it over, or should we be charging a handling fee, or should we be even collecting it all and apply our own native tax? (KL, Interview, March 1999).

The difficulty that arises for Aboriginal communities, according to these two informants, is that land designated as 'Indian land' is non-taxable. While the province may see 'Crown' land as belonging to 'them', Wabanaki Peoples see this same land as being unceded or unsurrendered Wabanaki territory, which essentially means it is 'Indian land' and therefore not taxable (TQ, Interview, March 1999). While at the outset this issue of taxation may mean little to most people, for Aboriginal Peoples across Turtle Island it is extremely significant and problematic. For Wabanaki communities in New Brunswick, to charge/collect taxes on wood cut on 'Crown' lands is to admit that these lands are not 'Indian lands'. Non-taxation is also held to be a 'right' protected by and through the federal fiduciary obligation to First Nations, and many Aboriginal Peoples equate paying taxes to outright assimilation, and hence cultural genocide.

Being brought further into provincial jurisdiction also raises other difficulties and concerns:

In terms of provincial Crown, there is no regulatory process in terms of 'Indians'. It is void of all that, although the Indian Act is void of provincial Crown, and the federal Crown only deals with reserves. You have so many little things with spaces in between and there is no line directly through them. So how do you take all that and fix it into a system that has marks and departures of whose in charge and who makes the rules? (TQ, Interview, March 1999).

Third, the deal to which Tobique is a signatory also 'props up' the governing power of Chiefs and Councils as the agreements place both employment and royalty distribution under Chief and Council control. Michael Foucault (1980a, p.97) argues that it is important to "look at power in its external visage... where it installs itself and produces real effects". As pointed out earlier, the real effects of power play themselves out at the local level and through colonial 'creatures' such as the band council system, which is governed by the *Indian Act*. To 'prop up' this system of government

has the effect of maintaining internal control through external structures, such that those directing the game plan, consciously or unconsciously, are never seen as participating in the domination. Indeed, when internal problems arise, colonial puppeteers can easily point their fingers to the community and argue that 'it is your own fault - deal with it'. In fact, this is precisely what happened with respect to this 'logging issue' as I will explain later.

It is therefore not surprising that Aboriginal Peoples are claiming that the "worst thing that could happen to Aboriginal people is Edwin Bernard" (Gregoire, 1998f). The Tobique deal was significant in that it undermined any attempt by Wabanaki Peoples to unite and negotiate a more comprehensive deal (Hrabluk and Poitras, 1998). In fact, many people predicted that this break in unity would have a domino effect across the province. As Tim Paul noted, "the Tobique deal will now send chiefs scrambling for the remaining scraps"(Gregoire, 1998f). Similarly, Chief Robert Levi from Big Cove commented that "in a very short while we'll have people knocking at our doors saying, 'look at what Tobique's doing. Do something to get us into that'" (quoted in Hrabluk and Poitras, 1998). And this is precisely what happened. By September of 1998 seven reserve communities had signed interim agreements with the province, by December that number had increased to eleven, and by April 1999 all fifteen communities had signed an agreement (Gregoire, 1998h; Tenszen, 1998b).

But while these agreements were continuously being pushed forward by the province, information about previous deals began to surface. Newspaper headlines reading, "Deals not all cut up to be", "Tobique's forest fiasco", "Controversy surrounds First Nation's forestry deal" and "Chiefs mishandled native logging deals", indicated that all was not well despite provincial arguments to the contrary. Residents from Tobique claimed that only a minority of the community were at the

meeting, called on the sly, that voted in favour of signing the interim agreement (Brennan, 1998). The First Nations of Tobique, Burnt Church, and Kingsclear had all run out of wood within months of the agreement being signed with the province. Many communities claimed that favouritism played an integral role in the distribution of timber allotments. In Tobique these allotments were doled out to 22 individuals out of a population of 1600, while in Kingsclear 21 individuals received timber allotments out of a population of 700. Members of both Tobique and Kingsclear complained that over fifty percent of the profits went to non-native harvesters (*Victoria County Record*, 1998d; Gregoire, 1998f, 1998g, 1998i; *Telegraph Journal*, 1998a; Hrabluk, 1998h ). “We were saying reserve politics would play a significant role”, claims Brian Francis (Gregoire, 1998i), a revelation that had little impact on the provincial drive to strike a deal. Indeed, the provincial government was well aware of internal politics, if for no other reason than that it had been brought up time and again by loggers, the NBAPC, and numerous other individuals concerned with issues of representation and accountability. “By taking the low road and choosing what appeared to be a quick fix to placate native protesters, the government has inadvertently [advertently] made a bad situation worse” (*Telegraph Journal*, 1998a).

Consequently, the government’s response to these disturbing revelations and Aboriginal Peoples’ demands for accountability, was to follow the colonial line of ‘no fault but yours’. When pressed by Tobique members to answer a myriad of questions on management accountability the response by the Department of Natural Resources was that it was not their responsibility to oversee the inner workings of the Chief and Council. “Look internally, do not come after the department” (*Victoria County Record*, 1998d). Natural Resource Minister Doug Tyler, the ‘genie’ behind the agreements, similarly argued that it was not his job to regulate the deal once it was signed (Gregoire,



1998g). In fact, when he was asked by the NBAPC why off-reserve and non-status were not provided with a portion of the annual allowable cut, his response was that “non natives had already been accounted for in the annual allowable cut and it was up to them to negotiate with band councils or the federal government in order to benefit from the harvest” (Chilibeck, 1998). The sad irony with the off-reserve population, however, is that while a few off-reserve members were successful in logging under their community deal, the majority were left out in the cold. And while most people I interviewed or talked to did not see this as an off-reserve/ on-reserve issue, the very structure of the *Indian Act* makes it an off-reserve/on-reserve issue. Stumpage fees<sup>12</sup> collected under these interim agreements are being directed to band councils with the idea that this money will be used for social programs in the community. Under *Indian Act* regulations, however, money to be used for social programs must be directed to the on-reserve population only.

Perhaps it may be argued that the accountability issues launched at the province are ill founded, due either to the province’s ignorance of ‘Indian politics’ or claims that its jurisdiction does not extend to on-reserve matters. However, one needs to seriously question whether the provincial line of action was not consistent with a greater power-knowledge machination which continually ‘set’ Aboriginal peoples up to ‘fail’. Why, for instance, did Doug Tyler “not demand a plan for sustainable and accountable harvesting from First Nations, an abstention otherwise unheard of in leasing Crown lands for the purpose of harvesting timber?” (*Telegraph Journal*, 1998a). Why were people promised one minute that their needs and concerns would be addressed in any negotiations only to be excluded in the next? Why was the provincial government so insistent on ‘secretly’ negotiating with Chiefs and

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<sup>12</sup>It must be noted that stumpage fees amount only to a small portion of the total amount of money injected into reserve economies through these deals.

Councils, particularly when it appeared that the Micmac-Maliseet coalition was gaining public support and momentum in reaching a unified proposal? Why did the federal government with its fiduciary responsibilities to Aboriginal Peoples refuse to become involved?

## **Conclusion**

This chapter began by exploring the context in which Aboriginal 'rights' discourse was appropriated, a context that is characterized by colonial contradictions and ambivalence, where peoples' understandings of self-in-community are concurrently grounded in spatial location and social cohesion, as well as cultural dislocation and social displacement. The remainder of this chapter then focused on the ways in which the Aboriginal 'rights' trickster, through the confrontational processes of the 'logging struggle', solicited the employment of cultural symbols as a medium through which individual and collective agency actualized itself within and outside Wabanaki communities. In following the trickster's journey, what became evident was that as it changes forms so too does the manner in which individuals harness internally contested and contingent cultural symbols, reflecting a responsive agency to new structures. The problem that arose, however, is that through the 'rights' squeeze, namely an unfavourable court ruling and the provincial negotiating process, the relative fluidity of the trickster's transformation became solidified. This in turn not only restricted the nature and content of 'rights', but also constrained exposure of internal diversities, particularly where it was expedient to maintain a unified front for negotiating purposes.

With the signing of the agreements, 'rights' came to a tentative rest, privileging certain forms of cultural symbols and certain meanings of those symbols at the expense of others. That this occurred is evidenced in: the content of the agreements; who negotiated those agreements; and

under whose authority Aboriginal negotiators acted.

Even though at the beginning of this chapter Aboriginal 'rights' began with all the trees in the province, through compromise and 'negotiation', those 'rights' were reduced to 5% of the annual allowable cut. The unfortunate reality is that while this 'rights' journey still remains incomplete, as the agreements signed with Wabanaki communities are only on an interim basis, there is every indication that the provincial government will make few, if any, changes to longer term agreements. In fact, if the 25 year agreement put forward to the Big Cove community is any indication, Aboriginal 'rights' will become even narrower in scope, as this agreement limits not only logging activities but also fishing and hunting (Poitras, 1998). When one compares these outcomes with the original goals and aspirations put forward by Mi'kmaq and Welastekwiyik Peoples in the early stages of this struggle, one needs to seriously question whether the 'dubious ally' of Aboriginal 'rights' secured Wabanaki Peoples a more self-determined existence, or whether the Aboriginal 'rights' trickster played an 'assimilation trick' which envelopes Aboriginal Peoples further into the spatial imaginary of the nation-state.

## **Chapter Five**

### **Coming full circle: a conclusion**

In Micmac stories about the six worlds<sup>1</sup>, it is always the forest where such beings and events are encountered. The further into the forest, the stranger the encounter, for it is the forest where reality becomes fluid. Within Micmac stories, the forest is chaos - the unconscious, the unknown... Usually, however, it is deep inside the forest that Persons come face to face with Power, and a story begins to unfold (Holmes Whitehead, 1988, p.6).

It is befitting that the 'logging struggle' for Wabanaki Peoples took place in and around the 'heart of the forest', where the image of the tree is one of symbolic importance in Mi'kmaq oral narratives. The tree, which is said to connect the three fundamental cosmic zones as its roots penetrate the underworld and its branches rise into the sky (Holmes Whitehead, 1988), served an important spiritual role for shamans of the people who would withdraw into the forest in order to journey internally to the 'forest-state' of the mind. "And deep within this forest-state, they found the Tree that was both actuality and symbol of the road on which they traveled" (Holmes Whitehead, 1988, p.7).

It is within the context of this internal journey of 'knowledge seeking' that the role of the trickster in Algonquian oral narratives becomes important. According to Evan Pritchard (1997, p.94), the role(s) of 'trickster' or deceiver was to convey, through different stories, settings and shape transformations, the message that while people have the same ability to lie and cheat, to throw people off balance, this power does not need to be used, and that there are consequences for doing so. Willie Ermine (1995, p.105) argues that the transformative capacities of the trickster spoke about the ways

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<sup>1</sup>The six worlds include in Mi'kmaq oral narratives include: "the World beneath The Earth, the World Beneath the Water, Earth World, Ghost World, the World Above The Earth, and the World Above the Sky" (Holmes Whitehead, 1988, p.3).

in which “people travel the path into knowing the unknown... [and] to guide our experiences into the deep reaches of the psyche and the unfathomable mystery of being”. It was the “Old Ones” (GM, Interview, March 1999), the medicine people who in their community positions were responsible for guiding “people into the various realms of knowledge by using the trickster” (Ermine, 1995, p.105), and “assisting others to see all the tricks and tricksters in order to dispel confusion” (Pritchard, 1997, p.105). In an unpredictable and unreliable world where nearly everything can change shapes, where Creation is fluid and in a continuous state of transformation (Holmes Whitehead, 1988), the Old Ones knew, despite its deceptive appearances and numerous tricks, “the character of the trickster and his capacity to assist with self-actualization” (Ermine, 1995, p.105). This is an essential element for survival in a world full of shape changers where “nothing is as it seems” (Holmes Whitehead, 1988). Survival in this world rested upon accumulating power, made possible by turning inward “where real power lies” (Ermine, 1995) and/or through alliances with “helpful empowering Persons” (Holmes Whitehead, 1988).

It is these various connotations and understandings that I invoked when using the Aboriginal ‘rights’ trickster throughout this thesis. The Aboriginal ‘rights’ trickster is a shape changer, a deceiver, but is it an empowering alliance or a dangerous alliance that “drains on power” (Holmes Whitehead, 1988)? It is to this question that this thesis has ultimately spoken by way of critically pursuing the travels of the Aboriginal ‘rights’ trickster through the unfolding story of the ‘logging issue’. To respond to the question of whether the Aboriginal ‘rights’ trickster is an empowering or dangerous alliance requires a summary of its travels through this thesis narrative.

Miigam’agan and gkisedtanamoogk’s story with which I introduced this thesis spoke of and to the spatial imagery of the Wabanaki Confederacy and the various nations belonging there too. The

geographical boundaries of this territory extend along the eastern coast of Turtle Island, and as such displace existing understandings of 'national' and 'international' geographies by "roaring disruption" (Sparke, 1998), as well as a refusal, of hegemonic cartographic spatiality. As a counter-hegemonic narrative, Mīgam'agan and gkisedtanamoogk's story, constituted through and by an understanding of ancestral space and place of territorial integrity and sovereign jurisdiction, calls for a radical re-thinking of the colonial frontiers of both 'national' and 'international' knowledge. Accompanying their footsteps in a Wabanaki landscape, first contact with Europeans becomes understood as a solidification of these international boundaries through the various nation-to-nation peace and friendship treaties negotiated in the 18<sup>th</sup> Century.

It is in this intersection that the Aboriginal 'rights' trickster arrives on the scene through the 'logging issue' by Thomas Peter Paul defending in a colonial court of law his 'right' to harvest bird's eye maples on "Crown" land, a 'right' which is upheld in the treaties negotiated between the Wabanaki and British, treaties which according to Wabanaki Peoples were based on the law of *Nikamen* (international law). By employing the Aboriginal 'rights' trickster, Wabanaki Peoples were attempting in a sense to "get us back to where we were"(Bear Nicholas, 1995), and more importantly "to make a claim to be respected" (Bear Nicholas, 1993). This claim for respect includes the traditions which came with this land, the autonomy of First Nations, the integrity of their territories and cultures, and the nation-to-nation relationship established through treaties.

However, the deceptive nature of the trickster, as explained in Chapter Three, obscures the colonial paradox that through the very appropriation of Aboriginal 'rights' discourse, Aboriginal Peoples are acknowledging nation-state jurisdiction on and in their territories, and in turn inviting disrespect for their nationhood, sovereignty, and territorial and cultural integrity. It is precisely

because of this colonial paradox that Bruce Clark (1996, p.7) argues that Aboriginal Peoples finding themselves in a colonial court should argue ‘non-jurisdiction’, calling attention to the need to “to submit the question of jurisdiction and possession to third party adjudication, as required by law”. The law to which he is referring is Queen Anne’s *Order in Council of 9 March 1704*, which was established through the actions of the Mohegans who “petitioned Queen Anne to create an independent and impartial third party court, for the constitutional purposes of adjudicating disputes between natives and newcomers” (Clark, 1996, p.3). Queen Ann’s Order in Council stated the need for third party jurisdiction, arguing that it “would be false to pretend that the newcomers’ court system, anymore than the native’s court system, can ever be seen to be independent and impartial in a dispute between them” (Clark, 1996, p.4).

This route was not selected in the Thomas Peter Paul case, as he relied instead on the ‘dubious ally’ of Aboriginal ‘rights’ law to secure for Wabanaki Peoples access to their traditional lands. What was secured through the Aboriginal ‘rights’ trickster’s ‘shape changing’ after the first two levels of trial was access to all the trees on ‘Crown’ lands. With the Court of Appeal ruling, which overturned the previous rulings of Judge Arseneault and Justice Turnbull, the trickster transformed once again from trees to logging, a transformation which became solidified through the “the clay of negotiations and the mud of compromises” (Manzo, 1995). This transformative process was explicated in Chapter Four, a process which culminated in an interim agreement allotting 5% of the provincial annual allowable cut pursuant to the terms and conditions of the provincial *Crown Lands and Forest Act*.

In reviewing the various shape changes the Aboriginal ‘rights’ trickster engaged in through this ‘logging struggle’, what emerges is an understanding of Aboriginal ‘rights’ as a “dangerous

alliance". Beginning within the international sphere, Wabanaki Peoples' alliance with the Aboriginal 'rights' trickster saw their power diminish from international, to national, to provincial, and finally to local. What began with the territorial integrity of the Wabanaki Confederacy, transformed to the confines of Canadian, and then provincial and finally reserve geography. While original Wabanaki notions of sovereignty called for a recognition of self-determination or the ability to govern oneself in accordance to Wabanaki customs and traditions, this was reduced to Canadian, and then New Brunswick, and finally band council, jurisdiction. And while the harnessing of contested cultural symbols within this 'rights' struggle was intended to secure a collective and unified position, it served instead to further divide Wabanaki communities, solidifying certain 'ways of being' which advanced individual as opposed to collective interests. What all of these descending transformations speak to, and what this thesis has shown, is that Aboriginal Peoples' alliance with the Aboriginal 'rights' trickster is one of "danger", an alliance that "does not add to communal Power but [instead] drains on it" (Holmes Whitehead, 1988).

### **Concluding observations**

Aboriginal land struggles have come to a cross roads marked by an inconsistency and incompatibility between stated territorial goals of First Nations Peoples and the 'rights' awarded through Aboriginal 'rights' law. Within this context, the problematic of this law, as argued by Roland Chrisjohn and Sherri Young (1997, p.105), is as follows:

**Come in one at a time and show me your scar; if you can prove how you got it, we'll cover it up with makeup for you. Remember you don't tell us what it is you want, we'll tell you what you're going to get (emphasis in original).**

From the perspective of a number of Wabanaki Peoples, participation in the colonial system is akin



to cultural genocide. “The Old Ones say that you will no longer be a human being” (GM, Interview, March 1999), or as expressed by another Miigemag woman, “we will be self-determining ourselves in an unhealthy way” (QT, Interview, February, 1999).

What then is the way forward for resolving Indigenous land claims and struggles? Ted Robert Gurr (1996, p.74), observes:

**Conflict management strategies that fail to recognize the importance of peoples’ cultural identities or that fail to address the grievances that animate their political movements will fail to reduce conflict.**

This thesis has shown that conflict management must also include the recognition of and need to understand internal diversities and dynamics. For Aboriginal communities, to negotiate and struggle on the basis of a ‘flattened’ culture belies the complexity and diversity inherent in a solidary and homogenous appearance (Cohen, 1993). While conflict processes with ‘outsiders’ demands a unified front in order to secure and strengthen bargaining power in the interest of community well-being and balance, it cannot be ignored that segmentary knowledge manifests “in disparate interpretations and opinions” which in the “interests of communal boundary management, masquerades as orthodoxy and consensus” (Cohen, 1993, p.40). ‘Sweeping differences under the carpet’, as this thesis has demonstrated, only enhances internal divisions, and in turn inhibits collective agency.

To focus on “processes of identity production, insisting on the discursive nature of ‘experience’ and on the politics of its construction” (Scott, 1992, p.36) is not to erase subject agency. Rather, the problematizing of ‘subject’, ‘experience’, and ‘identity’ as sites of multiple struggle enables the possible expansion of what they mean, “and in this sense to condition and enable an enhanced sense of agency” (Butler, 1992, p.16). Processes of deconstruction, as emphasized by postmodern and postcolonial thinkers, enables presuppositions to be called into question, thereby

freeing them from their “ metaphysical lodgings in order to occupy and serve very different political aims” (Butler, 1992, p.17).

A recognition of the divergent pulls on identity and diversity of experiences within Aboriginal communities and Nations is equally important for colonial authorities, though not for the purposes such understandings are harnessed for today, namely divide and conquer. If the ‘good faith’ intentions of federal and provincial governments are intended to bring a close to their ‘Indian problem’, then they need to begin by honestly acknowledging and incorporating internal dimensions and dynamics within their own negotiating position, particularly in relation to whom they are negotiating with and upon what constituency that negotiating authority is based. Failure to do so will result in the persistence of land struggles. As explained to me by a Miigemag youth:

In my mind, they [chief and council] can sign all the deals they want because they don’t have my consent, they can’t take my rights away. That is the way I see it and I know a lot of other people feel the same way. So whatever deal they sign, those people are not going to recognize it. They are still going to protest and fight (DH, Interview, February 1999).

A Wampanoag informant similarly articulated:

The reality is that these agreements are signed and initiated or implemented, but you still have people resisting that, and as long as there is resistance then the agreement isn’t followed. And eventually they will be overturned. They are always over turning these things in the first place. Nothing is etched in stone, even if the courts believe they are etched in stone. That is their belief. We have a different perspective on that (KG, Interview, March 1999).

A second fundamental observation Robert Gurr (1996, p.74) makes is:

Concentrating conflict-management efforts on one party to the exclusion of others is a no-win strategy. The principle is widely recognized by those concerned with managing interstate conflict, but not necessarily those dealing with intrastate conflict.

This understanding is what this thesis has ultimately argued for with respect to Indigenous land

struggles. My argument in this respect is that Indigenous land struggles need to be handled and approached as interstate conflicts, propelling these struggles into the 'international' realm where they properly belong. This suggestion, of course, demands cartographic decolonization and a 'relinquishing' of power by the nations-state in respect to 'owning' these issues. However, this is the only way justice can prevail with respect to Indigenous Peoples, and it therefore must be a justice that accounts for both past and contemporary process of colonialism and the violent disruption of Indigenous cultures. As the European Commissioner for Humanitarian Affairs, Emma Bonino noted:

Societies shattered by such nightmares cannot resume more than just a semblance of normal life unless there is a record of what happened, unless the guilty are brought to justice and punished, unless the innocent are cleared. Without justice, generation after generation is condemned to an existence haunted by the terrors of the past (Forum Europe, 1997, p.2).

If justice is the route to be followed, as recommended by the RCAP (1996) report, then further research needs to be undertaken into the ways in which justice can be attained through international processes of adjudication and reconciliation. For it is only when we challenge and destabilize 'sterile' national/international, domestic/foreign type dichotomies, and recognize both inter and intra-group differentiation, that we can begin to "seek out bridges across constructed chasms" (Agrawal, 1995, p.433) and initiate a productive dialogue through which to resolve Indigenous land struggles.

## References

- Abu-Lughod, Lila. 1993. *Writing Women's Worlds: Bedouin Stories*. Berkeley: University of California Press.
- Adams, Howard. 1995. *The Tortured People: The politics of colonization*. Penticton: Theytus Books Ltd.
- Alfred, Gerald. 1995. *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the rise of Native Nationalism*. Toronto: Oxford University Press.
- Agrawal, Arun. 1995. "Dismantling the Divide Between Indigenous and Scientific Knowledge," *Development and Change* 26, 413-439.
- Amin, Samir. 1976. *Unequal Development: An Essay on the Social Formation of Peripheral Capitalism*. New York: Monthly Review Press.
- Andersen, Erin. 1998. "N.B. trees cast shadow of Oka," *Globe and Mail*, 18 May, A4.
- Andersen, Roger. 1988. *The Power and the Word: Language, Power and Change*. London: Paladin Grafton Books.
- Anderson, Kelly. 1997. "Civil Society and the Northern Irish Conflict: Implications for community relations initiatives and political settlements". M.A. Research Paper. Ottawa: Norman Paterson School of International Affairs, Carleton University.
- Appadurai, Arjun. 1990. "Disjuncture and difference in the global cultural economy," *Public Culture*, 2: 1-21.
- Appellant's Submission. 1998. Her majesty the Queen and Thomas Peter Paul. Court of Appeal, Province of New Brunswick. File # 264/97/CA.
- Arno, Andrew. 1995. "Public Negotiation and Ethnic Discourse in Fiji," no. 1995-1, PCR Working Paper Series. Hawai'i: University of Hawai'i, Program on Conflict Resolution.
- Arseneault, J. Frédéric. 1995. Her Majesty the Queen and Thomas Peter Paul. Provincial Court. Province of New Brunswick. File # 238471, October 13.
- Ashcroft, Bill, Gareth Griffiths and Helen Tiffin (eds). 1995. *The Post-Colonial Studies Reader* London: Routledge.
- Atlantic Policy Congress. 1996. Resolution # 3 in support of gkisedtanamoogk. Transcript in the hands of Andrea Bear Nicholas, Chair of Native Studies, St. Thomas University.

- Augustine, Lloyd. 1998. "Nothing was free for natives," letter to the editor, *Saint John (New Brunswick) Telegraph Journal*, 7 March.
- Baldrige, William. 1993. "Reclaiming our Histories," in David Batstone *New Visions for the Americas: Religious Engagement and Social Transformation*. Minneapolis: Fortress Press.
- Barnes, Trevor and James Duncan (eds). 1992. *Writing Worlds: Discourse, Text and Methaphor in the Representation of Landscape*. London: Routledge.
- Barreiro, José. 1997. "Confronting the Spirit Eater: An interview with John Trudell," *Native Americas: Akwe;kon Journal of Indigenous Issues* XIV, 4: 34-42.
- Bear, Henry. 1998. "Opinion on Thomas Peter Paul Appeal Decision," letter to Chief Second Barlow and the Union of New Brunswick Indians, 27 April. Getty, Bear, Barristers and Solicitors, Tobique, New Brunswick.
- Bear Nicholas, Andrea. 1993. "Responsibilities not Rights: A Native perspective." in John McEvoy and Constantine Passaris (eds.) *Human Rights in New Brunswick: A new vision for a new century*. Fredericton: New Brunswick Human Rights Commission, 32-43.
- \_\_\_\_\_. 1994a. "Colonialism and the Struggle for Liberation: The Experience of Maliseet Women," *University of New Brunswick Law Journal* 43: 223-240.
- \_\_\_\_\_. 1994b. "Mascarene's Treaty of 1725." *University of New Brunswick Law Journal* 43:3-18.
- \_\_\_\_\_. 1995. Public presentation at human rights symposium, 29 March. Transcript in hand of Atlantic Human Rights Centre, St. Thomas University, Fredericton.
- \_\_\_\_\_. 1996. "Citizenship Education and Aboriginal People: The Humanitarian Art of Cultural Genocide," *Canadian and International Education* 25, 2: 59-108.
- Benjamin, Carig. 1997. "Biopiracy and Native Knowledge: Indigenous Rights on the Last Frontier," *Native Americas: Akwe;kon Journal of Indigenous Issues* XIV, 2: 22-32.
- Bhabha, Homi K. 1994a. *The Location of Culture*. London: Routledge.
- \_\_\_\_\_. 1994b. "Remembering Fanon: Self, Psyche and the Colonial Condition," in Patrick Williams and Laura Chrisman (eds) *Colonial Discourse and Post-Colonial Theory*. New York: Harvester Wheatsheaf, 112-125.

- Black Elk, Charlotte. 1996. "In our Origin Legend, Woman is called 'the Maker of Choices who is Complete'," in Dagmar Thorpe (ed) *People of the Seventh Fire: Returning lifeways of the Native Americans*. Ithaca: Akwe:kon Press, 148-160.
- Bodley, John. 1982. *Victims of Progress*. Palo Alto: Mayfield.
- Bourgois, Philippe. 1993. "Conjugated Oppression: Class and Ethnicity Among Guaymi and Kuna Banana Workers," in William Glade and Charles Reilly (eds) *Inquiry at the Grassroots*. Arlington: Inter-American Foundation, 55-83.
- Bracken, Christopher. 1997. *The Potlatch Papers: A Colonial Case History*. Chicago: The University of Chicago Press.
- Brascoupe, Simon. 1992. "Indigenous Perspectives on International Development," *Akwe:kon Journal IX*, 2: 6-18.
- \_\_\_\_\_. 1997. "The End of Sustainability," *Native Americas: Akwe;kon's Journal of Indigenous Issues XIV*, 3:64.
- Brennan, Rayanne. 1998a. "Tempers flare over land," *Fredericton (New Brunswick) Daily Gleaner*, 18 June.
- \_\_\_\_\_. 1998b. "Natives cut deal," *Fredericton (New Brunswick) Daily Gleaner*, 12 June.
- Brooks, Alma and family. 1997. "A declaration of Aboriginal and Treaty rights, made by one family". St. Mary's, New Brunswick.
- Brown, Doug. 1991. "From Traditional Mi'kmaq Government to Now: Changing those who do not need to be changed," in Stephanie Ingles, Joy Mannette and Stacey Sulewski *Paqtatek*. Halifax: Garamond Press, 43-55.
- Brown, Rose. 1996. "The Exploitation of the Oil and Gas Frontier: Its impact on Lubicon Lake Cree Women", in C. Miller and P. Chuchryk (eds) *Women of the First Nations: Power, Wisdom and Strength*. Winnipeg: University of Manitoba Press, 151-167.
- Brydon, Diana. 1995. "The White Inuit Speaks: Contamination as Literary Strategy," in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 136-143.
- Burtis, W.R.M. 1860. *New Brunswick as A Home for Emigrants: With the Best Means of Promoting Immigration, and Developing the Resources of the Province*. Saint John: Barnes and Co.

- Butler, Judith. 1992. "Contingent Foundations: Feminism and the Question of 'Postmodernism'," in Judith Butler and Joan Scott (eds) *Feminists Theorize the Political*. New York: Routledge, 3-21.
- Cayo, Don. 1997a. "Indian Country," part two, *The New Brunswick Reader Magazine*, 28 June. Saint John: *Telegraph Journal*.
- \_\_\_\_\_. 1997b. "Healing Powers," part three, *The New Brunswick Reader Magazine*, 5 July. Saint John: *Telegraph Journal*.
- Chaitoo and Michael Hart. 1998. "Sustainable Forest Management Standards: Issues and challenges for the Canadian forest industry," no. 50, *Occasional Papers in International Trade Law and Policy*. Ottawa: Centre for Trade Policy and Law, Carleton University.
- Chakrabarty, Dipesh. 1992. "Postcoloniality and the Artiface of History: Who Speaks for Indian Pasts?" *Representations*, 37.
- Chilibeck, John. 1998. "Native logging deals near completion: Tyler," *Saint John (New Brunswick) Telegraph Journal*, 26 September.
- Chrisjohn, Roland and Sherri Young. 1997. *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*. Penticton: Theytus Books Ltd.
- Clark, Bruce. 1996. "Eclipse and Enlightenment," A legal opinion delivered at Listuguj in the Mi'kmaq Country 4 September.
- Clarkson, Linda, Vern Morrissette and Gabriel Regallet. 1992. "Our Responsibility to the Seventh Generation: Indigenous Peoples and Sustainable Development," a report of the International Institute for Sustainable Development. Winnipeg: International Institute for Sustainable Development.
- Cohen, Anthony P. 1985. *The Symbolic Construction of Community*. Sussex: Ellis Horwood Limited.
- \_\_\_\_\_. 1993. "Segmentary Knowledge: A Whalsay Sketch," in Mark Hobart (ed) *An Anthropological Critique of Development: The growth of ignorance*. London: Routledge, 31-42.
- Cox, Kevin. 1998. "N.B. begins crackdown on native loggers," *The Globe and Mail*, 22 May.
- Daily Gleaner*. 1998. "Oromocto signs logging agreement with the province," *Fredericton (New Brunswick) Daily Gleaner*, 19 September.

- DeCerteau, Michel. 1988. *The Practice of Everyday Life*. Berkeley: University of California Press.
- Delgamuukw v. British Columbia*, [1997] S.C.J. No. 108 (S.C.C).
- Department of Indian Affairs and Northern Development. 1985. "Living Treaties: Lasting Agreements," Report of the task force to review comprehensive claims policy. Ottawa: Minister of Supply and Services.
- Dickason, Olive Patricia. 1992. *Canada's First Nations: A History of the Founding Peoples from Earliest Times*. Toronto: McClelland and Stewart Inc.
- Dirlik, A. 1992. "The Postcolonial Aura: Third World Criticism in the Age of Global Capitalism," *Critical Inquiry*, Winter.
- Douglas, Anne. 1998. "When the teachers came, that's when we started using those names: The social implications of name use in a Baffin Community". Public presentation at the Colloqu Nord-Laval en Sciences Humaines 1-3 April. GETIC, Université Laval, Quebec.
- During, Simon. 1995. "Postmodernism or Post-colonialism today", in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 125-129.
- Elliot, Duncan. 1921. Department of Indian Affairs Memo, *Native Issues* 1,11.
- Emberley, Julia. 1996. "Aboriginal Women's Writing and the Cultural Politics of Representation", in C. Miller and P. Chuchryk (eds) *Women of the First Nations: Power, Wisdom and Strength*. Winnipeg: University of Manitoba Press, 97-113.
- Enbanc*. 1998. Her Majesty the Queen and Thomas Peter Paul and others. Court of Appeal Decision, Province of New Brunswick. File # 264/97/CA. 22 April.
- Ennis, Dan. 1998. Letter to the editor, *Fredericton (New Brunswick) St. Thomas Aquinian*, 1 April.
- Ermine, Willie. 1995. "Aboriginal Epistemology," in Marie Battiste and Jean Barman (eds) *First Nations Education in Canada: The Circle Unfolds*. Vancouver: UBC Press, 101-113.
- Escobar, Arturo. 1995a. *Encountering Development: The making and unmaking of the Third World*. Princeton: University of Princeton Press.
- Fanon, Franz. 1963. *The Wretched of the Earth*. Trans. Constance Farrington. New York: Grove Press.



- Farrow, Heather. 1995. "Researching Popular Theatre in Southern Africa: Comments on a Methodological Implementation," *Antipode* 27, 1: 75-81.
- Fee, Margery. 1995. "Who Can Write as Other?," in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 242-245.
- Ferguson, James. 1994. *The Anti-Politics Machine*. Minneapolis: University of Minnesota Press.
- Ferguson, Kathy E. 1991. "Interpretation and Genealogy in Feminism," *Signs: Journal of Women in Culture and Society* 16, 2: 322-339.
- Fine, Michell. 1994. "Working the Hyphens: Reinventing Self and Other in Qualitative Research," in Norman Denzin and Yvonna Lincoln (eds) *Handbook of Qualitative Research*. Thousand Oaks: SAGE Publications, 70-82.
- Flax, Jane. 1992. "The End of Innocence", in Judith Butler and Joan Scott (eds) *Feminists Theorize the Political*. New York: Routledge, 445-463.
- Forbes, Jack. 1992. *Columbus and Other Cannibals*. Brooklyn: Autonomedia.
- Forum Europe. 1997. "No Peace Without Justice: The case for a permanent International criminal court," A discussion paper. Brussels: European Community Humanitarian Office.
- Foucault, Michel. 1980a. "Two Lectures," in Colin Gordon (ed) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. Brighton: The Harvester Press, 78-109.
- \_\_\_\_\_. 1980b. "Questions on Geography," in Colin Gordon (ed) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. Brighton: The Harvester Press, 63-77.
- Foucault, Michel (1982), "The Subject and Power", *Critical Inquiry*, 8(Summer): 777-795.
- Francis, Daniel. 1992. *The Imaginary Indian: The Image of the Indian in Canadian Culture*. Vancouver: Arsenal Pulp Press.
- Francis, Dave. 1998. "Logging deal reached with Eel Ground Band," *Fredericton (New Brunswick) Daily Gleaner*, 7 July.
- Francis, Joseph. 1999. "Logging deal is 'blatant sellout', letter to the editor, *Saint John (New Brunswick) Telegraph Journal*, 9 February.
- Freire, Paulo. 1970. *Pedagogy of the Oppressed*. New York: Continuum.

- Gedicks, Al. 1994. *The New Resource Wars: Native and Environmental Struggles Against Multinational Corporations*. Montreal: Black Rose Books.
- Gesner, Abraham. 1847. *New Brunswick, with Notes for Emigrants*. London: Simons and Ward.
- Gidmark, David. 1980. *Indian Arts and Crafts of William and Mary Commando*. Toronto: McGraw-Hill Ryerson.
- Gilbert, Stephanie. 1995. "A Postcolonial Experience of Aboriginal Identity," *Cultural Studies* 9, 1: 145-149.
- gkisedtanamoogk. 1996a. Position and analysis of border crossing application against Wabanaki Peoples. Transcript in the hands of Andrea Bear Nicholas, Chair of Native Studies, St. Thomas University.
- \_\_\_\_\_. 1996b. Presentation to native studies class 28 November. Fredericton: St. Thomas University.
- \_\_\_\_\_. 1996c. "Effectiveness of the Universal Declaration of Human Rights," letter to the Atlantic Human Rights Centre. Transcript in the hands of the Atlantic Human Rights Centre, St. Thomas University.
- Goguen, Giselle. 1998a. "Native activism's new face," *Saint John (New Brunswick) Telegraph Journal*, 10 March.
- \_\_\_\_\_. 1998b. "100 natives shut down logging operation," *Saint John (New Brunswick) Telegraph Journal*, 4 June.
- Graham, Allan. 1998. Letter to the editor, *Fredericton (New Brunswick) St. Thomas Aquinian*, 1 April.
- Grand Lake Mirror*. 1998a. "Preserving the past and securing the future," *Chipman (New Brunswick) Grand Lake Mirror*, March.
- \_\_\_\_\_. 1998b. "Who will find the way," *Chipman (New Brunswick) Grand Lake Mirror*, April.
- Gray, Cynthia. 1989. "A Question of Sovereignty: Patricia Monture v. the Queen," *Canadian Woman Studies* 10, 2 and 3:146-147.
- Gregoire, Lisa. 1998a. "Natives resilient," *Fredericton (New Brunswick) The Daily Gleaner*, 2 May.
- \_\_\_\_\_. 1998b. "Patience wearing thin," *Fredericton (New Brunswick) The Daily Gleaner*, 8 May.

- \_\_\_\_\_. 1998c. "Frenette makes native loggers another offer," *Fredericton (New Brunswick) The Daily Gleaner*, 9 May.
- \_\_\_\_\_. 1998d. "Natives deliver terse message," *Fredericton (New Brunswick) The Daily Gleaner*, 23 May.
- \_\_\_\_\_. 1998e. "Mill operators warned," *Fredericton (New Brunswick) The Daily Gleaner*, 29 May.
- \_\_\_\_\_. 1998f. "Tobique sets precedent," *Fredericton (New Brunswick) The Daily Gleaner*, 11 June.
- \_\_\_\_\_. 1998g. "Deals not all cut up to be," *Fredericton (New Brunswick) The Daily Gleaner*, 3 November.
- \_\_\_\_\_. 1998h. "Logging mischief allegations," *Fredericton (New Brunswick) The Daily Gleaner*, 12 September.
- \_\_\_\_\_. 1998i. "Native wood supply runs out," *Fredericton (New Brunswick) The Daily Gleaner*, 28 October.
- \_\_\_\_\_. 1998j. "Enforce the law, says Irving," *Fredericton (New Brunswick) Daily Gleaner*, 13 June.
- Griffiths, Gareth. 1995. "The Myth of Authenticity", in Bill Aschroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 237-242.
- Gronemeyer, Marianne. 1995. "Helping," in Wolfgang Sachs (ed) *The Development Dictionary: A guide to knowledge as power*. London: Zed Books, 53-70.
- Gunew, Sneja. 1987, "Culture, Gender and Author Function," *Southern Review* 20, 3:261-270.
- Gurr, Ted Robert. 1996. "Minorities, Nationalists, and Ethnopolitical Conflict," in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds) *Managing Global Chaos: Sources of and responses to international conflict*. Washington: United States Institute of Peace, 53-77.
- Hage, Ghassan. 1996. "The spatial imaginary of national practices: dwelling-domesticating/being-extermimating," *Environment and Planning D: Society and Space* 14: 463-485.
- Haliburton, Thomas Chandler. 1829. *An Historical and Statistical Account of Nova Scotia*. Halifax: Joseph Howe.
- Hall, Stuart. 1994. "Cultural Identity and Diaspora," in Patrick Williams and Laura Chrisman (eds) *Colonial Discourse and Post-Colonial Theory*. New York: Harvester Wheatsheaf, 392-404.

- \_\_\_\_\_. 1996. "When was 'the Post-Colonial'? Thinking at the Limit," in I. Chambers and L. Curti (eds) *The Post-Colonial Question: Common Skies, Divided Horizons*. London: Routledge, 242-261.
- Harley, J.B. 1994. "New England Cartography and the Native Americans", in E.W. Baker, E.A. Churchill, R. D'Abate, K.L. Jones, V.A. Konrad and H.E.L. Prin (eds) *American Beginnings: Exploration, Culture and Cartography in the Land of Norumbega*. Lincoln: University of Nebraska Press, 287-314.
- Harp, Rick. 1994. "Native by Nature?" in Eleanor Godway and Geraldine Finn (eds) *Who is this 'We'? Absence of Community*. Montreal: Black Rose Books, 46-55.
- Holmes Whitehead, Ruth. 1988. *Stories from the Six Worlds*. Halifax: Nimbus Publishing Limited.
- \_\_\_\_\_. 1991. *The Old Man Told Us: Excerpts from Micmac History, 1500-1950*. Halifax: Nimbus Publishing Limited.
- hooks, bell. 1990. *Yearning: Race, gender and cultural politics*. Boston: South End.
- \_\_\_\_\_. 1992. "Representing Whiteness in the Black Imagination," in Lawrence Grossberg, Cary Nelson and Paula Treichler (eds) *Cultural Studies*. London: Routledge, 338-346.
- \_\_\_\_\_. 1994. "Postmodern Blackness," in Patrick Williams and Laura Chrisman (eds) *Colonial Discourse and Post-Colonial Theory: A Reader*. New York: Harvester Wheatsheaf, 421-428.
- Hororka, Alice. 1997. "Searching for an alternative discourse to 'development'". M.A. Thesis, Norman Paterson School of International Affairs, Carleton University.
- Hrabluk, Lisa. 1998a. "Harvest Dreams: A new dawn for New Brunswick natives or another Oka?" *The New Brunswick Reader Magazine*, Saint John: *Telegraph Journal*, 16 May.
- \_\_\_\_\_. 1998b. "Emotions high on eve of Paul appeal," *Saint John (New Brunswick) Telegraph Journal*, 26 February.
- \_\_\_\_\_. 1998c. "Tyler might spark new logging test case," *Saint John (New Brunswick) Telegraph Journal*, 6 June.
- \_\_\_\_\_. 1998d. "Turnbull ruling on shaky ground," *Saint John (New Brunswick) Telegraph Journal*, 12 February.
- \_\_\_\_\_. 1998e. "Natives form alliance to develop united strategy," *Saint John (New Brunswick) Telegraph Journal*, 29 April.

- \_\_\_\_\_. 1998f. "Natives reject province's newest proposal," *Saint John (New Brunswick) Telegraph Journal*, 12 May.
- \_\_\_\_\_. 1998g. "Cash for gear part of both native deals," *Saint John (New Brunswick) Telegraph Journal*, 8 July.
- \_\_\_\_\_. 1998h. "Tobique's wood supply exhausted," *Saint John (New Brunswick) Telegraph Journal*, 27 October.
- \_\_\_\_\_. 1998i. "Premier, chiefs broker deal," *Saint John (New Brunswick) Telegraph Journal*, 9 May.
- \_\_\_\_\_. 1998j. "Natives fear 'divide and conquer' tactics," *Saint John (New Brunswick) Telegraph Journal*, 5 June.
- Hrabluk, Lisa and Jacques Poitras. 1998. "More bands poised to deal," *Saint John (New Brunswick) Telegraph Journal*, 11 June.
- Huggan, Graham. 1995. "Decolonizing the Map," in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 407-412.
- Huntington, Corey. 1998. "When the Bottom Line Isn't the End of the Story: Women's Experience with Micro-Credit Enterprise, Credit and Empowerment in Mbeya, Tanzania". M.A. Thesis. Ottawa: Norman Paterson School of International Affairs, Carleton University.
- Hunters and Gatherers. 1997. Report of meeting discussions 26 November.
- Jackson, Micheal. 1988. *Locking up Natives in Canada*. Vancouver: University of Vancouver Press.
- Jamieson, Kathleen. 1978. *Indian Women and the Law in Canada: Citizens Minus*. Ottawa: Minister of Supply and Services.
- Jhappan, C. Radha. 1992. "Global Community?: Supranational Strategies of Canada's Aboriginal Peoples," *Journal of Indigenous Studies* 3,1: 59-86.
- Joe, Rita. 1990. "Men of Peace," in Agnes Grant (ed) *Our Bit of Truth: An Anthology of Native Literature*. Winnipeg: Pemmican Publishing Inc., 324-325.
- \_\_\_\_\_. 1991. *Lnu and Indians We're Called*. Charlottetown: Ragweed Press.
- Johnson, Myke. 1996. "Wanting to be Indian: When Spiritual Teaching Turns Into Cultural Theft," November 26, <http://dickshovel.netgate.net/respect.html>.

- Krishna, Sankaran. 1994. "Cartographic Anxiety: Mapping the Body Politic in India," *Alternatives* 19: 507-521.
- LaDuke, Winona (1992), "Indigenous Environmental Perspectives: A North American Primer", *Akwe:kon Journal*, IX(2): 52-72.
- LaPrarie, Carol. 1994. *Seen but not Heard: Native Peoples in the Inner City*. Ottawa: Department of Justice.
- Llewellyn, Stephen. 1998a. "Native fight for cutting rights," *Fredericton (New Brunswick) Daily Gleaner*, 27 February.
- \_\_\_\_\_. 1998b. "Forestry downfall feared," *Fredericton (New Brunswick) Daily Gleaner*, 28 February.
- Liloqula, Ruth. 1996. "Value of Life: Saving Genes versus Saving Indigenous Peoples," *Cultural Survival Quarterly* Summer: 42-45.
- Lithman, Yngve. 1984. *The Community Apart: A Case Study of a Canadian Indian Reserve Community*. Winnipeg: University of Manitoba Press.
- Lorde, Audre. 1984. *Sister Outsider: Essays and Speeches*. Freedom: Crossing Press.
- Lyons, Oren and John Mohawk. 1994. "Sovereignty and Common Sense," *Cultural Survival Quarterly* Winter: 58-60.
- MacDonald, Freda. 1998. "No Longer an Indian: My Story," in Jace Weaver (ed) *Native American Religious Identity: Unforgotten Gods*. Maryknoll: Orbis Books, 69-74.
- MacLean, Rick. 1998. "Standing on their own - For now," *Saint John (New Brunswick) Telegraph Journal*, 25 May.
- MacPherson, Don. 1998. "Natives break olive branch," *Fredericton (New Brunswick) Daily Gleaner*, 4 May.
- McClintock, Anne. 1994. "The Angel of Progress: Pitfalls of the term 'Post-Colonialism'", in Patrick Williams and Laura Chrisman (eds) *Colonial Discourse and Postcolonial Theory: A Reader*. New York: Harvester Wheatsheaf, 291-305.
- \_\_\_\_\_. 1995. *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest*. New York: Routledge.

- McNeil, Kent. 1989. *Common Law and Aboriginal Title*. Oxford: Clarendon Press.
- Mackenzie, Fiona. 1998. "The Cheviot, The Stag...and the White, White Rock?: Community, identity, and environmental threat on the isle of Harris", *Society and Space* 16: 509-531.
- Maliseet Court. 1996. Letter to John G. Paul, Executive Director, Atlantic Policy Congress of First Nations Chiefs, 19 November. Transcript in the hand of Andrea Bear Nicholas, Chair of Native Studies, St. Thomas University.
- Mandell Pinder. 1998. The Delgamuukw decision analysis prepared by Mandell Pinder, Barristers and Solicitors, Vancouver, 16 January.
- Manzo, Kate. 1995. "Black Consciousness and the Quest for a Counter-Modernist Discourse", in Johnathan Crush (ed) *Power of Development*. London: Routledge, 228-253.
- Marantz, B. Denis. 1996. "Issues Affecting the Rights of Indigenous Peoples in International Fora", in International Centre for Human Rights and Democratic Development (ed) *People or Peoples; Equality, Autonomy and Self-Determination: The Issues at Stake of the International decade of the World's Indigenous Peoples*. Montreal: International Centre for Human Rights and Democratic Development, 9-77.
- Marshall Sr., Garnd Chief Donald, Grand Captain Alexander Denny and Putus Simon Marshall. 1989. "The Mi'kmaq: The Covenant Chain," in Boyce Richardson (ed) *Drumbeat: Anger and Renewal in Indian Country*. Toronto: Summerhill Press, 71-105.
- Mbilinyi, Marjorie. 1992. "Research Methodologies in Gender Issues," in Ruth Meena (ed) *Gender in Southern Africa: Conceptual and Theoretical Issues*. Harare: Sapes Books.
- Mies, Maria. 1991. "Women's Research or Feminist Research? The Debate Surrounding Feminist Science and Methodology," in Mary M.Farrow and Judith A. Cooke (eds) *Beyond Methodology: Feminist Scholarship as Lived Research*. Bloomington: Indiana University.
- Minh-ha, Trinh T. 1995. "Writing Postcoloniality and Feminism", in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 264-269.
- Mohanty, Chandra T. 1991. "Cartographies of Struggle: Third World Women and the Politics of Feminism," in Chandra Mohanty, Ann Russo and Lourdes Torres (eds) *Third World Women and the Politics of Feminism*. Bloomington: Indiana University Press.
- Mohawk, John. 1993. "Traditionalism and the Redevelopment of Native Economies," in Roger Moore (ed) *The Indigenous Voice: Visions and Realities*. Utrecht: International Books, 621-623.

- Montour, Sandra. 1995. "The Token Indian," in Joel T. Maki (ed) *Steal My Rage: New Native Voices*. Vancouver: Douglas and McIntyre, 27.
- Monture-Angus, Patricia. 1995. *Thunder in My Soul*. Halifax: Fernwood Press.
- \_\_\_\_\_. 1997. "Identity, Academia and Aboriginal Women," Public lecture 15 January. Fredericton: St. Thomas University.
- Moore, Donald. 1996. "Marxism, Culture and Political Ecology: Environmental struggles in Zimbabwe's Eastern Highlands", in Richard Peet and Michael Watts (eds) *Liberation Ecologies*. London: Routledge, 125-147.
- Morris, Chris. 1998. "N.B. contests aboriginal ownership of Crown lands, forests," *Globe and Mail*, 27 February.
- Morrison, Campbell. 1998. "Allaby ready for top court," *Fredericton (New Brunswick) Daily Gleaner*, 20 June.
- Morrison, Campbell and Tim Porter. 1998. "Ottawa keeps head low," *Fredericton (New Brunswick) Daily Gleaner*, 5 May.
- Morrison, Kenneth M. 1994. "Mapping Otherness: Myth and Study of Cultural Encounter," in E.W. Baker, E.A. Churchill, R. D'Abate, K.L. Jones, V.A. Konrad and H.E.L. Prin (eds) *American Beginnings: Exploration, Culture and Cartography in the Land of Norumbega*. Lincoln: University of Nebraska Press, 119-129.
- Mudimbe, V.Y. 1988. *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge*. Bloomington: Indiana University Press.
- Naipaul, V.S. 1979. *A Bend in the River*. New York: Alfred A. Knoff Inc.
- Native Women's Association of Canada. 1991. "Aboriginal Women and the Canadian Constitutional Debate," *Canadian Woman Studies* 12, 3: 14-16.
- Neumann, Roderick. 1995. "Ways of seeing Africa: Colonial Recasting of African Society and Landscape in Serengeti National park," *Ecumene* 2, 2: 149-169.
- New Brunswick Aboriginal Peoples Council. n.d. Position paper on forestry. NBAPC, Fredericton, New Brunswick.
- Newman, Rick. 1998. "Big companies not to blame for littered landscape," letter to the editor, *Saint John (New Brunswick) Telegraph Journal*, 18 May.
- Noley, Homer. 1991. *First White Frost*. Nashville: Abingdon Press.



- Obmsawin, Roger. 1999. "AFN and the \$18 Million Buy-Out," *Anasazi Newsletter*.
- Parpart, J.L. and M.H. Marchand. 1995. "Exploding the Canon: An Introduction/Conclusion", in J.L. Parpart and M.H. Marchand (eds) *Feminism, Postmodernism, Development*. London: Routledge, 1-23.
- Paul, Daniel N. 1993. *We Were Not the Savages: A Micmac perspective on the collision of European and Aboriginal civilization*. Halifax: Nimbus Publishing Ltd.
- Peet, Richard and Michael Watts. 1996. "Liberation Ecology: Development, sustainability, and environment in an age of market triumphalism", in Richard Peet and Michael Watts (eds) *Liberation Ecologies*. London: Routledge, 1-46.
- Penn, Arthur. 1992 [1970]. *Little Big Man*. Beverly Hills: CBS/Fox.
- Perley, Juanita. 1996. "Once You Walk With Your Spirit Again, It is Easier to Find the Way," in Dagmar Thorpe (ed) *People of the Seventh Fire: Returning Lifeways of Native America*. Ithaca: Akwe:kon Press, 40-52.
- Poitras, Jacques. 1998. "Big Cove to discuss logging deal," *Saint John (New Brunswick) Telegraph Journal*, 17 December.
- Polson, Gordon and Roger Spielmann. 1993. "'Fire in Our Hearts': Linguistic Hegemony and the First Nations of Canada," in Thomas E. Schirer and Susan Branstner (eds) *Native American Survival and Renewal*. Lake Superior: Lake Superior State University Press, 57-66.
- Ponting, J. Rick. 1990. "Internationalization: Perspectives on an Emerging Direction in Aboriginal Affairs," *Canadian Ethnic Studies* 22,3: 84-109.
- Prakash, Gyan (1994), "AHR Forum: Subaltern Studies as Postcolonial Criticism", *American Historical Review*, December: 1475-1491.
- Pritchard, Evan T. 1997. *No Word for Time: The way of the Algonquin People*. Tulsa: Council Oak Books.
- R. v. Simon* (1985), 23 C.C.C. (3d) 238 (S.C.C.).
- R. v. Sioui* (1990), 56 C.C.C. (3d) 255 (S.C.C.).
- R. v. Sparrow* (1990), 56 C.C.C. (3d) 263 (S.C.C.).
- R. v. Van der Peet* (1996), 137 D.L.R. (4<sup>th</sup>) 289 (S.C.C.).

- Rahnema, Majid. 1995. "Participation," in Wolfgang Sachs (ed) *The Development Dictionary: A guide to knowledge as power*. London: Zed Books, 116-132.
- Rattansi, Ali (1997), "Postcolonialism and its discontents", *Economy and Society*, 26(4): 480-500.
- Report on the Royal Commission on Aboriginal Peoples. 1996a. *Bridging the Cultural Divide, A Report on Aboriginal People and Criminal Justice in Canada*. Ottawa: Minister of Supply and Services.
- \_\_\_\_\_. 1996b. "Looking Forward, Looking Back," vol.1, Report on the Royal Commission on Aboriginal Peoples. Ottawa: Minister of Supply and Services.
- \_\_\_\_\_. 1996c. "Restructuring the Relationship," vol.2, Report of the Royal Commission on Aboriginal Peoples. Ottawa: Minister of Supply and Services.
- Reid, Jennifer. 1995. *Myth, Symbol and Colonial Encounter: British and Mi'kmaq in Acadia, 1700-1867*. Ottawa: University of Ottawa Press.
- Respondent's Submission. 1998. Her majesty the Queen and Thomas Peter Paul. Court of Appeal, Province of New Brunswick. File # 264/97/CA.
- Richardson, Mary, Joan Sherman and Michael Gismondi. 1993. *Winning Back the Words: Confronting experts in an environmental public hearing*. Toronto: Garamond Press.
- Robbins, Steven. 1998. "Breaking out of the Straightjacket of Tradition: The Politics and Rhetoric of 'Development' in Zimbabwe," *World Development* 26, 9: 1677-1693.
- Ryan, William. 1976. *Blaming the Victim*. New York: Pantheon Books.
- Said, Edward. 1993. *Culture and Imperialism*. New York: Alfred A. Knopf.
- Sangari, Kumkum. 1995. "The Politics of the Possible," in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds) *The Post-Colonial Studies Reader*. London: Routledge, 143-151.
- Sappier, Roche. 1998. Letter to the editor. (*New Brunswick*) *Victoria County Record*, February 4.
- Sark, John Joe. 1988. *Micmac Legends of Prince Edward Island*. Charlottetown: Ragweed Press.
- Sarri, Rosemary and Catherine Sarri. 1992. "Participatory Action Research in Two Communities in Bolivia and the United States," *International Social Work* 35: 267-280.

- Scott, Joan. 1992. "Experience," in Judith Butler and Joan Scott (eds) *Feminist Theorize the Political*. New York: Routledge, 22-40.
- Seufert-Barr, Nancy. 1993. "Seeking a New Partnership," *UN Chronicle* June: 40-51.
- Sharpe, Gene. 1973. *The Politics of Nonviolent Action*. Boston: Porter Sargent Publishers.
- Shaw, Barbara. 1995. "Contradictions Between Action and Theory: Feminist Participatory Research in Goa, India," *Antipode* 27, 1: 91-99.
- Sherzer, Joel. 1987. "A Discourse-Centred Approach to Language and Culture," *American Anthropologist* 89, 2: 503-511.
- Shohat, E. 1992. "Notes on the Postcolonial," *Social Text* 31/32.
- Simon, Lorne. 1994. *Stones and Switches*. Penticton: Theytus Books Ltd.
- Slattery, Brian. 1999. "Aboriginal Title in New Brunswick," The Seventh Annual Ivan C. Rand Memorial Lecture 18 February. Fredericton: University of New Brunswick Law School.
- Smith, Andrea. 1998. "Walking in Balance: The spirituality-liberation praxis of Native Women," in Jace Weaver (ed) *Native American Religious Identity: Unforgotten Gods*. Maryknoll: Orbis Books, 178-199.
- Sparke, Matthew. 1998. "A Map that Roared and an Original Atlas: Canada, Cartography, and the Narration of Nation," *Annals of the Association of American Geographers* 88, 3:463-495.
- Staples, Michael. 1998. "New Justice will rule on edgy case," *Fredericton (New Brunswick) Daily Gleaner*, 11 February.
- Sylvester, Christine. 1995. "African and Western Feminisms: World Traveling the Tendencies and Possibilities," *Signs* 20, 4.
- Tinker, George E. 1993. *Missionary Conquest: The Gospel and Native American Cultural Genocide*. Minneapolis: Fortress Press.
- Tenzsen, Mike. 1998a. "They'll have to drag us out," *Saint John (New Brunswick) Telegraph Journal*, 11 May.
- \_\_\_\_\_. 1998b. "Petition opposing logging deal," *Saint John (New Brunswick) Telegraph Journal*, 15 December.

- \_\_\_\_\_. 1998c. "Federal money will help Micmacs cut on Crown land," *Saint John (New Brunswick) Telegraph Journal*, 10 March.
- Te Pareake Mead, Aroha. 1996. "Genealogy, Sacredness, and the Commodities Market," *Cultural Survival Quarterly* Summer: 46-51.
- \_\_\_\_\_. 1998a. "Tobique's forest fiasco," *Saint John (New Brunswick) Telegraph Journal*, 2 November.
- \_\_\_\_\_. 1998b. "Most native bands vote to resume talks with the province," *Saint John (New Brunswick) Telegraph Journal*, 7 May.
- Thomas, Nicholas. 1994. *Colonialism's Culture: Anthropology, Travel and Government*. Princeton: Princeton University Press.
- Thorpe, Dagmar (ed). 1996. *People of the Seventh Fire: Returning Lifeways of Native America*. Ithaca: Akwe:kon Press.
- Toughill, Kelly. 1998. "'Dissident' leads N.B. loggers," *The Toronto Star*, 27 April.
- Turnbull, John. 1997. Her Majesty the Queen and Thomas Peter Paul. Court of Queen's Bench, Province of New Brunswick. File # B/M/114/96, 3 March.
- Turpel, Mary Ellen. 1989. "Aboriginal Peoples and the Canadian Charter of Rights and Freedoms," *Canadian Woman Studies* 10, 2 and 3: 149-157.
- Upton, L.F.S. 1979. *Micmac and Colonists: Indian-White Relations in the Maritimes, 1713-1867*. Vancouver: University of British Columbia Press.
- \_\_\_\_\_. 1998a. "Are some people harvesting the future," *Perth-Andover (New Brunswick) Victoria County Record*, February.
- \_\_\_\_\_. 1998b. "Natives can never have justice under Canadian Courts," *Perth-Andover (New Brunswick) Victoria County Record*, 6 May.
- \_\_\_\_\_. 1998c. "Task force on aboriginal issues formed," *Perth-Andover (New Brunswick) Victoria County Record*, 20 May.
- \_\_\_\_\_. 1998d. "Controversy surrounds First Nation's forestry deal," *Perth Andover (New Brunswick) Victoria County Record*, 4 November.
- Washinawatok, Ingrid. 1997. "International Emergence: Twenty Years at the United Nations," *Native Americas: Akwe:kon Journal of Indigenous Issues* XIV, 2: 12-22.

- Watts, Michael. 1997. "Black Gold, White Heat: State violence, local resistance and the national question in Nigeria," in S. Pile and M. Keith (eds) *Geographies of Resistance*. London: Routledge, 33-67.
- Weaver, Jace. 1998. "From I-Hermeneutics to We-Hermeneutics: Native Americans and the Post-colonial," in Jace Weaver (ed) *Native American Religious Identity: Unforgotten Gods*. Maryknoll: Orbis Books, 1-26.
- White, Allen. 1998a. "This is the calm before the storm," *Saint John (New Brunswick) Telegraph Journal*, 2 May.
- \_\_\_\_\_. 1998b. "Natives forming united front," *Saint John (New Brunswick) Telegraph Journal*, 16 May.
- \_\_\_\_\_. 1998c. "Crackdown in the woods," *Saint John (New Brunswick) Telegraph Journal*, 22 May.
- \_\_\_\_\_. 1998d. "Native leader is hopeful talks will resolve logging dispute," *Saint John (New Brunswick) Telegraph Journal*, 27 May.
- White, Allen and Lisa Hrabluk. 1998. "Native forestry company flees woods," *Saint John (New Brunswick) Telegraph Journal*, 30 April.
- World Council of Indigenous Peoples. 1984. "An Indian Without Land is a Dead Indian," *World Council of Indigenous Peoples Newsletter* 4, February.
- Wright, Ronald. 1998. "The 500 Year War: The Aboriginal Struggle in North America," Public lecture 24 November. Fredericton: University of New Brunswick.
- Wynn, Graeme. 1981. *Timber Colony: A historical geography of early nineteenth century New Brunswick*. Toronto: University of Toronto Press.
- York, Geoffrey. 1990. *The Dispossessed: Life and Death in Native Canada*. Toronto: Little Borwn Canada.
- York, Geoffrey and Loreen Pindera. 1991. *People of the Pines: The warriors and the legacy of Oka*. Boston: Little, Brown and Company (Canada) Limited.

## **Appendix A:**

### **Research Letter**

**Topic: The Political Constitution of Indigenous Resource Struggles**

**Date: February, 1999**

I am a Masters student at the Norman Paterson School of International Affairs at Carleton University and am currently undertaking research for my master's thesis. I am looking at the politics of Indigenous land/resource conflicts and how cultural politics influences the final outcome. As I am using the 'logging issue' in New Brunswick as a case study, I am doing part of my research in Aboriginal Communities in New Brunswick to see how the 'logging issue' has affected Aboriginal Communities. I will be asking you how the issue was first brought to your attention, how you see this issue in relation to Aboriginal self-determination, and what impact this logging issue has had on your community and your own life.

My research is being supervised by Professor Fiona Mackenzie, Department of Geography at Carleton University. She can be reached via mail at the Department of Geography, B349 Loeb Building, 1125 Colonel By Drive, Ottawa, Ontario, K1S 5B6, by phone at (613) 520-2561, or fax at (613) 520-4301. I can be reached at the address at the top of this page or in New Brunswick at R.R. # 4, Harvey Station, N.B, E0H 1H0; phone (506) 366-2105; fax (506) 366-2105.

#### **If you agree to be interviewed, I promise the following:**

- to ensure that your privacy and confidentiality are protected, which includes not attaching your name to any information and disguising any identifying information. While it would be useful for the purpose of my thesis to be able to use general references - gender/sex, youth (18-25), elder, off-reserve, non-status, Mi'kmaq, Welastekwiyik (Maliseet) - I will not do so without your express permission.
- that I will not record, either by tape or writing, our interview unless you give me permission to do so
- that I will be the only person having access to the interview notes and that these notes will be stored in my thesis files at my home in Alexandria, Ontario. I will delete identifying information from interview notes, and will destroy any tape recordings after I have transferred the information to written format
- that participation is limited to this one interview and that I will only contact you about clarification with your prior permission
- to provide you with a written summary of our interview for you to review, and to which you can make any deletions, changes or add new information
- to keep you informed about the progress of the research project and to mutually agree upon a central place where you will be able to access the final results/thesis. Arrangements can be

made for you to receive your own copy of the thesis if any of the central places where I leave a copy of my thesis is not easily accessible to you.

**If you agree to be interviewed, you have the right to following:**

- to decide upon the place where you would like the interview to be held
- to withdraw from the research project at any time, for any reason, without prejudice
- to be informed of and have discussed potential risks and benefits of participating in this research
- to refuse to answer any of the questions
- to discontinue with the interview if you feel any discomfort or anxiety at any point
- to decide if any general references to your identity - sex, youth (18-25), off-reserve/on reserve, status/non-status, elder, Mi'kmaq, Welastekwiyik (Maliseet) - will be used in the thesis
- to review a written summary of your interview and to make any deletion or changes as you desire
- to have access to the final results/thesis

Yours Sincerely,

Gerdine Van Woudenberg

Appendix B:

WOLUSTUQEY ATULI T'PELOTIMOK

Yuktek:

Isaac Edward Paul nit k'chikwenisel Percy Paulel tabeksopen naka toli nemiqesopen naka toli gisigopen eliwitahsig Ajemsek. Husawis Sabattis nitel dosisel Louisei naka qusel Husawis Arwinel, naka Leonard Arwinel k'chikwenisel toli nemiqesopen naka toli gisigopen eliwitahsig Ajemsek.

Naka wot:

Wenochey sakem Frank McKenna yut New Brunswick eliwitahsik (skijinowi k'taqmiqook) naka wenochey atoli t'pelotimok

KAQAS LAYU

Ali keti sispeyotahsik k'taqmiq (keti kenuwitahso sigasawagin naka yelalkatin senojiu) nit Ajemsek: naka Miqmwaweyuk sakamuq naka wolustegookeweyuk sakamuq wigwolujik eliwitahsig Wabanakik algimut Qotinsk Puwaqoni Kisuhs, kis wikhemotiniapin weci skat sispeyutahsiq k'taqmiq Ajemsek: naka kisi itemopen Bruce Clark LLB., M.A., PhD. ali cui mauwi pomowsoltimuk Canadieswikok naka psidedama skitkamiq itemowiwal ali mec skijinouk t'peltimotit psiu k'taqmiq yut Wabanakik -- ali tapu kisi k'mutnadahsik Wolustuqokewik k'taqmiq.

ELGIGAMOLTIMUK

1. Wanochey sakem Frank McKenna tulgigasini ska sispeyutasiu Ajemsek.
2. Tekec wanochey sakem Frank McKenna ska wolitahamok algimut -- kisi nakem notawestawamqun.
3. Tekec wanochey sakem Frank McKenna ska wolumsitamok ali yut cowi leyik -- nakemch kisi abacikasin yut skohotasu atli t'pelotimuk psiu tama skitkamiq

YUT WOLUSTUQEY ATLI T'PELOTIMUK

Seedunsisk  
Nan, Toqaquwi Kisuhs  
Esqonatek kes anku kes atog cel esqonatek kes insk cel kamacin

*Denise Brooks*  
*H. Wayne Brooks*  
*Dean M. Brooks*  
 130 Wolustuq Aut  
 Seedunsisk  
 E3A 2V9

*Heather G. Brooks*  
*Martin Reed*  
*Donna Kerley*

*Harold LaPorte*  
*Ed Francis*  
*Audace Ben Nicholas*  
*Wendy Nichols*  
*Conni G. Doro*  
*Donna G. LaPorte*  
*Jack LaPorte*  
*Jack LaPorte*

*Margina Moulton*  
*Thomas G. Brooks*  
*Jack LaPorte*  
*Helen LaPorte*  
*Kemi Brooks*  
*Susan Gibbon*  
*Shirley DeLam*  
*Julia Kennedy*



Between:

170

The 4th generation of Isaac Edward Paul in the name of Percy Paul and the family of John Sabbattis's daughter Louise and son John Atwin in the name of Leonard F. Atwin and all extended families of the aboriginal people with direct ancestral ties to Ajemseg on the shores of the Ajemseg River

and:

Premier Frank McKenna as representative of the governments and courts of New Brunswick

ORDER

Upon hearing the aboriginal people's concern that the spiritual peace at Ajemseg is threatened by archeologists and bridge contractors; and upon reading the resolution of the Chiefs of the Atlantic Policy Congress dated 10 October 1996 requesting a moratorium; and upon hearing the legal opinion of Bruce Clark, LLB, MA, PhD that international law and Canadian constitutional law confirm that the aboriginal people have jurisdiction and the governments and courts of New Brunswick do not because the land at Ajemseg is still unsundered Indian country:

IT IS ORDERED

1. That Premier McKenna ensure that Ajemseg is not disturbed;
2. Provided that the Premier can apply to this Court to vary or set aside this order if he feels it is unfair or unreasonable; and
3. Further provided that if the Premier feels that this order is illegal, that he be invited to submit the jurisdiction issue for third party adjudication before an independent and impartial court in the international arena.

BY THE COURT

At Fredericton this 5th day of November 1996.

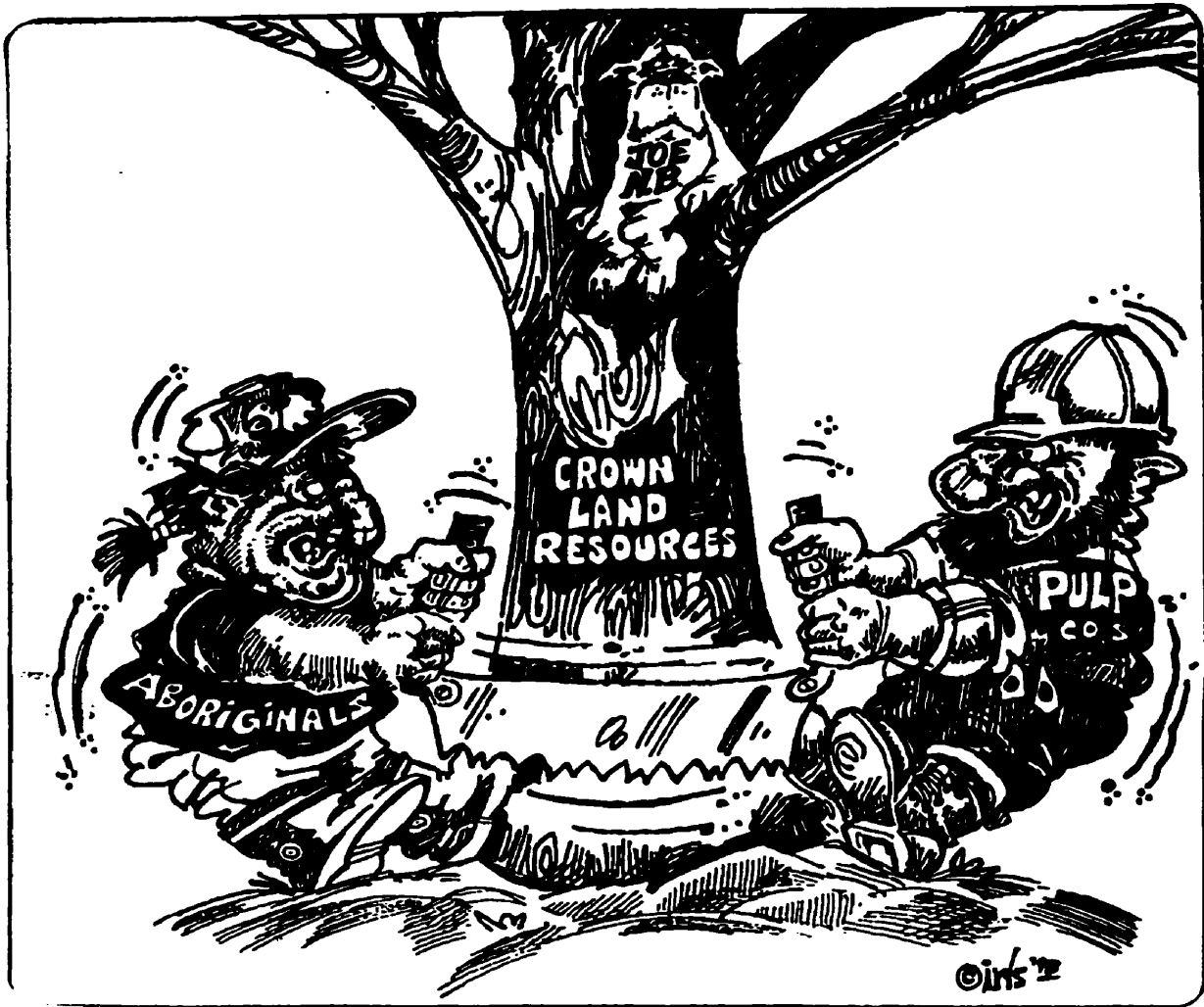
*Dema Brooks*  
*Burdett*  
*Shirley Deben*  
*H. Wayne Brooks*  
*Duan M Brooks*  
*Donna Peckey*

The Court's address for this issue for the time being is:  
130 Maliseet Drive, Fredericton, New Brunswick, E3A 2V9.

*Yves-Lucien G. Etizak*  
*Martin Paul*  
*Marianne Morillon*

*Thomas Brooks*  
*Donna Brooks*  
*Andrew Beech*  
*Connie Labonte*  
*Eric Labonte*  
*James Brooks*  
*Julia Kennedy*  
*Ann Whelan*  
*Julia Kennedy*  
*Donna Labonte*

Appendix C:



Source: *Fredericton (New Brunswick) Daily Gleaner*, 26 February 1998



Source: *Fredericton (New Brunswick) Daily Gleaner*, 2 May 1998



Source: *Fredericton (New Brunswick) Daily Gleaner*, 1 May 1998.



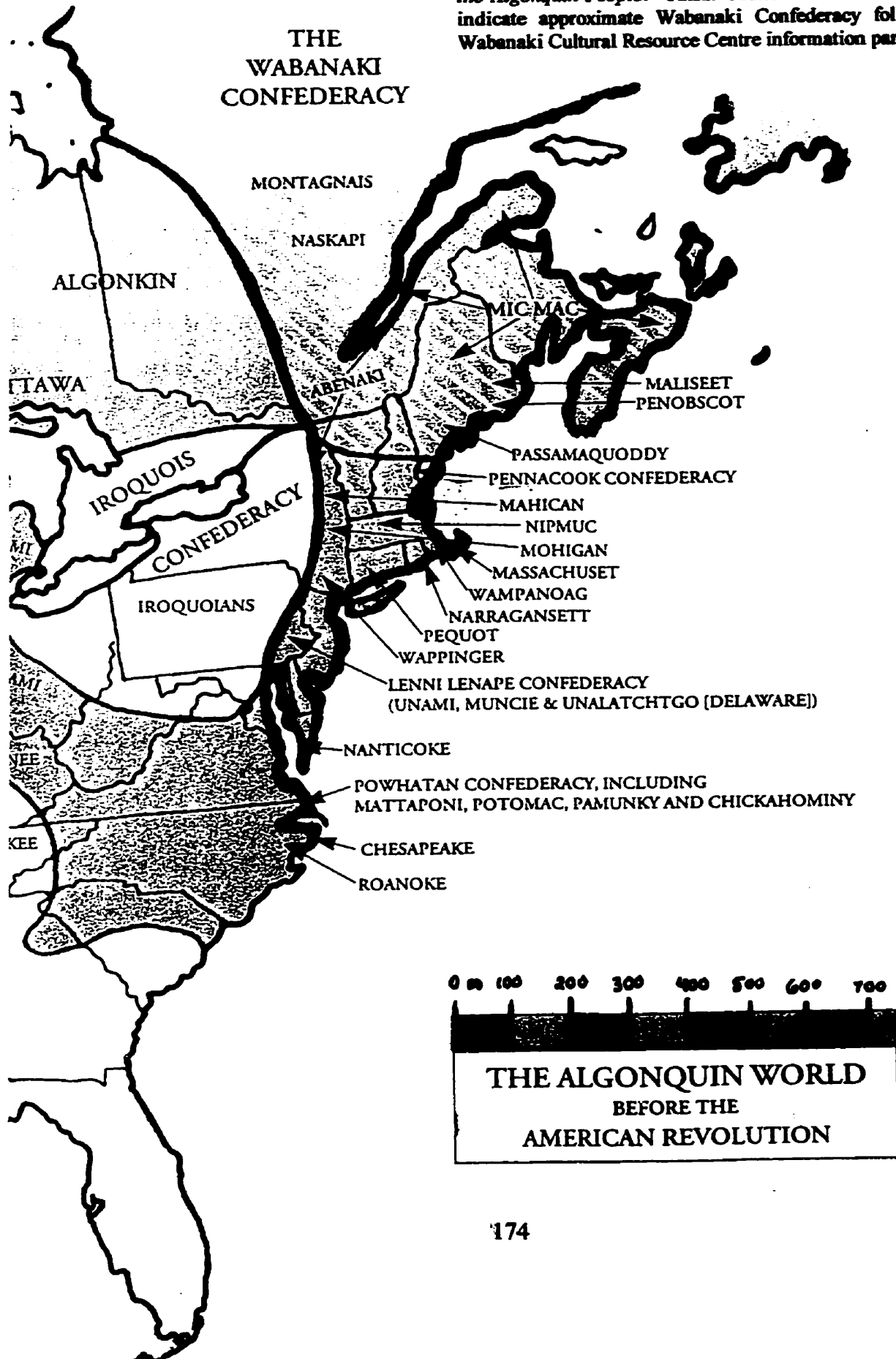
Source: *Fredericton (New Brunswick) Daily Gleaner*, 20 May 1998.



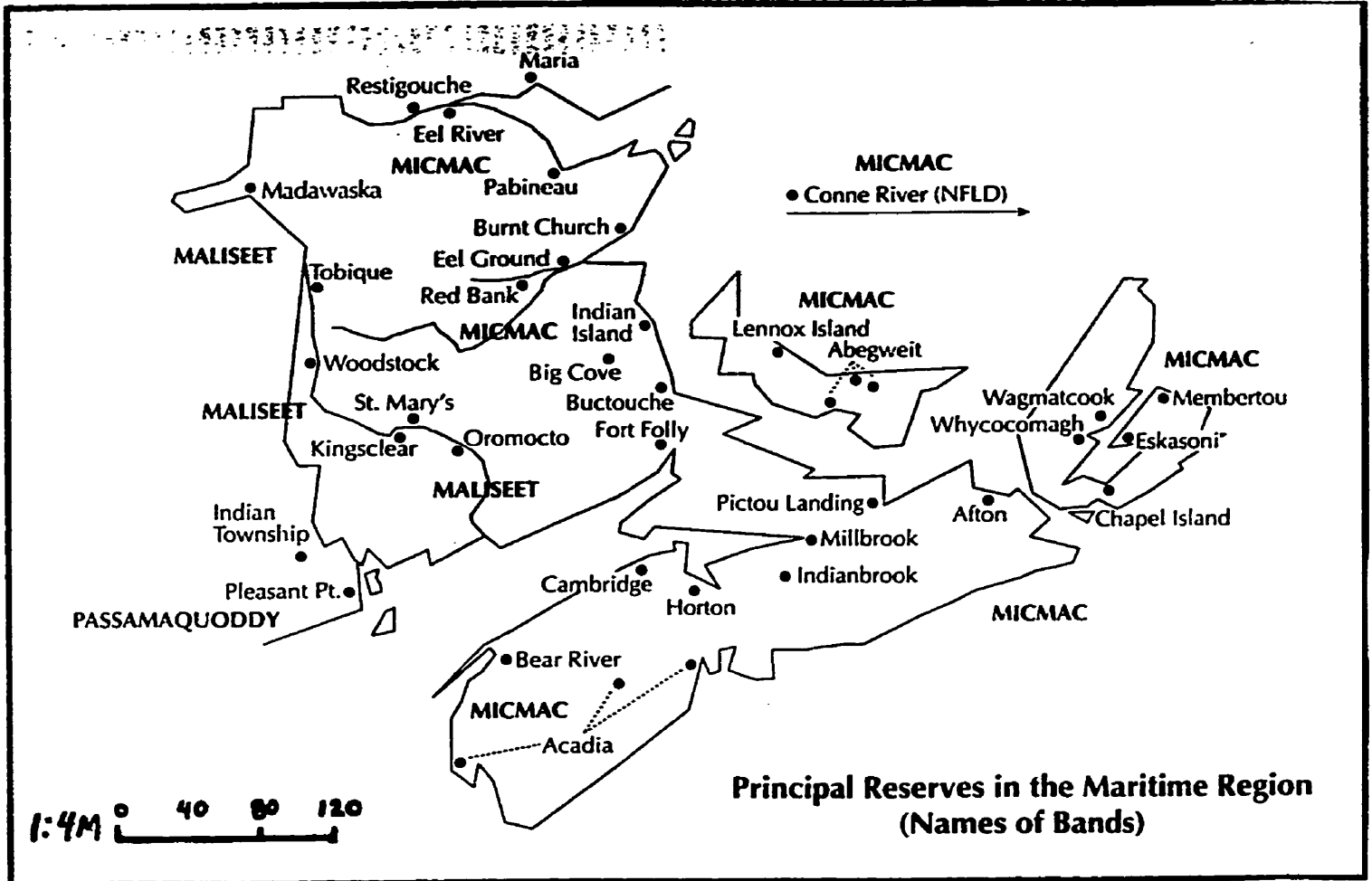
Source: *Fredericton (New Brunswick) Daily Gleaner*, 17 June 1998

**Appendix D:**

Source: Evan T. Pritchard (1997) *No Word For Time: the Way of the Algonquin People*. Tulsa: Council Oak Books. Red lines indicate approximate Wabanaki Confederacy following the Wabanaki Cultural Resource Centre information pamphlet.



**Appendix E:**



Source: Don Cayo (1997). "Indian Country," The New Brunswick Reader Magazine, 28 June, Fredericton: *Daily Gleaner*.